

## *St. Louis City Ordinance 65122*

FLOOR SUBSTITUTE  
BOARD BILL NO. 245 [00]

INTRODUCED BY ALDERMAN LEWIS REED

An ordinance pertaining to Lucas Park; authorizing and directing the execution of a lease reviewed and recommended by the Board of Public Service and approved by the City Counselor as to form and as being in all respects consistent with Ordinance 59741, of certain land and certain playground equipment in said Lucas Park; and containing an emergency clause.

**WHEREAS**, the Board of Aldermen wishes for Downtown Children's Center, Inc., a Missouri not for profit corporation and day care center ("DCC"), to continue to operate in Downtown St. Louis; and

**WHEREAS**, in order for DCC to continue so to operate, it is necessary for the City to lease certain land and certain playground equipment in a portion of Lucas Park to it, on the terms set forth herein;

Now, Therefore,

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

**SECTION ONE.** The Mayor and the Comptroller are hereby authorized and directed to execute a lease between the City and Downtown Children's Center Inc. ("DCC") of certain land and playground equipment in Lucas Park to the DCC, in substantially the form attached hereto as Exhibit 1, which is incorporated herein and made a part of this ordinance by this reference.

**SECTION TWO.** This ordinance being deemed necessary for the immediate preservation of the public health and safety is hereby declared an emergency measure pursuant to Sections 19 and 20 of Article IV of the City Charter, and shall become effective upon its passage and approval by the Mayor or its adoption over the Mayor's disapproval.

**EXHIBIT 1  
LEASE**

This Lease ("this Lease") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Date of this Lease") between the City of St. Louis, Missouri (the "City") and Downtown Children's Center, Inc., a Missouri not for profit corporation ("DCC"), witnesses that:

**WHEREAS**, the Board of Aldermen wishes for DCC to continue to operate in Downtown St. Louis; and

**WHEREAS**, in order for DCC to continue so to operate, it is necessary for the City to lease certain land and certain playground equipment in a portion of Lucas Park to it, on the terms set forth herein; and

**WHEREAS**, said playground equipment was purchased and installed by DCC as a gift to the City in 1991; and

**WHEREAS**, the Mayor and the Comptroller of the City, acting for and on behalf of the City pursuant to the City Charter and Ordinance \_\_\_\_\_ (C.S.B.B. 245) have been authorized and directed to execute and deliver this Lease; and

**WHEREAS**, this Lease has been reviewed and favorably recommended in writing by the Board of Public Service, and approved by the City Counselor as to form and as being in all respects consistent with Ordinance 59741, prior to the adoption of Ordinance \_\_\_\_\_ (C.S.B.B. 245); and

**WHEREAS**, this Lease complies with all of the terms, conditions required by said Ordinance 59741 and all procedures specified by said Ordinance 59741 have been followed with respect to this Lease;

**NOW, THEREFORE**, in consideration of the premises and their mutual promises, undertakings, and agreements hereinafter set forth, the parties hereto agree as follows:

**1. LEASED PREMISES.** The City hereby leases, lets and rents to DCC, and DCC hereby leases, lets and hires from the City, subject to all the provisions of this Lease, that certain tract of land and the playground equipment situated thereon (the "Leased Premises") in Lucas Park described in Exhibit A and depicted on Exhibit B hereto, which are incorporated herein by this reference. Notwithstanding any provision hereof to the contrary, DCC shall have the exclusive right to use the

Leased Premises only during the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday during the term of this Lease.

**2. TERM.** The initial term of this Lease shall be twenty-five (25) years from the Date of this Lease. This Lease may be renewed thereafter for one (1) or more successive renewal terms of twenty-five (25) years each upon the same terms and conditions, provided, however, that any such renewal term shall be subject to the approval of the City's Board of Aldermen by Resolution upon favorable recommendation by the City's Director of Parks, Recreation & Forestry (" the Director") and the City's Board of Estimate and Apportionment, obtained prior to the commencement thereof.

**3. RENT.** As and for rent throughout the initial term and any renewal term hereof, DCC shall pay to the City rent in the amount of One Dollar (\$1.00) per year. The receipt of the rental payment for the entire initial term hereof is hereby acknowledged by the City. Such payment shall be held by the Comptroller in the Lucas Park Fund authorized by Ordinance 61988, which is codified as Chapter 5.74, Revised Code, for use pursuant to that ordinance.

**4. USE.** The Leased Premises shall be held and maintained by DCC solely for the use and benefit of DCC and the public generally as a playground.

**5. MAINTENANCE, REPAIRS AND EXPENSES.**

a. All costs and expenses of any kind whatever of operating and maintaining or which are related to the Leased Premises shall be borne by DCC, including, but not limited to, the costs and expenses of the maintenance of all fencing, playground equipment, grass, trees, shrubbery and other landscaping from time to time on the Leased Premises. Such maintenance shall be performed in a manner which is approved in advance by the Director.

a. Any structure, fence, fixture, or facility constructed, erected or renovated on the Leased Premises pursuant to this Lease shall be and remain the property of the City.

b. Charges for all utilities, including but not limited to, water, electricity, telephone, security alarm, power, heat,

refrigeration, sewage and waste disposal within the Leased Premises shall be paid at the sole cost and expense of DCC.

## **6. SIGNS & COMMERCIAL ADVERTISEMENT.**

a. No exterior signs shall be erected without the prior written approval of the Director after review by the City's Preservation Board.

b. Permanent commercial advertisements on the Leased Premises are prohibited.

**7. CONSTRUCTION OR WORK.** Any and all construction or work on the Leased premises or on or in the facilities thereon by DCC shall be done in complete compliance with all applicable City, State and Federal Codes and pursuant to plans and specifications approved by the City's Board of Public Service after review by the City's Preservation Board and subject to approval by or permit of any other City department or agency whose approval or permission may be required under the City Charter or City ordinances prior to the commencement of any such construction or work; provided, however, that construction or work not expressly authorized by this Lease shall also be subject to the approval provisions of said Ordinance 59741.

**8. LICENSES AND PERMITS.** DCC will secure and keep in force all licenses and permits required for its use of the Leased Premises. Except as otherwise specifically provided in this Lease, nothing in this Lease shall be construed to exempt DCC from the provisions of any City ordinance of general applicability.

## **9. ENVIRONMENTAL LAWS.**

a. DCC shall comply in its occupancy and its use of the Leased Premises with any applicable laws pertaining to health of the environment including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as hereafter amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Hazardous and Solid Waste Amendments of 1984, as hereafter amended ("RCRA"), the

Federal Water Pollution Control Act, as now or hereafter amended ("FWPCA"), and any laws of the State of Missouri or any subdivision thereof, relating to the presence of, removal, spill, release, leaking or disposal of oil, petroleum, toxic pollutants, solid waste or other hazardous substances.

b. DCC shall, periodically furnish the Director with satisfactory proof that it is in full compliance with any and all federal and/or state laws and regulations and City ordinances relating to or concerning air quality, water quality, noise, hazardous or toxic materials, hazardous wastes, infectious wastes, solid wastes, underground storage tanks and hazardous building materials; provided, that DCC shall not be obligated to incur significant expense in doing so. Further, the City shall have the right to inspect any and all portions of the Leased Premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if the City has reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur.

**10. INSPECTION.** From time to time during the term of this Lease, and in addition to the inspections authorized in Section 9 hereof, authorized personnel of the City shall at all reasonable hours (with reasonable advance notice to DCC) be permitted to enter upon and inspect the Leased Premises and the facilities thereon in order to ascertain that the Leased Premises and the facilities are being properly maintained and kept in repair and good order by DCC.

**11. ANNUAL REPORT.** The DCC shall submit to the Director a written annual report describing in detail its activities and operations on the Leased Premises in the preceding calendar year, by June 30 of each year.

**12. INDEMNIFICATION.** DCC shall indemnify and hold harmless the City, and all its departments, boards, officers, agents, and employees from all suits, actions, loss, expense, or claims or any kind whatsoever, including attorneys' fees and expenses, arising out of or relating in any way to the execution, performance, or non-performance of this Lease or the operation, use, occupancy or any condition of the Leased Premises, or of any improvement, facility, improvement, or thing of any kind on

the Leased Premises, or caused by any action or omission, whether or not covered by insurance. DCC shall defend the City, at the sole expense of DCC, against any such claim, suit or action. This Section 12 shall not apply, however, to any such liability as may be the result of the negligence or willful misconduct of the City or its employees or agents acting within the scope of their employment or agency.

### **13. INSURANCE.**

a. During the term of this Lease, DCC shall, at no cost or expense to the City, maintain public liability and property damage insurance, naming the City as an insured on forms and with companies reasonably satisfactory to the City, against claims for personal injury, death, or property damage occurring upon, in, or about the Leased Premises and the facilities thereon and on, in, or about the adjoining sidewalks and park area. Said insurance shall be a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and an aggregate amount Two Million Dollars (\$2,000,000). The policies for such insurance may be for the mutual benefit of DCC (including any entity affiliated with or acting with, under or through DCC) and the City, or for the benefit of the City alone.

b. If at any time any of the insurance policies required by this Section shall be or become unsatisfactory to the City, as to form or substance (including coverage amounts) or issuer, DCC shall, upon notice to that effect from the City, promptly obtain a new policy, and submit the same for approval to the City's Comptroller, provided, however, that within ten (10) days of receipt of notice to such effect from the City, DCC may notify the City that it disputes the content of such notice. In that event, such issue shall be resolved within forty-five (45) days by a panel consisting of the City's Comptroller or her/his designee, a designee of DCC, and an insurance broker doing business in the Metropolitan Saint Louis Area jointly selected by the City's designee and DCC's designee within ten (10) days after DCC's notice under this paragraph.

c. Copies of certificates of all such policies of insurance (or the renewals thereof) showing the City as a "named

insured" shall be forwarded to and maintained on file at all times with the City's Comptroller, accompanied by evidence that the premiums thereon have been paid.

d. All policies of insurance issued pursuant to this Section shall contain an agreement by the insurer that such policies shall not be canceled or altered without at least thirty (30) days prior written notice to the City.

**14. NONDISCRIMINATION.** DCC agrees that in the use of the Leased Premises or in the use of any premises, it will not exclude or discriminate against any person solely because of race, color or creed, sex, sexual orientation, or for any reason violative of law and not applicable alike to persons generally in the use of said Leased Premises.

**15. MINORITY PARTICIPATION.** As specified in Exhibit C, which is incorporated herein by this reference, DCC agrees to maximum utilization of minority business enterprises in construction on the Leased Premises. DCC agrees to conform to all applicable federal, state and local equal opportunity laws. DCC agrees to designate one of its employees as a Minority Participation Administrator, and to notify the City of the name, business address and telephone number of such administrator. During periods of major construction on the Leased Premises DCC shall report monthly to the City's contract compliance officer the level of MBE and WBE participation in such construction projects. Such reports shall identify the MBE and WBE participants and set forth the amounts paid to such participants and the total project cost.

**16. NON-ASSIGNABILITY.** Without the prior written consent of the other party first obtained, which shall not be unreasonably withheld, neither party shall assign, sublease, lease or transfer, in whole or in part, this Lease or such party's interest in the Leased Premises. This Lease shall automatically and forthwith terminate if assigned, sold or otherwise transferred by DCC without prior written consent by the City.

**17. NOTICE AND OPPORTUNITY TO CURE; TERMINATION.** In the event of DCC's failure to comply with or perform any of the terms, covenants or agreements herein required to be complied with or performed by DCC and the continuation of such failure for sixty (60) days after written notice of such failure from the City to DCC (by registered or certified mail, return receipt requested), or, if the failure is of such a character as cannot reasonably be cured within a sixty (60) day

period, then upon failure by DCC within such sixty (60) day period to undertake such action as reasonably can be taken toward curing same, or failure thereafter diligently to prosecute such action to completion as promptly as reasonably possible after such action is initiated, then such failure shall constitute a breach of this Lease and all rights of DCC hereunder, and this Lease, shall cease, terminate, be forfeited, and be void.

**18. RE-ENTRY.** If this Lease shall be terminated pursuant to Sections 16 or 17 hereof, the City may immediately or at any time thereafter re-enter the Leased Premises and remove therefrom DCC, its agents, employees, or other persons, and all or any of its property therefrom.

**19. SUCCESSOR AND ASSIGNS.** The covenants and agreements herein contained shall bind and inure to the benefit of the City, its successors and assigns, and DCC, its successors and assigns.

**20. LESSEE'S ACKNOWLEDGMENTS.** DCC acknowledges that neither expenditures of funds by DCC, nor construction of improvements by DCC, nor any representation by any City official or employee, shall create any valid expectancy or right in DCC to renewal of this Lease, or obligation by the City to renew this Lease, and that DCC's performance of all its undertakings in this Lease, over the term thereof, is a valid factor for consideration by the City in determining whether this Lease shall be renewed.

**21. REPRESENTATIONS.**

a. DCC represents and warrants to the City that to the best of DCC's knowledge, DCC's execution, delivery and performance of this Lease will not conflict with or violate any constitutional provision, statute, rule, order or regulations of any governmental body applicable to DCC and will not conflict with or violate any bylaw or rule however denominated of any corporation or any government or governmental agency applicable to DCC. DCC represents and warrants that the execution and delivery of this Lease has been duly authorized and that no further authorizations or approvals of DCC or of any third party or agency are needed or will be needed with respect to the performance by DCC of any of its obligations or agreements under the Lease throughout the term of this

Lease (except for such routine and customary authorizations, permits or approvals as are described in this Lease).

b. The City represents and warrants to DCC that the City's execution, delivery and performance of this Lease, will not conflict with or violate any constitutional provision, statute, rule, order or regulation applicable to the City and will not conflict with or violate the City Charter. The City represents and warrants that the execution and delivery of this Lease has been duly authorized by the City's Board of Aldermen.

**22. GOVERNING LAW.** This Lease and the rights and liabilities of the parties to this Lease shall be governed by the laws of the State of Missouri. If any provision of this Lease is invalidated by judicial decision or statutory enactment, the invalidity of any such provision will not affect the validity of any other provisions of this Lease.

**23. CAPTIONS.** The captions or headings of the several sections of this Lease are for convenience only and shall not define, limit or construe the contents of such sections.

**24. NON-WAIVER.** No failure of either party to exercise any power given under this Lease or to insist upon strict compliance with the undertakings, duties and obligations of the other party hereunder, and no custom or practice of either party at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the provisions, covenants, terms and conditions of this Lease.

**25. GENDER.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

**26. MEMORANDUM OF LEASE.** The parties shall record a Memorandum of Lease with respect to this Lease in the real estate records of the City of St. Louis, Missouri.

**27. NOTICES AND ADDRESSES.** All notices, demands, requests or replies provided for or permitted by this Lease shall be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified

or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (3) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery.

For purposes of notice, demand, request, reply or payment, if to the City, delivery of such shall be to the City's Comptroller at the following address:

Comptroller, City of St. Louis  
Room 212, City Hall  
1200 Market Street  
St. Louis, Missouri 63103

With copies to:

Director of Parks, Recreation & Forestry  
5600 Clayton Avenue (in Forest Park)  
St. Louis, Missouri 63110

And

City Counselor's Office  
Room 314 City Hall  
1200 Market Street  
St. Louis, Missouri 63103

If to DCC, delivery shall be to:

Ms. Joan Gerard  
Downtown Children's Center, Inc.  
507 North 13<sup>th</sup> Street  
St. Louis, Missouri 63103

With a copy to:

David C. Miller, Esq.  
Stinson, Mag & Fizzell, P.C.

100 South Fourth Street, Suite 700  
St. Louis, Missouri 63102

Each party shall have the right to designate a different address within the United States of America by the giving of notice in conformity with this section.

IN WITNESS WHEREOF, this Lease was executed the day and year first above written.

**DOWNTOWN CHILDREN’S CENTER, INC.**

By: \_\_\_\_\_

(SEAL)

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_

Mayor

By: \_\_\_\_\_

Comptroller

(SEAL)

\_\_\_\_\_  
City Register

Approved as to form:

\_\_\_\_\_  
City Counselor

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**EXHIBIT A**

**DESCRIPTION OF LEASED PREMISES**

A tract of land with improvements thereon in the eastern portion of Lucas Park in City Block 625, said portion being bounded by the east line of the eastern north/south park

sidewalk, the south line of St. Charles Street sidewalk, the west line of the North 13<sup>th</sup> Street sidewalk, and the north line of the Locust Street sidewalk, as further depicted in Exhibit B.

Exhibit B

**EXHIBIT C**

**POLICY STATEMENT OF**

**DOWNTOWN CHILDREN’S CENTER, INC.**

**REGARDING DISADVANTAGED BUSINESS**

**ENTERPRISE PARTICIPATION**

Qualified and bonafide Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") shall have the maximum feasible opportunity to participate fully in the business activities and projects of DCC conducted in Lucas Park.

The goal of DCC is that for all construction projects costing over \$100,000 that thirty percent (30%) of the dollar value of all construction work be performed by MBE/WBE firms certified as such by the City of St. Louis with 25% to be performed by MBE firms and with 5% to be performed by WBE firms.

<b>Legislative History</b>				
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>
06/30/00	06/30/00	PARK		
<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>PERFECTN</b>	<b>PASSAGE</b>
12/15/00			12/19/00	12/19/00
<b>ORDINANCE</b>	<b>VETOED</b>	<b>VETO OVR</b>	<b>SIGNED BY MAYOR</b>	
65122			01/05/01	