

One-rdg. _____
P. Hrngs. _____
Pgs. 8
Filed: 01-05-21

Sponsored by: Schilling

First Reading: _____

Second Reading: _____

COUNCIL BILL 2021- 015

SPECIAL ORDINANCE _____

AN ORDINANCE

1 APPROVING a Transportation Project Agreement between the City of Springfield,
2 Ridge at Ward Branch Transportation Development District, and
3 RW Development, LLC. (Staff recommends approval).
4
5

6 WHEREAS, the Ridge at Ward Branch Transportation Development District (the
7 “District”), formed on December 2, 2020, by order of the Circuit Court of Greene County,
8 Missouri, is a political subdivision of the State of Missouri and is transacting business
9 and exercising powers granted to it pursuant to the Transportation Development District
10 Act, Section 238.200 through 238.275, RSMo (the “TDD Act”); and
11

12 WHEREAS, the District is authorized to impose a sales tax within the District for
13 the purpose of funding transportation improvements; and
14

15 WHEREAS, as part of a mixed-use development in southwest Springfield, the
16 District has proposed various street and parking lot improvements that will not be
17 merged into the state highways and transportation system (the “Local Transportation
18 Project”); and
19

20 WHEREAS, pursuant to 238.225 RSMo, approval of the Local Transportation
21 Project vests with the City as the local transportation authority; and
22

23 WHEREAS, the City and the District desire to establish their relationship
24 regarding development and future maintenance of the Local Transportation Project.
25

26 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
27 SPRINGFIELD, MISSOURI, as follows, that:
28

29 Section 1 – The City Manager, or his designee, is hereby authorized to enter into
30 a Transportation Project Agreement, said contract to be substantially in the form and
31 content as “Exhibit A,” attached hereto and incorporated herein by this reference, for the
32 construction, maintenance, dedication, and other matters related to various street and
33 parking lot improvements that will not be merged into the state highways and

34 transportation system.

35

36 Section 2 – This Ordinance shall be in full force and effect from and after its
37 passage.

38

39 Passed at meeting: _____

40

41

42 _____
43 Mayor

44

44 Attest: _____, City Clerk

45

46 Filed as Ordinance: _____

47

48

49 Approved as to form:  _____, Assistant City Attorney

50

51

52 Approved for Council action:  _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-015

FILED: 01-05-21

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: An ordinance approving a Transportation Project Agreement between the City of Springfield, Missouri, Ridge at Ward Branch Transportation Development District and RW Development, LLC.

BACKGROUND: RW Development, LLC (“Developer”) is in the process of developing a 100-acre mixed-use site in southwest Springfield. The Developer has formed the Ridge at Ward Branch Transportation Development District (“TDD”) to generate revenue to fund various street and parking lot improvements for the development (“Transportation Project”).

A general description of the projects comprising the Transportation Project is as follows:

- (a) Construction of certain portions of new public roads within and/or adjacent to the boundaries of the proposed District;
- (b) Realignment, reconstruction, and improvement, as necessary, of the median near the intersection of West El Camino Alto Street and South Lyons Avenue, within and/or adjacent to the proposed District;
- (c) Realignment, reconstruction, and improvement, as necessary, of the intersection of South Campbell Avenue and East Lakewood Street within and/or adjacent to the proposed District;
- (d) Construction of new driveways and parking lots within and/or adjacent to the boundaries of the proposed District; and
- (e) Certain grading, drainage, pavement, curbing, gutters, sidewalks, storm water facilities, structures (including any architectural treatments related thereto), signage, striping, lighting, traffic signals, landscaping, irrigation systems, utility relocation, or other similar or related infrastructure or improvements in connection with items (a) through (d) above.

Items a, b, d, and e are Local Transportation Projects. Item c is a State Transportation Project as it related to public improvements maintained by the Missouri Highways and Transportation Commission (“MHTC”).

Pursuant to Section 238.225 of the TDD Act, authority to approve the portion of the Transportation Project that will not be merged into the state highways and transportation system (the “Local Transportation Project”) vests with the City, as the applicable “local transportation authority,” and the City and Developer shall enter into a mutually

acceptable agreement regarding development and future maintenance of the Local Transportation Project.

COMMENTS: The Ordinance approves said agreement relating to the Local Transportation Projects (items a, b, d, e) funded by the TDD.

The Developer, at its cost, shall construct the Local Transportation Project on behalf of the TDD in accordance with all applicable laws and regulations. Once it is complete, the Developer will dedicate to the City the portions of the Local Project identified on any subdivision plat approved by the City, and the City will be responsible for maintenance of those improvements.

Upon completion of the portions of the Local Transportation Project that will not be dedicated to the City or MHTC, including driveways and parking lots ("Parking Lot Portion"), the Developer shall grant an easement or license to the TDD providing for the public use of the Parking Lot Portion for its useful life.

REMARKS: Staff recommends approval.

Submitted by:


Sarah Kerner,
Economic Development Director

Recommended by:


Mary Lilly Smith, Director

Approved by:


Jason Gage, City Manager

Exhibit A

TRANSPORTATION PROJECT AGREEMENT

THIS TRANSPORTATION PROJECT AGREEMENT (this “Agreement”) is made and entered into as of the ___ day of _____, 2020, by and among the **RIDGE AT WARD BRANCH TRANSPORTATION DEVELOPMENT DISTRICT**, a political subdivision and transportation development district duly organized and existing under the laws of the State of Missouri (the “TDD”), **RW DEVELOPMENT LLC**, a Missouri corporation (the “Developer”), and the **CITY OF SPRINGFIELD, 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. On June 19, 2020, Developer, Springfield-Greene County Library District and Burning Tree Consulting, L.L.C. filed a Unanimous Petition for Formation of a Transportation Development District with the Circuit Court of Greene County, Missouri (the “TDD Petition”) pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.280, RSMo., as amended (the “TDD Act”).

B. The TDD Petition describes a transportation project generally consisting of various street and parking lot improvements (as further described in the TDD Petition, the “Transportation Project”).

C. Pursuant to Section 238.225 of the TDD Act, the City, as the applicable “local transportation authority” is required to approve the portion of the Transportation Project that will not be merged into the state highways and transportation system (the “Local Transportation Project”).

D. Pursuant to the TDD Petition, the TDD intends to impose a sales and use tax (the “Sales Tax”) pursuant to Section 238.235 of the TDD Act.

AGREEMENT

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. Approval of the Transportation Project. The City, as the applicable local transportation authority under the TDD Act, hereby approves the Local Transportation Project. The parties acknowledge that the TDD will enter into an agreement with the Missouri Highways and Transportation Commission (the “Commission”) regarding the portion of the Transportation Project to be merged into the state highways and transportation system.

Section 2. Construction of the Local Transportation Project.

(a) The Developer shall construct the Local Transportation Project on behalf of the TDD in accordance with all applicable laws and regulations. The Developer shall be responsible for obtaining all permits, approvals and authorizations required by any federal, state or local authority for the construction of the Local Transportation Project (and the approval provided in **Section 1** above shall not be construed as excusing the Developer from obtaining any permit, authorization or approval required by the City’s municipal code).

(b) Upon completion of the Local Transportation Project (excluding the Parking Lot Portion of the Project (as defined herein)), the Developer shall (or shall cause the applicable property owners to) promptly dedicate to the City by deed, license, easement, grant, or other conveyance satisfactory to the City in its sole discretion those portions of the Local Project identified on any subdivision plat approved by the City (the "**City Dedication**"). The City Dedication shall be made free and clear of all liens and other monetary encumbrances (including, without limitation, any deeds of trust, mortgages, mechanic's liens, materialman's liens, or any other monetary lien or encumbrance of any kind). At the time of the City Dedication, the Developer shall provide the City with satisfactory evidence in the form of a title commitment showing that Developer has good and marketable title to the property to be dedicated to the City (except for any portion already owned by the City).

(b) Upon completion of those portions of the Local Transportation Project that will not be dedicated to the City or the Commission, including driveways and parking lots (collectively, the "**Parking Lot Portion of the Project**"), the Developer shall (or shall cause the applicable property owners to) promptly grant an easement or license to the TDD providing for the public use of the Parking Lot Portion its useful life (as reasonably determined by the TDD), subject to reasonable time, manner and place restrictions.

Section 3. Funding of the Transportation Project. The Developer has advanced and shall advance all costs of (i) promoting, financing, planning, designing, constructing, improving, maintaining, and operating the Transportation Project, (ii) ongoing administration of the District, (iii) filing and defending the TDD Petition (including, without limitation, legal fees) and all publication and incidental costs incurred in obtaining the Court's certification of the TDD Petition pursuant to Section 238.217 of the TDD Act, and (iv) all other items of expense concerning the TDD Project that may lawfully be paid or incurred by the District under the TDD Act. The TDD and the Developer shall enter into a separate agreement whereby the TDD shall reimburse the Developer for such costs as TDD Sales Tax revenues are generated or through the issuance of notes, bonds or other obligations payable from the TDD Sales Tax revenues. Notwithstanding anything to the contrary herein, the Developer shall not be entitled to any reimbursement until the TDD verifies to its reasonable satisfaction that the costs to be reimbursed have been properly incurred and are eligible for reimbursement under the TDD Act.

Section 4. Indemnification and Release. To the extent permitted by law, the TDD and the Developer agree 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: (a) any transaction or activity resulting from this Agreement; (b) the location of hazardous wastes, hazardous materials or other environmental contaminants located within the TDD; and (c) the negligence or willful misconduct of the Developer, the TDD or their respective employees, agents or independent contractors in connection with the management, and acquisition of the Local Transportation Project. The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

Section 5. Miscellaneous.

5.1 Representations and Warranties of the TDD. The TDD hereby represents and warrants that: (a) the TDD is authorized to enter into and perform this Agreement; (b) this Agreement was duly authorized by the governing body of the TDD; and (c) this Agreement is binding upon, and enforceable against the TDD, in accordance with its terms.

5.2 Representations and Warranties of the Developer. The Developer hereby represents and warrants that: (a) the Developer is authorized to enter into and perform this Agreement; (b) this Agreement was duly authorized by the governing body of the Developer; and (c) this Agreement is binding upon, and enforceable against the Developer, in accordance with its terms.

5.3 Representations and Warranties of the City. The City hereby represents and warrants that: (a) the City is authorized to enter into and perform this Agreement; (b) this Agreement was duly authorized by the governing body of the City; and (c) this Agreement is binding upon, and enforceable against the City, in accordance with its terms.

5.4 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.

5.5 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 shareholder, 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.

5.6 Entire Agreement; Amendment. This Agreement shall be amended only in writing and effective when executed by the City, the Developer and the TDD.

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

5.8 Severability. If 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.

[Signature Pages to Follow.]

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

**RIDGE AT WARD BRANCH TRANSPORTATION
DEVELOPMENT DISTRICT**

By: _____

Name: _____

Title: Chairman _____

RW DEVELOPMENT, a Missouri limited liability company

By: _____

Name: _____

Title: _____

CITY OF SPRINGFIELD, MISSOURI

By: _____

Name: _____

Title: _____