

ORDINANCE #65383
Board Bill No. 204
Committee Substitute

An ordinance authorizing and directing the City, acting through the Mayor, the Comptroller, to enter into an Intergovernmental Cooperation Agreement with St. Louis County, Missouri and the City of Clayton, Missouri to cooperate in the establishment, development and administration of the Ellenwood Subdivision Neighborhood Improvement District and the construction of the improvements within the district as set forth in Ordinance 65291 (Board Bill 124); and containing an emergency clause.

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

SECTION ONE. On behalf of the City of St. Louis, the Mayor and the Comptroller are hereby authorized and directed to enter into an Intergovernmental Cooperation Agreement with St. Louis County, Missouri and the City of Clayton, Missouri to cooperate in the establishment, development and administration of the Ellenwood Subdivision Neighborhood Improvement District and the construction of the improvements within the district as set forth in Ordinance 65291 (Board Bill 124), subject to such terms and conditions in substantially such form as Exhibit A attached hereto and incorporated herein by reference.

SECTION TWO. Emergency. This being an Ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and shall become effective immediately upon its passage by the Board of Alderman and its approval by the Mayor.

INTERGOVERNMENTAL COOPERATION AGREEMENT

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2001, by and between ST. LOUIS COUNTY, MISSOURI (the "County"), a duly organized and created body politic and political subdivision under the Constitution and laws of the State of Missouri, THE CITY OF ST. LOUIS, MISSOURI, a duly organized and created body politic and political subdivision under the Constitution and laws of the State of Missouri (the "City"), and THE CITY OF CLAYTON, MISSOURI ("Clayton"), a duly organized and created body politic and political subdivision under the Constitution and laws of the State of Missouri.

RECITALS

1. Section 70.220 R.S.Mo. provides that any municipality or political subdivision of the State may contract and cooperation with any other municipality or political subdivision for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; and
2. The Ellenwood Subdivision is a subdivision which is bounded on the north by Wydown Boulevard, on the east by Skinker Road, on the south by Hillcrest and the Wilson School and on the west by DeMun and Wydown Blvd and which lies partly within the boundaries of the City of St. Louis and partly within the boundaries of the City of Clayton and St. Louis County; and
3. The interior of the subdivision contains three streets known as Fauquier Drive, Alexander Drive and Woodbourne Drive, all of which are in bad condition and need of repair; and
4. The City, County and Clayton have found and determined that it is desirable and in the best interest of the residents of Ellenwood Subdivision and other members of the public using said roads for travel that a neighborhood improvement district be established for the purpose of reconstructing the three roads within Ellenwood Subdivision; and
5. Section 67.458 R.S.Mo. provides that the governing bodies of two or more adjoining counties, may contract to improve a road or street and may create a neighborhood improvement district for the purpose of improving roads and streets located within such adjoining counties; and
6. Petitions have been submitted to the City and County to establish the Ellenwood Subdivision Neighborhood Improvement District; and
7. The City and County have each passed ordinances creating said Neighborhood Improvement District; and

8. If the Ellenwood Subdivision Neighborhood Improvement District is created, the County shall maintain the neighborhood improvement district fund required by section 67.473 R.S.Mo. as the County contains the largest percentage of the assessed valuation of the District; and

9. The City, the County and Clayton do now find and determine that it is desirable and in the best interest of the City, the County, and the residents of the proposed Ellenwood Subdivision Neighborhood Improvement District to cooperate in the establishment, development and administration of the Ellenwood Subdivision Neighborhood Improvement District and the construction of the improvements as outlined in the petitions for the establishment of the district.

AGREEMENT

Now, therefore, in consideration of the above premises and the mutual obligations of the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - DEFINITIONS

1.1 Definitions. As used in this Agreement, the following words and terms shall have the following meanings:

"Act" means the Neighborhood Improvement District Act, Sections 67.453 to 67.475 of the Revised Statutes of Missouri, as amended.

"Agreement" means this Intergovernmental Cooperation Agreement, as the same may be from time to time modified, amended or supplemented by the parties hereto.

"Board" means the Board of Aldermen of St. Louis City, Missouri.

"Bonds" means any series of neighborhood improvement district bonds that may be authorized and issued under the Act for the purpose of providing permanent financing for the costs of construction of improvements within neighborhood improvement districts.

"Construction Manager" means the Construction Manager for the Project with such obligations and duties as are identified in this Agreement and which shall be the City.

"County Council" means the County Council of St. Louis County, Missouri.

"District" means the Ellenwood Neighborhood Improvement District created under the Act.

"Improvements" means any one or more public facilities or improvements which confer a benefit or property within the Neighborhood Improvement District and which may include, but are not limited to, those Improvements identified in the Act.

"Notes" means the temporary notes that may be issued pursuant to provisions of the Act to fund construction costs for the Improvements in connection with an individual Project in a Neighborhood Improvement District.

"Project" means the construction of improvements for the Neighborhood Improvement District.

"Special Assessments" means the Special Assessments to be imposed on property within the District benefitted by the Improvements.

"State" means the State of Missouri.

ARTICLE II - THE DISTRICT

2.1 Establishment of the District. Clayton will assist the City and the County in establishing the Ellenwood Neighborhood Improvement District as follows:

(a) Clayton will assist the City and County to such extent as requested by the City or County, in preparing and/or reviewing any and all petitions, ordinances, assessment rolls, advertisements, notices, specifications, drawings or other documents necessary for the formation and administration of the District.

(b) Clayton will prepare proposed budgets, cost estimates and construction schedules with respect to the Project to be constructed for the District.

(c) Clayton will attend the public hearing required by Section 67.463.1 R.S.Mo. in order to answer any questions or concerns of the residents of the District.

(d) Clayton will disseminate information regarding the Project to owners of property within the District and solicit citizen participation in the process of forming the District.

2.2 Construction Manager. The City and County hereby select and designate Clayton, and Clayton agrees, to act as Construction Manager for the Project. Clayton may retain one or more firms of engineers or other advisors to assist Clayton in its duties as Construction Manager hereunder.

2.3 Obligations of Construction Manager. In its capacity as Construction manager, the parties agree that Clayton shall perform the following:

(a) the selection, approval, hiring and discharge of engineers, contractors, subcontractors, professionals and other third parties on such terms and conditions as Clayton deems appropriate (provided that the same shall be subject to any competitive bidding procedure required by applicable law and code);

(b) the negotiation of contracts and other agreements and the procurement of easements, surveys, licenses and other rights with third parties in form and substance satisfactory to Clayton;

(c) the procurement of preliminary engineering studies in connection with the Project;

(d) the preparation of budgets, cost estimates, financial projections, statements, information and reports and the procurement of cost estimates from such professionals as Clayton deems appropriate in its discretion.

2.4 Construction Plans. Clayton will cause to be prepared construction plans for the Improvements to be constructed for the Project in sufficient detail to show that construction will be in general conformance with the provisions of this Agreement. Construction plans and all construction practices and procedures with respect to the Improvements shall be in conformity with all applicable state and local laws, ordinances and regulations, including, but not limited to, any performance, labor and material payment bonds required for the Improvements. The City and County agree to cooperate with the Construction Manager and to expeditiously process and timely consider all applications for any permits or approvals required by the City or County in order for the Construction Manager to proceed under the construction plans, all in accordance with applicable City and County ordinances and the laws of the State.

2.5 Changes. During construction of the Improvements, Clayton may make such changes, including expansion or deletion of items, revisions to the areas and scope of the Improvements, and any and all other changes as site conditions or orderly development may dictate or as may be in furtherance of the general objectives of the Project; however, such changes shall not increase the cost of the Project by more than twenty-five (25%) of the original cost estimates as approved by the District residents.

2.6 Information Regarding the Project. Clayton will keep the City and County informed regarding the progress of the design and construction of the Project, and, at the request of the City or County, shall meet with representatives of the City or County with respect thereto.

2.7 Licenses and Permits. Clayton shall require that the engineers, contractors and other third parties retained in connection with the Project obtain all licenses and permits required in connection with the Project, and shall require that such engineers, contractors and other third parties shall agree to perform and construct the Project in accordance with this Agreement and applicable governmental requirements.

2.8 Obligations of the City and County. In connection with the Project, the City and County agree that it will:

(a) promptly review all documents required for establishment of the District and for all other action under the Act and, if such documents are satisfactory to the City and County, take action as permitted by the Act;

(b) cooperate with Clayton as necessary in the construction of the Improvements and assessment of the properties benefited by the Improvements.

ARTICLE III - PROJECT COSTS

3.1 Estimated Project Costs. The estimated project cost shall be that estimated project cost set forth in the Petition submitted by the property owners within the District and in the ordinances or resolutions passed the governing bodies of the City and County which created the District.

3.2 Division of Project Costs. The Project costs for the entire District, including the portion of the District which lies in the City of St. Louis and the portion of the District which lies in St. Louis County, shall be separated for the purpose of initial funding into two distinct amounts as follows: 1) the Project costs for the Improvements located wholly within the City of St. Louis and 2) the Project costs for the Improvements located wholly within St. Louis County. The parties understand and agree that a separate method is used in determining the allocation and assessment of the Project costs among the benefited properties within the District.

3.3 Initial Funding of Project Costs. Clayton hereby agrees to provide the initial funding for the Project costs related to the improvements lying wholly within St. Louis County and the City of Clayton; such funding is subject to appropriation. Clayton shall be reimbursed for this amount from the special assessments levied on the properties within the District benefited by the improvements. As Clayton is providing the initial funding for Project costs related to the improvements lying wholly within St. Louis County and the City of Clayton, the County need not provide any initial, or subsequent, funding for the Project costs.

The City hereby agrees to provide the initial funding for the Project costs related to the improvement lying wholly within St. Louis City; such funding is subject to appropriation. The City shall be reimbursed for this amount from the special assessments levied on the properties within the District benefitted by the improvements.

3.4 Costs Reimbursed. The City's costs, County's costs and Clayton's costs related to the Project (including, but not limited to, administrative, legal, engineering, or construction costs) shall be reimbursed from moneys generated by the special assessments on the benefited properties within the District as allowed under the Act. These costs may not be reimbursed immediately, but may be reimbursed over a period of years as special assessments are collected.

3.5 Obligations Limited. The City's costs, County's costs, and Clayton's costs related to administration and construction of the Project shall be reimbursed from moneys generated by the special assessments on the benefited properties within the District as allowed under the Act. The parties have no other financial obligation to the District.

3.6 Issuance of Notes and Bonds. Pursuant to the Act, the City and County may issue Notes and/or Bonds from time to time to provide financing to fund construction costs incurred in connection with the Improvements for the Project. While the parties agree that it will probably not be necessary to issue Notes or Bonds, nothing in this Agreement would prevent the City or County from issuing Notes and/or Bonds to provide financing to fund construction costs incurred in connection with the Improvements for the Project. If the City or County elect to issue Notes or Bonds, all proceeds shall be deposited into the separate account established for the District and used to reimburse the City and County for all costs incurred by them in connection with the Project.

3.7 Examination of Records. All documents and records, which shall include but not be limited to accounting records (hard copy as well as computer readable data), written policies and procedures, indirect cost records, subcontractor records, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Project shall be open to inspection and subject to audit and/or reproduction by any of the parties to this agreement.

ARTICLE IV - SPECIAL ASSESSMENTS

4.1 Assessment of Property. The City, County and Clayton shall compute the final cost of the Improvements, including the costs incurred by City, County and Clayton in the establishment and administration of the Project, and shall apportion the costs among the property benefited by such Improvements in accordance with the method of assessment as set forth in the Petition

and the Ordinances or Resolutions creating the District. The City and County shall assess the special assessments by Ordinance and with appropriate notice.

4.2 Yearly Notice of Assessment. The City and County shall mail a notice of special assessment to all properties assessed within the District; Clayton shall mail the assessment notices if requested to do so by either the City or the County. The Notice shall be mailed at the same time as the bill for general property taxes.

4.3 Collection of Special Assessments. Clayton shall collect the special assessments assessed against all benefited properties within the District. Clayton, with assistance from the City and County if necessary, may take any action necessary to collect delinquent assessments.

4.4 Separate District Account. As the County contains the largest percentage of the assessed valuation of the District, the County shall maintain the neighborhood improvement district fund required by section 67.473 R.S.Mo. All assessments, whether collected by the City, County or Clayton, shall be deposited into the separate account established for the District.

4.5 Reimbursement for Project Costs. With the assistance of the City and County, Clayton shall then compute proportional reimbursements to be made to the City, County or Clayton. The County shall then pay the necessary reimbursements to the City, County or Clayton from the separate account established for the District; the County may request and Clayton hereby agrees to make such payments if appropriate procedures can be established between the County and Clayton whereby Clayton may make payments to the parties from the separate account established for the District.

ARTICLE V - GENERAL PROVISIONS

5.1 Breach of Contract. In the event of any material violation or breach of any covenant or agreement contained in this Agreement by the City, County or Clayton or their successors or assigns, as the case may be, the non-breaching parties shall give written notice of such violation or breach and the breaching party shall have thirty (30) calendar days after receipt of such notice to cure such breach; provided, however, that in the event that said breach cannot be cured within thirty (30) calendar days and the breaching party shall have undertaken the curing of said breach within thirty (30) calendar days and shall diligently and continuously pursue the same, then the failure to cure said breach within thirty (30) calendar days shall not be a violation or breach hereof.

In the event any breach or violation remains uncured after thirty (30) days calendar days from the date of notice as extended for such period of time for which the breaching party shall have diligently pursued the cure pursuant to the preceding sentence, the breaching party, for itself and its successors and assigns, agrees that the non-breaching parties have the right and power to institute and prosecute any proceeding at law or in equity to specifically enforce any covenant or agreement contained herein and for damages resulting therefrom (subject to the limitations in Section 5.2 hereof).

The parties, their successors and assigns, further agree that the other party shall have the right and power to institute and prosecute proceedings to enjoin the threatened or attempted violation of any covenant or agreement contained herein.

5.2 Force Majeure. Neither the City, County, Clayton nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and time for performance of obligations hereunder shall be extended, in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; condemnation; strike; lockout; civil disorder; war; restrictive government regulations; issuance of any permits and/or legal authorization by the governmental entity necessary for the Clayton to proceed with the construction of the Improvements or any portion thereof; shortage or delay in shipment of material or fuel; act of God; unusually adverse weather or wet soil conditions; or other causes beyond the parties' reasonable control, including, but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement or the District.

5.3 Assignment. The rights, duties and obligations of the parties shall not be assignable in whole or in part subject to prior written approval of the other parties, which approval shall not be unreasonably withheld or delayed.

5.4 Notices. Any notice, demand or other communication required by this Agreement to be given by any party hereto shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage

prepaid, or delivered personally,

- (1) In the case of the City, to:

Office of the Comptroller
1200 Market Street
Room 311
St. Louis, Missouri 63103

with a copy to:

F. M. Oates
Associate City Counselor
1200 Market Street
Room 314
St. Louis, Missouri 63103

- (2) In the case of the County, to:

with a copy to:

Bob Grant
County Counselor's Office
41 South Central Avenue
St. Louis, Missouri 63105

- (3) In the case of Clayton, to:

Scott Randall
City Manager
10 North Bemiston Ave.
Clayton, Missouri 63105

with a copy to:

Kevin M. O'Keefe
City Attorney
130 South Bemiston, Suite 200
Clayton, Missouri 63105

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 party as provided in this Section. Said notices shall be deemed received on the third (3rd) business day after deposit in the United State mail or on the actual date such notice is delivered.

5.5 Choice of 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 for all purposes and intents.

5.6 Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

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

5.8 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City, County or Clayton shall be personally liable to the other party to this Agreement 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.

ARTICLE VI - TERMINATION

6.1 Termination of this Agreement. This Agreement shall terminate upon the collection of the final special assessments and reimbursement of all costs to the parties.

Any party may cancel this Agreement upon thirty (30) days written notice to the noncanceling parties as long as such cancellation is done prior to the advertisement for bids for construction of the Project.

This Agreement shall automatically terminate if the governing bodies of the City and County fail to enact any of the necessary ordinances as required by the Act. Upon such failure to act, the City and County agree to reimburse Clayton for any engineering or construction costs expended on the Project and incurred prior to the termination of the agreement.

IN WITNESS WHEREOF, the City, County and Clayton have caused this Agreement to be executed in their respective names and each has caused its seal to be affixed hereto, and attested as to the date first above written.

CITY OF ST. LOUIS, MISSOURI

Name:
Title:

(Seal)

Attest:

Title:

Approved as to Form:

By:
City Counselor's Office

ST. LOUIS COUNTY, MISSOURI

Name:
Title:

(Seal)

Attest:

Title:

CITY OF CLAYTON, MISSOURI

Name:
Title:

(Seal)

Attest:

Title:

Approved: December 31, 2001