

ORDINANCE #68970
Board Bill No. 108

An Ordinance Authorizing The Execution Of A Transportation Project Agreement Between The City And The St. Louis Food Hub 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 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, as amended (the “TDD Act”), the owner(s) of certain real property (the “Property”) described in that certain Transportation Project Agreement (the “Agreement”), attached hereto as **Exhibit A** and incorporated herein by reference, intend to form a Transportation Development District to be known as the St. Louis Food Hub Transportation Development District, or by such other name as may be designated by a petition (the “Petition”) of such owner(s) to form such district (the “TDD”); and

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

WHEREAS, the City constitutes the “local transportation authority” pursuant to section 238.202.1(4) of the TDD Act for the purposes of the Transportation Project, and as no portion of the proposed Transportation Project has been or is intended to be merged into the State highways and transportation system under the jurisdiction of the Missouri Highway Transportation Commission, approval of the Transportation Project is vested exclusively with the City pursuant to section 238.225.3 of the TDD Act; and

WHEREAS, section 238.225.1 of 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 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, section 238.275 of 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 Agreement; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the 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 Agreement with the TDD (upon its formation) 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 public access to the parcels described in the Petition and 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 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 Agreement and to affix the seal of the City thereto. The 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.

EXHIBIT A

Transportation Project Agreement

ST. LOUIS FOOD HUB TRANSPORTATION DEVELOPMENT DISTRICT

TRANSPORTATION PROJECT AGREEMENT

THIS ST. LOUIS FOOD HUB TRANSPORTATION PROJECT AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 201_, by and between the ST. LOUIS FOOD HUB 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. City Hospital Development II, L.L.C., a Missouri limited liability company, or any one or more affiliates (collectively, the "Company"), 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 Company a leasehold interest in a portion of the Property, upon which the

Company may design, develop, and construct a TDD Project (as hereinafter defined), may cause the design, development, and construction of a TDD Project, or which may be acquired for a TDD Project.

D. 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 Company, 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 or any other political subdivision (in whole or in part on behalf of the TDD) to finance the TDD Project.

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

TDD Project. The Transportation Project described in the Petition for the Creation of a Transportation Development District, filed in the Circuit Court of the City of St. Louis.

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 Lease 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 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 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 Company 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 Company 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: St. Louis Food Hub TDD
1935 Park Ave
St. Louis, Missouri 63104
Attention: Chris Goodson

With a copy to: Husch Blackwell 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 St. Louis Food Hub Transportation Development District Transportation Project Agreement to be executed as of the date first written above.

**ST. LOUIS FOOD HUB TRANSPORTATION
DEVELOPMENT DISTRICT**

By: _____
_____, Chairman

ATTEST:

By: _____
_____, Secretary

IN WITNESS WHEREOF, the parties have caused this St. Louis Food Hub Transportation Development District Transportation Project Agreement to be executed as of the date first written above.

CITY OF ST. LOUIS, MISSOURI

By: Mayor

By: Comptroller

Attest:

Register

Approved as to form:

City Counselor

EXHIBIT A

LEGAL DESCRIPTION

The District Property includes those parcels identified by St. Louis City Assessor Parcel Identification Numbers 082000050, 041500015 and 041400015, as well as a portion of S. 14th St., described as follows:

Beginning at a point on the southern line of Lafayette Ave. at the northeast corner of that certain parcel identified as Parcel No. 082005015; thence eastward along said southern line of Lafayette Ave. to a point along the western line of S. 14th St.; thence southwest along the northwest line of S. 13th St. to a point at the southeast corner of that certain parcel identified as Parcel No. 041500015; thence along the southwestern line of said parcel and along a straight line across S. 14th St. to the northwest line of said S. 14th St.; thence southwest along said northwest line of S. 14th street to a point at the southern line of that certain parcel identified as Parcel No. 082000050; thence continuing along the boundaries of said Parcel No. 082000050 to the point of beginning.

Approved: July 20, 2011