

ORDINANCE #68608
Board Bill No. 341
Committee Substitute

An Ordinance Authorizing The Execution Of A Transportation Project Agreement Between The City, And Railway Exchange Building Transportation Development District; Prescribing The Form And Details Of Said Agreement; Making Certain Findings With Respect Thereto; Authorizing Other Related Actions In Connection With The Transportation Project; And Containing An Emergency Clause And A Severability Clause.

WHEREAS, the City of St. Louis, Missouri (the “City”), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

WHEREAS, pursuant to sections 238.200 to 238.280 RSMo. (2009) (the “TDD Act”), by that certain Judgment and Order of the Circuit Court of the City of St. Louis, Missouri, in Cause No. _____, Division 1, entered _____, 2010 (the “Order”), the Railway Exchange Building Transportation Development District (the “TDD”) was created; and

WHEREAS, the TDD intends to undertake that certain “Transportation Project” as described and defined in the Order, which Transportation Project will provide a benefit to the City by increasing the available supply of parking; and

WHEREAS, the City of St. Louis constitutes the “local transportation authority” for the purposes of the Transportation Project, and as a result of the Missouri Highway Transportation Commission’s declining jurisdiction over the Transportation Project, approval of the Transportation Project is vested exclusively with the City; and

WHEREAS, the TDD Act provides that prior to construction or funding of a proposed project, such project shall be submitted to the local transportation authority for its prior approval, subject to any required revisions of such project, and the district and local transportation authority in question entering into a mutually satisfactory agreement regarding the development and future maintenance of the Transportation Project; and

WHEREAS, the City hereby desires and intends to approve the Transportation Project, subject to the TDD and the City entering into a mutually satisfactory agreement regarding the development and future maintenance of the Transportation Project; and

WHEREAS, the City intends to enter into that certain Transportation Project Agreement (the “Agreement”), in the form attached hereto as **Exhibit A** and incorporated herein by reference, with the TDD, as a mutually satisfactory agreement regarding the development and future maintenance of the Transportation Project; and

WHEREAS, the TDD Act provides that, within six months after development and initial maintenance costs of a project have been paid, the district shall transfer control and ownership of the project in question to the local transportation authority pursuant to contract; and

WHEREAS, the TDD intends to transfer and the City intends to accept such control and ownership pursuant to and on the terms set forth in the Transportation Project Agreement; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Transportation Project Agreement attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City and the TDD of their respective obligations are in the best interests of the City and the health, safety, morals and welfare of its residents.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Board of Aldermen hereby approves the Transportation Project as submitted to the City.

SECTION TWO. The Board of Aldermen further finds and determines that it is necessary and desirable to enter into the Transportation Project Agreement with the TDD in order to implement the Transportation Project.

SECTION THREE. The Board of Aldermen finds and determines that the Transportation Project is necessary and desirable in order to increase the supply of available parking in the City.

SECTION FOUR. The Board of Aldermen hereby approves, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Transportation Project Agreement by and between the City and the TDD in similar form to that attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Transportation Project Agreement and to affix the seal of the City thereto. The Transportation Project Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

SECTION FIVE. The Mayor and Comptroller of the City or his or her designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor or Comptroller or his or her designated representatives.

SECTION SIX. The Mayor and Comptroller or his or her designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor or Comptroller or his or her designated representatives.

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

SECTION EIGHT. The Board of Aldermen hereby finds and determines that this ordinance constitutes an “emergency measure” pursuant to Article IV, Section 20 of the City Charter, because this Ordinance establishes the District, which is a taxing district, and as such, this Ordinance shall take effect immediately upon its approval by the Mayor as provided in Article IV, Section 20 of the City Charter.

SECTION NINE. After adoption of this Ordinance by the Board of Aldermen, this Ordinance shall become effective on the 30th day after its approval by the Mayor or adoption over his veto; *provided that* if, by September 1, 2010, a closing on the sale of the Railway Exchange Building has not occurred, the provisions of this Ordinance shall be deemed null and void and of no effect.

EXHIBIT A

Transportation Project Agreement

RAILWAY EXCHANGE BUILDING TRANSPORTATION DEVELOPMENT DISTRICT

TRANSPORTATION PROJECT AGREEMENT

THIS RAILWAY EXCHANGE BUILDING TRANSPORTATION PROJECT AGREEMENT (this “Agreement”) is made and entered into as of the ___ day of _____, 20___, by and between the RAILWAY EXCHANGE BUILDING TRANSPORTATION DEVELOPMENT DISTRICT, a political subdivision duly organized and existing under the laws of the State of Missouri (the “TDD”), and the CITY OF ST. LOUIS, MISSOURI, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri (the “City”).

Recitals:

A. The TDD is a political subdivision and transportation development district formed pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the “TDD Act”).

B. Railway Exchange Building TIF, Inc., a Missouri corporation, or an affiliate (the “Developer”), is the owner of certain real property described on Exhibit A, attached hereto and incorporated herein by this reference, together with certain improvements thereon, located in the City (the “Property”).

C. The TDD shall acquire from the Developer a leasehold interest in a portion of the Property, upon which the Developer may design, develop, and construct a TDD Project, may cause the design, development, and construction of a TDD Project, or which may be acquired for a TDD Project (as hereinafter defined).

D. Upon completion of acquisition of the TDD Project, the TDD intends to issue Obligations (as defined hereinafter) in a principal amount sufficient to finance the TDD Project and related costs of the TDD, including, without limitation, the costs of issuance of the Obligations and accrued interest thereon; in the alternative, the TDD may pledge its revenues to the City (or an authority located within the City with the power to issue obligations) for the repayment of any obligations issued with respect to the redevelopment of the Property, at least a portion of which shall be issued on behalf of the TDD with respect to the TDD Project. The contribution by the TDD towards the acquisition and/or construction of the TDD Project will be in the form of payment for the Property plus reimbursement of Developer’s construction and soft costs.

E. Preliminary plans and specifications (“Preliminary Plans”) of the TDD Project are set forth on Exhibit B, attached hereto and incorporated herein by this reference, which Preliminary Plans have been approved by the City.

F. The City and the TDD desire to enter into this Agreement in order to: (i) acknowledge the general economic benefit and value to the community created by the TDD Project and to provide for public access within the TDD Project on the terms set forth herein; (ii) memorialize the agreement of the City, acting in its capacity as local transportation authority (as defined in the TDD Act) regarding development and future maintenance of the TDD Project; and (iii) serve as the contract pursuant to which the TDD shall transfer control and ownership of the TDD Project to the City after the costs thereof have been paid in accordance with Section 238.275.1 of the TDD Act. The City acknowledges that it is entering into this Agreement for the overall benefit of the community and that the commitment to provide public access to the TDD Project does not constitute a specific economic benefit to the City or the TDD.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, the TDD and the City hereby agree as follows:

Section 1. Definitions. In addition to the capitalized terms defined elsewhere in this Agreement and in the Recitals, the following capitalized terms used in this Agreement shall have the meanings ascribed to them in this Section.

Lease. That certain lease agreement entered into between the Developer, as landlord, and the TDD, as tenant, for the TDD Project, as may be amended from time to time by the parties thereto.

Obligations. Obligations issued by the TDD to assist in the finance the design, development, construction and/or the acquisition of the TDD Projects; including, the pledging of revenues by the TDD to the City (or an authority located within the City with the power to issue obligations) for the repayment of obligations issued with respect to the redevelopment of the Property, at least a portion of which shall be issued on behalf of the TDD with respect to the TDD Project.

Property. The real property described in Exhibit A hereto, all of which is located within the boundaries of the TDD.

TDD Ground Sublease. That certain sublease agreement entered into between the TDD, as Landlord, and the Developer, as subtenant, as may be amended from time to time by the parties thereto.

TDD Project. The Transportation Project described in Exhibit C of the Petition for the Creation of a Transportation Development District, filed in the Circuit Court of the City of St. Louis, Cause No. _____, Division 1, on _____, 2010.

TDD Revenues. The TDD Sales Tax and any other sales taxes, special assessments, real property taxes and other fees and

charges that may be imposed by the TDD pursuant to the applicable provisions of the TDD Act.

TDD Sales Tax. The transportation development district sales tax that the TDD is authorized to impose pursuant to Section 238.235 of the TDD Act.

Term. The period commencing on the date of execution of the TDD Ground Sublease and, unless otherwise terminated hereunder prior thereto, continuing until the end of the calendar month that includes that date that is the later of: (i) the end of the TDD Project's reasonably expected useful life, as determined by an engineer qualified to provide engineering services in the State of Missouri; or (ii) the satisfaction in full of all Obligations.

Section 2. Access to TDD Project. The TDD shall, and shall cause its agents and contractors to, comply with any and all applicable laws in connection with its operation of the TDD Project. Prior to the Transfer (as hereinafter defined), the TDD shall retain all operational control of the TDD Project. After the Transfer, the City shall have all operational control of the TDD Project for the duration of the Lease term, subject to any existing encumbrances.

Section 3. Transfer of Ownership and Control. The City and the TDD agree to execute an Assignment of Lease Agreement in form mutually agreeable to the parties immediately upon maturity or termination of the Obligations, by which the TDD transfers to the City its interest in the Lease for the remaining term of the Lease (the "Transfer"). The TDD and the City acknowledge that, upon execution, the transactions contemplated by the Assignment of Lease Agreement shall constitute the transfer of control and ownership of the Project as required pursuant to Section 238.275 of the TDD Act, provided that the TDD shall remain responsible for operation and maintenance of the Project even after such transfer, in accordance with Section 4 hereinafter.

Section 4. TDD Project Operation and Maintenance. Except as otherwise provided in the Lease, while the Obligations remain outstanding, the TDD shall perform, or cause to be performed, all obligations connected with or arising out of owning, occupying or using the TDD Project or any part thereof, including without limitation the payment of all expenses required for the operation of the TDD Project, including, without limitation, payment of any real or personal property taxes, assessments, payments in lieu of taxes assessed, any expenses incurred, performance of any cleaning or maintenance services required to maintain the TDD Project in good condition, and provision of any repairs for any damage to the TDD Project (the "TDD Maintenance"). The TDD agrees to operate and maintain the TDD Project in accordance with all applicable laws and regulations. Following the satisfaction in full of all Obligations, and during the remaining Term of this Agreement, the City shall be responsible for the TDD Maintenance.

Section 5. Indemnification and Release. To the extent permitted by law, the TDD agrees to indemnify, defend, and hold the City, its employees, agents, and independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the acquisition of the TDD Project, including liability under any Environmental Laws; and (ii) the negligence or willful misconduct of the TDD or its respective employees, agents or independent contractors in connection with the management, and acquisition of the TDD Project. To the extent permitted by law, the City agrees to indemnify, defend, and hold the TDD and its employees, agents, and independent contractors harmless from and against any and all suits, claims, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the negligence or willful misconduct of the City, its employees, agents, and independent contractors and consultants, or arising from a default by the City of its obligations hereunder. The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

Section 6. Miscellaneous.

6.1 Representations and Warranties of the TDD. The TDD hereby represents and warrants to the City and the Developer that: (i) the TDD is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the TDD pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the TDD; and (iii) this Agreement is binding upon, and enforceable against the TDD, in accordance with its terms.

6.2 Representations and Warranties of the City. The City hereby represents and warrants to the TDD and the Developer that: (i) the City is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the City pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the City; and (iii) this Agreement is binding upon, and enforceable against the City, in accordance with its terms.

6.3 Termination. In the event that the Ordinance authorizing the execution of this Agreement shall become

ineffective, then this Agreement shall terminate.

6.4 Applicable Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by, the laws of the State of Missouri.

6.5 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City or the TDD shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement. No member, partner, agent, employee or representative of the Developer shall be personally liable to the City or the TDD in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

6.6 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the TDD and the City with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. It supercedes all prior written or oral understandings with respect thereto. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the TDD and the City.

6.7 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

6.7 Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision, unless the unenforceable or invalid term or provision is such that a court reasonably would find that the parties, or any of them, would not have entered this Agreement without such term or provision, or would not have intended the remainder of this Agreement to be enforced without such term or provision.

6.8 Notices. Any notice, demand, or other communication required by this Agreement to be given by any party hereto to the others shall be in writing and shall be sufficiently given or delivered if dispatched by certified mail, postage prepaid, or delivered personally as follows:

In the case of the TDD: Railway Exchange Building Transportation Development District
706 Demun
St. Louis, Missouri 63105
Attention: Richard Yackey

With a copy to: Husch Blackwell Sanders LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attention: David Richardson, Esq.

In the case of the City, to: City of St. Louis
City Hall
1200 Market Street
St. Louis, Missouri 63103
Attention: Mayor, Room 200
Attention: Comptroller, Room 212

With a copy to: St. Louis Development Corporation
1015 Locust Street, Suite 1200
St. Louis, Missouri 63101
Attention: Executive Director

and

City Counselor
City of St. Louis

1200 Market Street, Room 314
St. Louis, Missouri 63103
Attention: Patricia A. Hageman

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

[Signature Pages to Follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

RAILWAY EXCHANGE BUILDING
TRANSPORTATION DEVELOPMENT
DISTRICT

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

CITY OF ST. LOUIS, MISSOURI

By: _____
Comptroller

Attest: _____
Register

Approved as to form: _____
City Counselor

**EXHIBIT A
DISTRICT LEGAL DESCRIPTION**

A tract of land consisting of the majority of City Block 128 and City Block 129 in the City of St. Louis, Missouri, and being more particularly described as follows:

Beginning at a point, said point being the intersection of the south right-of-way line of Locust Street and the east right-of-way line of 7th Street; thence southeasterly along south right-of-way line of Locust to the intersection of the south right-of-way line of Locust Street and the west right-of-way line of 6th Street; thence southwesterly along the west right-of-way line of 6th Street to the intersection of the north right-of-way line of Olive Street and the west right-of-way line of 6th Street; thence southwesterly along the west right-of-way line of 6th Street to the intersection of the south right-of-way line of Olive Street and the west right-of-way line of 6th Street; thence southwesterly along the west right-of-way line of 6th Street to the intersection of the west right-of-way line of 6th Street and the southeast corner of that parcel having an address of 207 N. 6th Street, currently or formerly owned by C A G Properties LLC (also known as City of St. Louis Tax Assessor Parcel ID 1290001000); thence northwesterly along the south line of said parcel to the east right-of-way line of a 15' W. north-south alley; thence southwesterly along the east right-of-way line of said 15' W. north-south alley to a point on the north right-of-way line of Pine Street; thence northwesterly along the north right-of-way line of Pine Street to the intersection of the southeast corner of that parcel having an address of 617 Pine Street, currently or formerly owned by James Angelos, May Department Stores Shopping Center Inc. Lessee (also known as City of St. Louis Tax Assessor Parcel ID 1290001300); thence northeasterly along east line of said parcel to the northeast corner

of said parcel; thence northwesterly along north line of said parcel to the northwest corner of said parcel; thence southwesterly along the west line of said parcel to the intersection of the north right-of-way of Pine Street and the southwest corner of said parcel; thence northwesterly along the north right-of-way line of Pine Street to the intersection of the north right-of-way line of Pine Street and the east right-of-way line of 7th Street; thence northeasterly along the east right-of-way line of 7th Street to the intersection of the east right-of-way line of 7th Street and the southwest corner of that parcel having an address of 216 N. 7th Street, currently or formerly owned by the Jack, Catherine A, Louis, & Eunice Berkley Trust (also known as City of St. Louis Tax Assessor Parcel ID 1290001500); thence southeasterly along the south line of said parcel to the southeast corner of said parcel; thence northeasterly along the east line of said parcel to the northeast corner of said parcel; thence northwesterly along the north line of said parcel to the intersection of the east right-of-way line of 7th Street and the northwest corner of said parcel; thence northeasterly along the east right-of-way line of 7th Street to a point on the east right-of-way line of 7th Street, also being the northwestern point of that portion of 7th Street vacated by Ordinance #50495; thence southeasterly 12 feet along the northern line of that portion of 7th Street vacated by said Ordinance #50495 to a point on the east right-of-way line of 7th Street; thence northeasterly along the east right-of-way line of 7th Street to the intersection of the east right-of-way line of 7th Street and the south right-of-way line of Olive Street; thence southeasterly along the south line of Olive Street to the intersection of the south right-of-way line of Olive Street and the northwest corner of that parcel having an address of 614 Olive Street, currently or formerly owned by Neil Tober Trs, May Department Stores Co Lessee (also known as City of St. Louis Tax Assessor Parcel ID 1290000300); thence southwesterly along the west line of said parcel to the southwest corner of said parcel; thence southeasterly along the south line of said parcel to the southeast corner of said parcel; thence northeasterly along the east line of said parcel to the intersection of the south right-of-way line of Olive Street and the northeast corner of said parcel; thence northeasterly to a point on the north right-of-way of Olive Street, directly across from the northeast corner of said parcel; thence northwesterly along the north right-of-way line of Olive Street to the intersection of the north right-of-way line of Olive Street and the east right-of-way line of 7th Street; thence northeasterly along the east right-of-way line of 7th Street to the Point of Beginning.

Together with all intervening streets and alleys, including a portion of Olive Street and a 15' W. north-south alley in City Block 129.

EXHIBIT B
PRELIMINARY PLANS OF TDD PROJECT
[SEE ATTACHED]

Approved: March 16, 2010