

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

IN THE MATTER OF:

KANSAS CITY URBAN RAIL TRANSPORTATION
DEVELOPMENT DISTRICT

CITY COUNCIL OF THE CITY OF KANSAS CITY,
MISSOURI and BOARD OF COMMISSIONERS OF
THE PORT AUTHORITY OF KANSAS CITY,
MISSOURI, ET AL.,

Petitioners,

vs.

KANSAS CITY AREA TRANSPORTATION
AUTHORITY and MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION, ET AL.,

Respondents.

Case No. 1416-CV02152

Division: 16

ORDER AND JUDGMENT

This matter, having come before this Court for a public hearing on the 1st day of April, 2014, and an evidentiary hearing on the 15th and 24th of April 2014, on the Petitioner's First Amended Petition For The Formation of A Transportation Development District filed in this matter (the "Amended Petition"), and the Declaratory Judgment requested by Individual Respondents. Petitioner Kansas City Urban Rail Transportation Development District was represented by Douglas S. Stone, Jeffrey J. Simon, and Michael Raupp; Petitioner Board of Commissioners of Port Authority of Kansas City, Missouri was represented by Mark Coulter and Andrenna Taylor; Individual Supporting Petitioners 3-Trails Village Community Improvement District, Zimmer Real Estate Services, L.C., as well as Streetcar Neighbors, Downtown Neighborhood Association, River Market Community Association and several individuals were

represented by Boyce N. Richardson; Supporting Petitioner Kansas City Regional Transit Alliance was represented by Robert M. Pitkin; Respondent Kansas City Area Transportation Authority was represented by Jerry Riffel and Alison Auxter; Respondent Missouri Highways and Transportation Commission was represented by Ardita Roark; and Individual Respondents were represented by Sherri DeJanes and Gerard Donovan.

Now on this day, after hearing and consideration of the public testimony, the parties' pleadings and argument, and consideration of the statutory provisions of the Missouri Transportation Development District Act, §§ 238.200 – 238.275 RSMo, as amended (the "Act"), and other applicable law, the Court being satisfied in the premises that the Petitioners' allegations in the Amended Petition are true, the Court makes the following findings of fact and conclusions of law, and enters the following Judgment:

PROCEDURAL BACKGROUND

Petitioners commenced this case on January 27, 2014 by the filing of a Petition for the Formation of a Transportation Development District pursuant to the Act, and specifically section 238.207.5 of the Act (the "Original Petition"). The Original Petition sought the formation of a transportation development district (the "District") for the development and funding of the project described therein. Notice was published in the Kansas City Star once a week for four consecutive weeks, on January 31, 2014, February 7, 2014, February 14, 2014, and February 21, 2014, notifying the public of the filing of the petition, advising of the dates set for the April 1, 2014 public hearing and the April 2, 2014 evidentiary hearing,¹ and advising the public that pleadings in support or opposition to the Original Petition were to be filed with the Court no later than March 24, 2014. Timely responsive pleadings were filed by Respondents Missouri Highway and Transportation Commission and Kansas City Area Transportation Authority (collectively,

the “Respondents”), and by Supporting Petitioners 3-Trails Village Community Improvement District, Zimmer Real Estate Services, L.C., as well as Streetcar Neighbors, Downtown Neighborhood Association, River Market Community Association and several individuals. An Answer and Petition for Declaratory Judgment was timely filed by several individuals, opposing the relief sought by the Original Petition (the “Individual Respondents”).

On March 28, 2014, Petitioners filed an Amended Petition which revised the boundary of the District, and revised the Funding Proposal by reducing from one-half mile to one-third mile the geographic area within the District in which the Board of Directors of the District would have the power and authority to impose a special assessment. Individual Respondents filed their Answer to Petitioners’ First Amended Petition and Request for Declaratory Judgment on April 7, 2014. Petitioners filed their Answer to Individual Respondents’ Petition for Declaratory Judgment on April 14, 2014. As a result of the Amended Petition, several individual Supporting Petitioners and Individual Respondents fell outside of the proposed District and were removed from the action when the Court granted Petitioners’ Motion to Dismiss on April 15, 2014.

The Amended Petition proposes the formation of the District, to be wholly within Kansas City, Jackson County, Missouri, for the purpose of developing the “Project,” which is comprised of Subproject 1 (the design, construction, ownership and/or operation of a fixed rail streetcar and/or light rail system, and all elements thereof, as more specifically described in the Amended Petition) and Subproject 2 (the acquisition of express bus vehicles to implement a bus rapid transit route as more specifically described in the Amended Petition).

¹ As discussed below, the judicial hearing was later rescheduled to April 15, 2014.

The Amended Petition seeks an order of the Court that, among other things, would order the Court Administrator of the Circuit Court of Jackson County, Missouri² to cause the question to be submitted to the qualified voters within the limits of the proposed District whether or not they will establish the District to develop the Project, on a date to be specified in the Court's Order (the "Formation Election").

The Court conducted a public hearing on April 1, 2014 as permitted (but not required) under the Act (the "Public Hearing"), and an evidentiary hearing on April 15 and 24, 2014 (the "Judicial Hearing"). At the Public Hearing, numerous persons testified, some as individuals and some in a representative capacity for certain groups or associations. At the Judicial Hearing, counsel for Petitioners and counsel for Individual Respondents elicited testimony from several witnesses, and provided argument to the Court. Upon the conclusion of the Judicial Hearing, the Court took the matter under advisement and requested that the Parties submit briefing regarding specific issues identified by the Court. Petitioners, Respondent Kansas City Area Transportation Authority and Individual Respondents each filed post-hearing briefs.

FINDINGS OF FACT

1. Petitioner City Council is the governing body of the City, and is acting in its official capacity. The City is a constitutionally chartered municipal corporation of the State of Missouri, with its principal place of business located at 414 East 12th Street, Kansas City, Missouri 64106, and is a local transportation authority within the meaning of § 238.202.1(4) of the Act. The proposed District lies entirely within the corporate limits of the City.

2. Petitioner Port Authority Board is the governing body of the Port Authority, and is acting in its official capacity. The Port Authority is a political subdivision of the State of

² The Court Administrator is the officer that holds the position referred to as the Clerk of the Circuit Court in other Circuits, and within the meaning of the Act.

Missouri, with its principal place of business located at 300 Wyandotte, Suite 100, Kansas City, Missouri 64105, and is a local transportation authority within the meaning of § 238.202.1(4) of the Act.

3. Respondent Kansas City Area Transportation Authority (the “KCATA”), is a political subdivision of the State of Missouri and an “Interstate Transportation Authority” within the meaning of Section 92.400, RSMo, as amended, with its principal place of business at 1200 East 18th Street, Kansas City, Missouri 64108. The KCATA is a required respondent to the Amended Petition by virtue of Section 238.207.5(3)(c) of the Act.

4. Respondent, State of Missouri Highways and Transportation Commission (the “Commission”), is the state agency constitutionally responsible for constructing and maintaining the Missouri highway system, with its principal place of business at 105 West Capitol Avenue, Jefferson City, Missouri 65101. The Commission is a required respondent to the Amended Petition by virtue of Section 238.207.5(3)(c) of the Act.

5. The City has adopted a resolution calling for the joint establishment of the District with the Port Authority. A copy of that resolution is attached to the Amended Petition. The City also adopted a Resolution authorizing the Amended Petition. A copy of that resolution is attached to the Amended Petition.

6. The Port Authority has adopted a resolution calling for the joint establishment of the District with the City. A copy of that resolution is attached to the Amended Petition.

7. A specific description of the proposed District’s boundaries, and a map illustrating such boundaries, are attached to and incorporated into this Judgment as Exhibit 1, Exhibit 2, and Exhibit 3, respectively. The area of the District is contiguous within the meaning of the Act.

8. Petitioners propose that the District will undertake, or cause to be undertaken, all or any portion of the Project, consisting of two subprojects:

(a) Subproject 1: The design, construction, ownership and/or operation of a fixed rail streetcar and/or light rail system, and all elements thereof, including without limitation maintenance facilities, constituting a “public mass transportation system” as such term is defined in the Act. Subproject 1 will include (i) the initial 2.1 mile (+/-) starter line running generally along Main Street from River Market to Crown Center/Union Station (the “Starter Line”), initially developed and initially funded by the existing Kansas City Downtown Streetcar Transportation Development District (the “Starter Line District”), and (ii) certain additional expansion routes of such fixed-rail streetcar and/or light rail system as finally determined by the City (the “Expansion Routes”), all to be owned and operated by an entity other than the District. The Expansion Routes will connect to the Starter Line or to another Expansion Route, and are expected to run generally along (i) Independence Avenue, east from the Starter Line, (ii) Main Street, south from the Starter Line, and (iii) Linwood Boulevard, east from the Main Street Expansion Route. The specific Expansion Routes, their respective termini and the specific location of embark/disembark points, remain subject to refinement or alteration following further design and engineering; provided, however, that the Expansion Route that would run generally along Main Street south from the Starter Line would not extend further than the general vicinity of the University of Missouri – Kansas City’s Volker campus; and

(b) Subproject 2: The acquisition of express bus vehicles to implement a bus rapid transit route (the “BRT Route”), and related capital items that assist in implementing the BRT Line, for use in a “public mass transportation system” as such term is defined in the Act. Subproject 2 will include the cost of acquisition of approximately fifteen (15) express buses, and related capital items that assist in implementing the BRT Route, to be owned and operated by an entity other than the District (the “BRT Capital Items”). No District revenues will be used to operate the BRT Route and Subproject 2 does not include the operational costs of the BRT Route. The BRT Route will intersect Subproject 1, and is expected to run generally along Prospect Avenue and Twelfth Street. The specific route of the BRT Route, its respective termini and the specific location of embark/disembark points, remain subject to refinement or alteration following further design and engineering.

9. Petitioners’ Funding Proposal is set out in section 15 of the Amended Petition. Applying the maximum rate of the commercial property assessment proposed by the Amended Petition to a commercial property with a market value for ad valorem tax purposes of One Million Dollars (\$1,000,000) would result in a special assessment of One Thousand Five Hundred Thirty-Six and 00/100 Dollars (\$1,536.00) and an effective special assessment rate of approximately fifteen one-hundredths of one percent (0.15%).

10. Applying the maximum rate of the residential property assessment proposed by the Amended Petition to a residential property with a market value for ad valorem tax purposes of Seventy Thousand Dollars (\$70,000) would result in a special assessment of Ninety-Three and 10/100 Dollars (\$93.10) and an effective special assessment rate of approximately thirteen one-hundredths of one percent (0.13%).

11. Applying the maximum rate of the tax exempt property assessment proposed by the Amended Petition to a tax exempt property with a market value for ad valorem tax purposes of One Million Dollars (\$1,000,000) would result in a special assessment of Eight Hundred Ninety-Six and 00/100 Dollars (\$896.00) and an effective special assessment rate of approximately nine one-hundredths of one percent (0.09%).

12. Applying the rate of the City property assessment proposed by the Amended Petition to a City property with a market value for ad valorem tax purposes of One Million Dollars (\$1,000,000) would result in a special assessment of Three Thousand Three Hundred Twenty-Eight and 00/100 Dollars (\$3,328.00) and an effective special assessment rate of approximately thirty-three one-hundredths of one percent (0.33%).

13. Applying the maximum rate of the surface parking assessment proposed by the Amended Petition to a surface pay parking lot with forty (40) pay parking spaces would result in a special assessment of Two Thousand One Hundred Ninety and 00/100 Dollars (\$2,190.00), which is the same amount that would be payable if there were an improvement on such lot that was subject to the commercial property assessment with a market value for ad valorem tax purposes of One Million Four Hundred Twenty-Five Thousand Seven Hundred Eighty-One and 25/100 Dollars (\$1,425,781.25).

14. If the Board of Directors of the District were to impose the maximum special assessment allowed, the effective rates would be less than two-tenths of one percent of tax market value for privately-owned real property. The owner of a commercial property valued at \$1,000,000 would pay an annual special assessment of approximately \$1,540 for a maximum

total of \$38,500 over the 25-year assessment period. That amounts to 3.85% of tax market value.³ The effective rates for residential and tax exempt properties are lower.

15. Of the total annual revenue projected to be derived from the District's proposed sales tax and special assessments, approximately twenty-four percent (24%) is projected to be attributable to the District's proposed special assessments. This percentage does not take into account any non-District funding that will be required in order to develop the District's project, including the modeled 50% federal grant contribution. Assuming the total funding for the District's project involves somewhere between 50% to 65% of non-District funding, the percentage of funding for the Project to be derived from special assessments would be approximately 8.4% to 12%. The percentage of the total District-derived funding for the Project represented by special assessments on residential properties is projected to be approximately 7% of the total District-derived revenue, and would be approximately 2.5% to 3.5% when considered with the non-District funding needed for the project.

16. Publication as required by § 238.212 of the Act has been made, as evidenced by the affidavits of publication filed in this matter.

17. There is at least one (1) registered voter residing in the District.

18. The Project proposed to be undertaken by the District is not intended to be merged into the state highways and transportation system under the jurisdiction of the Commission.

19. The proposed District is located wholly within Kansas City, Jackson County, Missouri.

³ Because the assessment rate is applied to a property's value, this 3.85% ratio will hold true regardless of a property's value or changes in value.

20. The Court heard live testimony from witnesses for the Petitioners on the subject of benefits to real property from proximity to a fixed-rail streetcar system and on increased economic development currently being experienced in the vicinity of the Starter Line (specifically Mr. Vincent Gauthier, Mr. David Vozzolo, Ms. Pamela Yonkin, Mr. Jason Swords and Mr. Gib Kerr). The Court finds the testimony of these witnesses credible and persuasive. The benefits include increased property values, neighborhood stability, lower vacancy rates, increased interest in, and enhanced pace of, development and redevelopment of surrounding properties, and increased housing stock. Specifically, Mr. Vozzolo and Ms. Yonkin provided several examples of cities that have experienced “transit premiums” to properties near a streetcar line. Ms. Yonkin explained that one-quarter to one-half mile is a reasonable range in which to expect these benefits. Credible testimony demonstrated that the benefit could be expected to extend to the properties within the assessment zone outlined by the Amended Petition. Additionally, the Court heard testimony from Mr. Gauthier, Mr. Vozzolo, and Ms. Yonkin that, in addition to property values, there are several other intangible benefits that accrue to properties near a streetcar line.

CONCLUSIONS OF LAW

Section 238.210 of the Act requires the Court to make certain determinations and findings as a precondition to calling the Formation Election, specifically:

- (a) that the Amended Petition is not legally defective;
- (b) that the proposed District is not illegal or unconstitutional;
- (c) that the Respondents have been duly served with process in this action;
- (d) that the proposed funding methods and mechanisms are neither illegal nor unconstitutional; and

(e) that the proposed District is not an undue burden on any owner of real property within the District and is not unjust or unreasonable;

The Court will address each of these preconditions individually.

A. The Amended Petition Is Not Legally Defective

The Amended Petition is not legally defective. As noted previously, the Amended Petition was filed under section 238.207.5 of the Act. Section 238.207.5(2) of the Act provides that the proposed District area must be contiguous (and recognizes expressly that “property separated only by public streets, easements or rights-of-way...shall be considered contiguous”). Review of the proposed boundary of the District, as contained in the Amended Petition and its exhibits, shows that this requirement is satisfied.

Section 238.207.5(3) of the Act lists the contents required of a petition. Those requirements are listed below verbatim from the Act, along with the corresponding portion of the Amended Petition that satisfies each such requirement in parentheses and bold italics:

(3) The petition shall set forth:

(a) That the petitioner is the governing body of a local transportation authority acting in its official capacity; or, if the petition was filed by obtaining the signatures of not less than fifty registered voters in each of two or more counties, it shall set forth the name, voting residence, and county of residence of each individual petitioner (See ¶¶ 1 and 2 of the Amended Petition);

(b) The name of each local transportation authority within the proposed district. The resolution of the governing body of each local transportation authority calling for the joint establishment of the district shall be attached to the petition (See ¶¶ 1, 2, 3, 5 and 6, and Ex. A and B, of the Amended Petition);

(c) The name and address of each respondent. Respondents must include the commission and each affected local transportation authority within the proposed district, except a petitioning local transportation authority (See ¶¶ 3 and 4 of the Amended Petition);

(d) A specific description of the proposed district boundaries including a map illustrating such boundaries (See ¶ 9 and Ex. C-1 and C-2 of the Amended Petition);

(e) A general description of each project proposed to be undertaken by the district, including a description of the approximate location of each project (See ¶ 10 of the Amended Petition);

(f) The name of the proposed district (See ¶ 11 of the Amended Petition);

(g) The number of members of the board of directors of the proposed district (See ¶ 12 of the Amended Petition);

(h) A request that the question be submitted to the qualified voters within the limits of the proposed district whether they will establish a transportation development district to develop the projects described in the petition (See Amended Petition's prayer for relief subsections (f) and (g));

(i) A proposal for funding the district initially, pursuant to the authority granted in sections 238.200 to 238.275, together with a request that the imposition of the funding proposal be submitted to the qualified voters residing within the limits of the proposed district; provided, however, the funding method of special assessments may also be approved as provided in subsection 1 of section 238.230 (See ¶¶ 13, 14, 15, 16, 17, and 18 of the Amended Petition); and

(j) A statement that the proposed district shall not be an undue burden on any owner of property within the district and is not unjust or unreasonable (See ¶ 19 of the Amended Petition).

B. The Proposed District Is Not Illegal Or Unconstitutional

The proposed district is not illegal or unconstitutional. None of the persons testifying in opposition to the District, and none of the remaining parties to the proceeding, have asserted specifically that the proposed District itself is illegal or unconstitutional. Individual Respondents raise several challenges to the proposed funding mechanisms, which are addressed *infra*. To the extent any of the challenges are construed to contest the legality or constitutionality of the District itself, the Court incorporates herein by reference the discussion in section 4 below

explaining why the proposed funding methods and mechanisms are neither illegal nor unconstitutional.

C. The Respondents Have Been Duly Served With Process In This Action

Respondents have been duly served with process. Respondent Kansas City Area Transportation Authority was served on January 29, 2014. Petitioners filed a corresponding Notice of Service on February 5. Respondent Missouri Highways and Transportation Commission was served on January 30. Petitioners filed a corresponding Notice of Service on February 12. Further, Petitioners complied with the requirement in § 238.212 RSMo that public notice be given via publication. Petitioners filed their Affidavit of Publication on March 24.

None of the respondents, including the Individual Respondents, have challenged the Amended Petition for ineffective service. All respondents appeared through counsel and served responsive pleadings.

D. The Proposed Funding Methods And Mechanisms Are Neither Illegal Nor Unconstitutional

The proposed funding methods and mechanisms for the proposed district are neither illegal nor unconstitutional. Individual Respondents raise eight counts in their petition for declaratory judgment. Six of these counts assert that the proposed funding mechanisms are illegal or unconstitutional. These six counts are addressed here.⁴ Common throughout Individual Respondents' arguments is their assertion that the Project will not provide a benefit, and thus, a special assessment is not warranted. As discussed above, the Court heard credible testimony from several witnesses about benefits to property near the Project. These benefits include increased property values, neighborhood stability, lower vacancy rates, increased interest in and enhanced pace of development and redevelopment of surrounding properties, and

increased housing stock. Specifically, Mr. Vozzolo and Ms. Yonkin provided several examples of cities that have experienced “transit premiums” to properties near a streetcar line. The Court finds this testimony credible and persuasive. Ms. Yonkin explained that one-quarter to one-half mile is a reasonable range in which to expect these benefits, which provides credible support for the limited special assessment zone proposed by the Amended Petition to be authorized by the qualified voters. Additionally, credible testimony revealed that, in addition to property values, there are several other intangible benefits that accrue to properties near a streetcar line. The Act specifically permits special assessments based on these types of benefits. *See* § 238.230.1 RSMo.

Based on the credible evidence presented at the Judicial Hearing, the Court finds that real property located in the geographic area within the District in which the Board of Directors of the District would have the power and authority to impose a special assessment could be legally determined by the Board of Directors of the District (if the District is formed and the Funding Proposal approved by the qualified voters after the two successive elections required under the Act) to be benefited by Subproject 1 to justify a special assessment.

1. The sales tax is not impermissibly “stacked” on the sales tax of other transportation development districts.

In Count I, Individual Respondents assert that because other transportation development districts (specifically, the 1200 Main/South Loop Transportation Development District and the Country Club Plaza Transportation Development District) exist within the boundaries of the District proposed here, the 1% sales tax proposed in the Amended Petition is illegal. The Act does not impose such a limitation. The only limit the legislature established is that a single

⁴ Counts IV and V of Individual Respondents’ Petition for Declaratory Judgment allege an undue burden and are thus addressed in Section E.

transportation development district may not impose a sales tax greater than 1%. § 238.235.1(7) RSMo. The Amended Petition complies with this requirement.

Individual Respondents assert that § 238.236 RSMo expresses the legislative intent that one cannot have overlapping separate transportation development districts. However, § 238.236 RSMo merely prevents a sales tax being adopted by a transportation development district that consists of “all of one or more entire counties, all of one or more entire cities, or all of one or more entire counties and one or more entire cities which are totally outside the boundaries of those counties”, if a district sales tax has been imposed by a district under section § 238.235 RSMo. Though this Court agrees this is a clear expression of legislative intent, the intent expressed has no bearing on a sales tax that, as in this case, is being proposed under § 238.235 RSMo.

2. The special assessment does not violate the statute.

In Count II, Individual Respondents allege that assessing only those within one-third mile of the streetcar is improper under the Act. However, the Act authorizes special assessments for properties that are specially benefited. § 238.230.1 RSMo. Ultimately, it is the District’s governing Board of Directors, and not the Amended Petition, or this Court, that makes the legally required legislative determination as to what parcels of property are specially benefited and thus subject to the special assessment. *See* § 238.222.1, RSMo; *Haeussler Inv. Co. v. Bates*, 267 S.W. 632 (Mo. banc 1924), *aff’d*, 271 U.S. 647 (1926). Such special benefits may extend to the properties within the assessment zone proposed in the Amended Petition. The special assessment authority is neither unjust nor unreasonable.

Individual Respondents also contend there is no rational basis for permitting all residents of the District to vote to impose a special assessment on only some of the residents within the

District. The voters, however, are not voting to actually impose a special assessment. Rather, the voters will, in the first of the two required elections, be authorizing the creation of the District, which will, through action of its Board of Directors, have the power to levy special assessments against real properties found to be benefited should it choose to do so.

Finally, Individual Respondents allege that the special assessment is defective because the Amended Petition does not designate “classes or subclasses” of properties for purposes of the special assessment. The plain language of the statute, however, does not require that the Amended Petition create classes or subclasses. *See* § 238.230.5 RSMo (“A district *may* establish different classes or subclasses of real property within the district for purposes of levying differing rates of special assessments.”). Moreover, even if creation of these classes were necessary, the Amended Petition complies by creating varied assessment rates based on type of real property and whether one’s real property is in proximity to Subproject 1.

3. The special assessment provision is not unconstitutionally vague.

In Count III, Individual Respondents assert that § 238.230 RSMo is vague about whether a special assessment may be levied against some properties within a transportation development district or whether it must be levied against all properties within a transportation development district. This vagueness, they allege, violates their Due Process rights.

“[N]either absolute certainty nor impossible standards of specificity are required in determining whether terms are impermissibly vague.” *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999). “Moreover, it is well established that ‘if the law is susceptible of any reasonable and practical construction which will support it, it will be held valid, and . . . the courts must endeavor, by every rule of construction, to give it effect.’” *Id.* (alteration in original) (citing *State v. Duggar*, 806 S.W.2d 407, 408 (Mo. banc 1991)).

“Statutes are presumed to be constitutional and will be held otherwise only if they clearly contravene some constitutional provision; doubts are to be resolved in favor of validity.” *Perez v. Mo. State Bd. of Registration for Healing Arts*, 803 S.W.2d 160, 165 (Mo. App. W.D. 1991).

Individual Respondents read three subsections of the statute to conflict with one another. However, “[n]o portion of a statute is read in isolation, but rather is read in context to the entire statute, harmonizing all provisions.” *Conant v. Dep’t of Ins., Fin. Insts. & Prof’l Registration*, ___ S.W.3d ___, 2014 WL 928965, at *3 (Mo. App. W.D. March 11, 2014) (quoting *Utility Serv. Co. v. Dep’t of Labor and Indus. Relations*, 331 S.W.3d 654, 658 (Mo. banc 2011)). Read in conjunction with one another, Subsections 1, 2, and 5 of Section 238.230 are not vague. Subsection 1 permits the levying of special assessments within a transportation development district and describes some of the benefits that can serve as a basis for special assessments. Subsection 2 defines the specifics of any special assessment by providing the language to be used on the ballot, and specifically addresses the issue of which properties may be assessed by including the following ballot language: “said special assessment to be levied ratably against each tract, lot or parcel of property within the district which is benefited by such project...” § 238.230.2 RSMo. Finally, Subsection 5 recognizes that certain properties may be benefited in ways that others are not, and permits customized assessment on that basis.

The statute is not unconstitutionally vague.

4. The statute is not ambiguous.

In Count VI, Individual Respondents repeat their argument from Count III, but here, they allege that the statute is ambiguous. For the same reasons discussed, *supra* Section D.3, the statute is not ambiguous. *See Conant*, 2014 WL 928965, at *3.

5. The Amended Petition does not violate Equal Protection.

In Count VII, Individual Respondents assert that imposition of the special assessment violates the Equal Protection clause of the United States and Missouri Constitutions because the proposed assessment is allegedly based on property value as opposed to the value of the benefit accrued. This assertion misconstrues the Funding Proposal. The special assessment *is* based on benefit to the real properties in proximity to Subproject 1. The value of the real properties that may be assessed is merely the metric employed to determine each benefited property's assessment. The credible evidence at the hearing established that the proceeds from the special assessments will pay only a small portion of the entire cost of the improvement for which the assessment may be imposed.

Individual Respondents' contention that they are not afforded a hearing prior to imposition of a special assessment is similarly foreclosed:

The legislature, or other body exercising legislative functions, may ascertain and determine, as a legislative act, the question of benefits accruing to property owners, and the propriety of the establishment of a taxing district for a public improvement. That determination of the Legislature is conclusive; no notice or hearing is necessary in order that the property may be burdened with the cost of the improvement.

Haeussler Inv. Co. v. Bates, 267 S.W. 632, 634 (Mo. banc 1924), *aff'd*, 271 U.S. 647 (1926); *see also Mudd v. Wehmeyer*, 19 S.W.2d 891, 895 (Mo. 1929) (“[I]t is not necessary as due process of law that the property owner be given notice or opportunity to be heard before the taxing district is created, or as to whether or to what extent his property will be benefited.”).

6. The special assessment is not a general tax.

In Count VIII, Individual Respondents argue that the special assessment is actually a general property tax, and as such, must be passed by a four-sevenths vote. *See* § 238.232 RSMo. Individual Respondents are incorrect. The special assessment provision of the Amended Petition

makes clear that the District can only impose a special assessment if the governing board finds that the properties to be assessed are specially benefited. “While the words ‘special assessment,’ ‘fee,’ and ‘tax’ may sometimes be used interchangeably, the term ‘special assessment’ is generally understood to be related either to a specific property or a specific purpose.” *Zahner v. City of Perryville*, 813 S.W.2d 855, 858 (Mo. banc 1991). Thus, when payments were made for a specific purpose, and a governing body makes a finding that there is a special benefit to the assessed properties, the payment is appropriately considered a special assessment. *Id.* at 859. That is the procedure outlined by the Amended Petition and the Act. The proposed special assessment is not a general tax.

E. The Proposed District Is Not An Undue Burden On Any Owner Of Real Property Within The District And Is Not Unjust Or Unreasonable.

The proposed District is not an undue burden on any owner of real property within the District and is not unjust or unreasonable. In Counts IV and V of Individual Respondents’ Petition for Declaratory Judgment, they assert that the sales tax and the special assessment, respectively, pose an undue burden. Individual Respondents elicited testimony from several witnesses who reside within or have business dealings within the District. Those individuals testified that the proposed Project would not benefit them personally or the organizations they represent, and that the proposed sales tax and/or the special assessment would be an “undue burden” as well as “unjust and unreasonable”. The substance of their testimony is not persuasive regarding the legal issues to be considered by this Court

The terms “undue burden,” “unjust,” and “unreasonable” are not defined in the Act. *See* § 238.202 RSMo. Therefore, the Court ordered the parties to provide briefing on the meaning of these terms as used in the Act. Individual Respondents urged the Court to confine its analysis to dictionary definitions of these terms, whereas Petitioners encouraged the Court to look to case

law using these terms. The Court is free to use any of the offered sources: “When the Legislature has not defined a word, we can examine other legislative or judicial meanings of the word, and can also ascertain a word’s plain and ordinary meaning from its definition in the dictionary.” *State v. Blankenship*, 415 S.W.3d 116, 121-22 (Mo. banc 2013), *see also Balloons Over the Rainbow, Inc. v. Dir. of Revenue*, ___ S.W.3d ___, 2014 WL 1499535, at *8 (Mo. banc Apr. 15, 2014).

While the dictionary definitions do provide guidance as to the meaning of the individual words in the abstract, the Court finds most helpful the decisions of Missouri courts applying these terms in analogous contexts. The term “undue burden,” as it has been used by Missouri courts in the context of special assessments, inquires as to whether the assessment is borne ratably by the property owners, or instead, borne by a single property owner in a disproportionate manner. *See Mound City, ex rel. and to Use of Key v. Melvin*, 205 S.W. 254 (Mo. App. 1918); *Fay v. City of Springfield*, 94 F. 409 (C.C.W.D. Mo. 1899). As the *Fay* court explained:

In the very nature of the power imposing this special tax upon the abutting property there must be some method of ascertainment, and some time of determining, the question of fact as to whether or not one lot is subjected to an undue burden *compared to that apportioned to the other lots alike situated*. The whole burden of such tax cannot be placed upon a single lot on the ground that the whole is not greater than the betterment of such lot, unless the other lots on the street derive no benefit therefrom. The burden should be distributed ratably among the several lots in the relative proportion of the benefits received by them.

Fay, 94 F. at 421 (emphasis added). Similarly, the Missouri Supreme Court stated, “[t]he rule of apportionment among the parcels of land benefited also rests within the discretion of the legislature, and may be directed to be in proportion to the position, the frontage, the area or the market value of the lands, or in the proportion of the benefits...” *Barber Asphalt Pav. Co. v French*, 58 S.W. 934, 938 (Mo. 1900) (quoting *Bauman v. Ross*, 167 U.S. 548 (U.S 1897)).

Here, the proposed special assessment is borne ratably by property owners according to their property value. Further, the proposed special assessment represents a small portion of the overall funding for the Project. Only 24% of the District’s local-source annual revenue will come from special assessments.⁵ The Court finds that the proposed special assessment is not an undue burden.⁶

Similarly, the Court finds that the proposed District and the Funding Proposal are not “unjust or unreasonable.” While courts have not analyzed this phrase in the context of the Act, courts have done so in the analogous context of analyzing a municipal license fee. There, the Missouri Supreme Court said:

License fees for revenue purposes must be reasonable, but such a fee fixed by ordinance is prima facie reasonable, and ‘[b]efore the courts will interfere and declare a license tax to be unjust or unreasonable, a flagrant case of excessive and oppressive abuse of power (or improper discrimination) by the municipal authorities in the levying of the license tax must be established.’ (emphasis added).

508 Chestnut, Inc. v. City of St. Louis, 389 S.W.2d 823, 832 (Mo. 1965) (citations omitted); *see also Dean Taylor Cadillac-Olds, Inc. v. Thompson*, 871 S.W.2d 5, 7-8 (Mo. App. 1993) (“Before we will declare a license tax to be unjust or unreasonable, a flagrant case of excessive and oppressive abuse of power or improper discrimination by the municipality must be established.”). Moreover, the Missouri Supreme Court held in *Barber*

[t]he system which leads to the least mischievous and unjust consequences is that which takes into account the entire line of the way improved and apportions the expense....for it takes into

⁵ For a more complete discussion of this concept, see Findings of Fact, *supra*, ¶¶ 9-14.

⁶ The Act ties the concept of “undue burden” to any “property owner.” Thus, the undue-burden analysis is appropriately confined to analysis of the proposed special assessment. Further, *Mound City, Fay*, and *Barber* illustrate that “undue burden” is a concept uniquely tied to special assessments. To the extent the undue-burden analysis could consider the proposed sales tax in any way, the Court finds it does not impose an “undue burden” as that term is used in the Act.

consideration the benefit to each property owner that accrues from the improvement of the entire line of the way and does not impose upon one lot owner an unjust portion of the burden.

Barber, 58 S.W. 934, 939.

The Amended Petition is not an “excessive and oppressive abuse of power or improper discrimination.” Rather, the public will have the ultimate say on whether this project moves forward and individuals are free to fully participate in the political process. The Act manifests the legislature’s intent to have the public pass judgment on the *merits* of the proposal. An interpretation that permits one individual to take that opportunity away from the public as a whole would be an absurd result, and statutes are to be construed to avoid absurd results. *State ex rel. Greufe v. Davis*, 407 S.W.3d 710, 713 (Mo. App. W.D. 2013) (internal quotation marks and citations omitted).

Neither the Funding Proposal nor the proposed District is unjust or unreasonable.

F. LEGISLATURE’S MANDATE TO COURTS WAS TO ASSURE THAT THE FORMATION OF THE DISTRICT COMPLIES WITH THE STATUTE

The Act has been used multiple times within the state of Missouri to establish transportation development districts, including the Starter Line District. When certifying the election for the Starter Line District, Judge Atwell correctly noted:

The initial judicial role, relative to this statute, is solely to determine whether or not the petitioners have completed the tasks necessary to consider a “formation election.” In addition, the Court, in a global or general way must determine whether or not the proposed project suffers from significant legal or constitutional impediments. In making this conclusion, the Court is required to give deference to the Legislature. *See generally Sch. Dist. of Kan. City v. State*, 317 S.W.3d 599, 604 (Mo. 2010); *Mo. Prosecuting Attys. & Circuit Attys. Ret. Sys. v. Pemiscot Co.*, 256 S.W.3d 98 (Mo. 2008); *United C.O.D. v. State*, 150 S.W.3d 311 (Mo. 2004); *Bd. of Educ. of City of St. Louis v. State*, 47 S.W.3d 366 (Mo. 2008). The role of the Court is neither to endorse nor condemn the project itself, but merely to determine whether or not the

petitioners have performed the necessary tasks to order the first of two elections, before any public dollars are spent.

In re Kansas City Downtown Streetcar Transp. Dev. Dist., Case No. 1216-CV02419, slip op. at 12 (Jackson Cnty. Cir. Ct. Apr. 27, 2012). Petitioners here “have met their burden, and done so without running afoul of any legal or constitutional impediments.” *Id.*

THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

1. Jurisdiction is proper in this Court pursuant to Section 238.207.1 of the Act.
2. Venue is proper in this Court pursuant to Section 238.207.1 of the Act, in that the District lies entirely within Jackson County, Missouri.
3. The allegations contained in Individual Respondents’ Petition for Declaratory Judgment have been considered, and the Petition for Declaratory Judgment is **OVERRULED**.
4. The Court hereby finds and certifies that:
 - (a) All Respondents in this action have been duly served with process;
 - (b) The Amended Petition is not legally defective and the proposed District is not illegal or unconstitutional;
 - (c) The District is not an undue burden on any owner of property within the District and is not unjust or unreasonable; and
 - (d) Neither the Funding Proposal nor any part thereof is illegal or unconstitutional.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to § 238.210.2 of the Act:

1. The Court certifies the Amended Petition for voter approval, and calls an election pursuant to § 238.216 of the Act as further ordered herein;

2. The Court Administrator of the Circuit Court of Jackson County, Missouri (the “Court Administrator”) shall coordinate with the Kansas City Board of Election Commissioners (the “Election Authority”) to cause the ballot question (the “Question”) in the form attached hereto as Exhibit 4 to appear on the ballot on the next regularly scheduled primary election day, to wit, August 5, 2014, for consideration by qualified voters within the proposed District;

3. In the event that the Election Authority certifies that the Question was approved through the Formation Election, then:

(a) The District shall automatically and without further order of this Court be deemed and considered properly, duly and lawfully organized, and the name of the District will be The Kansas City Urban Rail Transportation Development District;

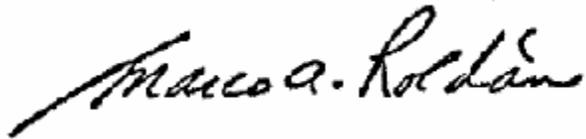
(b) The Board of Directors of the District shall be comprised of four persons, to wit: the person then at the time serving as the Mayor of Kansas City, Missouri, the person then at the time serving as the Chair of the Port Authority, one person designated by the governing body of Kansas City, Missouri and one person designated by the governing body of the Port Authority of Kansas City, Missouri. Such initial appointment(s) may be made prior or subsequent to the certification by the Election Authority of the results of the Formation Election. Advisors to the Board may be appointed as provided in section 238.220 of the Act;

(c) The first meeting of the Board of Directors of the District shall be held at Kansas City, Missouri City Hall, at a time and date set by the Mayor of the City, in a notice given to the Chair of the Port Authority and the other members of the Board of Directors at least seventy-two (72) hours prior to the time called by the Mayor for such meeting.

Such notice may be transmitted electronically, via email or facsimile, or by hand delivery; and

(d) Approval of the Project shall vest exclusively with the City, which has jurisdiction over and will become owner of the Project, subject to the District or the City entering into all necessary agreements with the Commission and acquiring from the Commission all necessary permits to provide for the construction, maintenance and ownership of the portions of the Project that will be located on the surface and airspace of the right of way that is within the state highway system and subject to the District and the City developing the Project in a manner compatible with the current operation and development of the state highway system.

IT IS SO ORDERED.



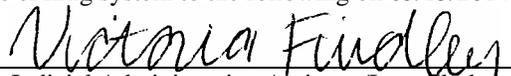
MARCO A. ROLDAN
JUDGE, DIVISION 16

Dated: May 15, 2014

NOTE: Division 16 is sitting in Division 13 at the Kansas City Courthouse.

Certificate of Service

This is to certify that a copy of the foregoing was hand delivered/faxed/emailed/mailed and/or sent through the eFiling system to the following on 05/15/2014.



Judicial Administrative Assistant/Law Clerk

ANDRENNIA LEIGH-ANN TAYLOR

BOYCE NEAL RICHARDSON

JEFFREY JOHN SIMON (816) 983-8080

MARK REED COULTER (816) 559-3759

DOUGLAS SCOTT STONE (816) 753-1536

JANE A AUXTER (816) 292-2001

JEROME DEAN RIFFEL (816) 292-2001

GERARD H DONOVAN (816) 931-5042

SHERRY DANITA DEJANES (816) 931-5042

EXHIBIT 1

SPECIFIC DESCRIPTION OF PROPOSED DISTRICT BOUNDARIES

The Transportation Development District shall include all that territory in the corporate limits of Kansas City, Jackson County, Missouri, described as follows:

Beginning at a point where the Western boundary line of the State of Missouri intersects the center line of the main channel of the Missouri River, said intersection being the "Point of Beginning" for the boundary of the Transportation Development District and the same point as the Point of Commencement referenced in Ordinance No. 10349, passed September 3rd, 1946;

Thence South along the Western corporate limits line of the City of Kansas City, Missouri, said line also being the Western boundary line of the State of Missouri, to a point where the center line of the right of way of 46th Street, as now established, intersects the Western corporate limits line of the City of Kansas City, Missouri;

Thence Easterly and Southerly along said center line of the right of way of 46th Street to a point where it intersects the center line of the right of way of Holly Street, as now established;

Thence South along said center line of the right of way of Holly Street to a point where it intersects the center line of the right of way of Ward Parkway, as now established;

Thence Southwesterly along said center line of the right of way of Ward Parkway to a point where it intersects the center line of the right of way of Westwood Road, as now established;

Thence Southeasterly along said center line of the right of way of Westwood Road to a point where it intersects the center line of the channel of Brush Creek;

Thence Northeasterly along said center line of channel of Brush Creek to a point where it intersects the center line of the right of way of Roanoke Parkway, as now established;

Thence Southeasterly along said center line of the right of way of Roanoke Parkway to the point where Roanoke Parkway becomes Summit Street;

Thence continuing along Summit Street to a point where it intersects the center line of the right of way of Ward Parkway, as now established;

Thence Northeasterly along said center line of the right of way of Ward Parkway to a point where it intersects the center line of the right of way of 49th Street, as now established;

Thence Southeasterly along said center line of the right of way of 49th Street to a point where it intersects the center line of the right of way of Sunset Drive, as now established;

Thence Northeasterly along said center line of the right of way of Sunset Drive to a point where it intersects the northerly prolongation of the west line of Lot 8, Hemphurst Terraces;

Thence Southeasterly along said west line of Lot 8, Hemphurst Terraces to the north right of way line of vacated West 49th Street;

Thence South fifteen (15) feet to the north line of the southeast ¼ of the southeast ¼ of Section 30, T49N, R33W;

Thence West along said north line of the SE ¼ of the SE ¼ of Sec 30, T49N, R33W to a point where it intersects the northerly prolongation of the west line of Lot 10, Amended Plat of Monticello;

Thence South twenty-five (25) feet along said northerly prolongation of the west line of Lot 10, Amended Plat of Monticello, to the south right of way line of vacated West 49th Street;

Thence continuing South along the west line of Lot 10, Amended Plat of Monticello, to a point seventeen (17) feet south of the south right of way line of vacated West 49th Street;

Thence East along a line seventeen (17) feet south of and parallel to the south right of way line of vacated West 49th Street to a point at the northwest corner of Lot 1, Block 1, Alameda Towers Subdivision, point being marked as N 1,045,713.23 E 473,592.69 on said plat;

Thence East along the north line of Lot 1, Block 1, Alameda Towers Subdivision, to a point at the northeast corner of Lot 1, Block 1, Alameda Towers Subdivision and on the west right of way line of Wornall Road as now established, point being marked as N 1,045,707.44 E 473,936.75 on said plat;

Thence South along said west right of way of Wornall Road to a point where it intersects the center line of the right of way of 49th Terrace, as now established;

Thence East along said center line of the right of way of 49th Terrace to a point where it intersects the center line of the right of way of Wornall Road, as now established;

Thence South along said center line of the right of way of Wornall Road to a point where it intersects the center line of the right of way of 50th Street, as now established;

Thence East along said center line of the right of way of 50th Street to a point where it intersects the center line of the right of way of Wyandotte Street, as now established;

Thence South along said center line of the right of way of Wyandotte Street to a point where it intersects the center line of the right of way of 51st Street, as now established;

Thence East along said center line of the right of way of 51st Street to a point where it intersects the center line of the right of way of Brookside Boulevard, as now established;

Thence Southeasterly along said center line of the right of way of Brookside Boulevard to a point where it intersects the center line of the right of way of 52nd Street, as now established;

Thence Easterly along said center line of the right of way of 52nd Street to a point where it intersects the center line of the right of way of Holmes Street, as now established;

Thence South along said center line of the right of way of Holmes Street to a point where it intersects the center line of the right of way of 53rd Street, as now established;

Thence East along said center line of the right of way of 53rd Street to a point where it intersects the center line of the right of way of Paseo, as now established;

Thence South and Southwesterly along said center line of the right of way of Paseo to a point where it intersects the center line of the right of way of 63rd Street, as now established;

Thence East along said center line of the right of way of 63rd Street to a point where it intersects the east right of way line of Bushman Drive, as now established;

Thence Southeasterly along said east right of way line of Bushman Drive \Paseo\E Meyer Boulevard to a point where it intersects the center line of the right of way of Paseo (northbound), as now established;

Thence Southwesterly along said center line of the right of way of Paseo to a point where it intersects the center line of the right of way of Gregory Boulevard, as now established;

Thence Easterly along said center line of the right of way of Gregory Boulevard to a point where it intersects the center line of the right of way of Lakeside Drive, as now established;

Thence Northeasterly along said center line of the right of way of Lakeside Drive to a point where it intersects the center line of the right of way of Gregory Boulevard, as now established;

Thence Easterly along said center line of the right of way of Gregory Boulevard to a point where it intersects the center line of the right of way of Inter-State 435, as now established;

Thence Northerly along said center line of the right of way of Inter-State 435 to a point where it intersects the center line of the right of way of Raytown Road, as now established;

Thence Southeasterly along said center line of the right of way of Raytown Road to a point where it intersects the center line of the right of way of Blue Ridge Cutoff, as now established;

Thence North along said center line of the right of way of Blue Ridge Cutoff to a point where it intersects the center line of the right of way of Inter-State 70, as now established;

Thence Northwesterly along said center line of the right of way of Inter-State 70 to a point where it intersects the center line of the right of way of Inter-State 435, as now established;

Thence Northerly along said center line of the right of way of Inter-State 435 to a point where it intersects the center line of the main channel of the Missouri River;

Thence Westerly, with the meanderings of the center line of the main channel of the Missouri River, to the Point of Beginning.

EXHIBIT 3

Detail of Southwest Boundary



0 100 200 Feet



EXHIBIT 4

FORM OF BALLOT QUESTION

Shall a transportation development district, to be known as the “Kansas City Urban Rail Transportation Development District” (the “District”), be organized in that part of Kansas City, Jackson County, Missouri generally bounded by the Missouri River on the north, State Line Road on the west, Interstate 435 on the east (but including an area east of Interstate 435 to incorporate Kauffman and Arrowhead Stadiums) and approximately 51st Street on the southwest and Gregory Boulevard on the southeast (but the specific legal description below will control), for the purpose of developing the transportation project (the “Project”) operating within the boundaries of, or serving and benefiting, the proposed District and consisting of the two subprojects described below, each of which subprojects are approved, and to have the power to fund the proposed Project upon separate voter approval by any or all of the following methods in any combination, each of which are, subject to approval at one or more future elections, approved as potential funding methods?

YES

NO

Summary of the Project:

Subproject 1: The design, construction, ownership and/or operation of a fixed rail streetcar and/or light rail system, and all elements thereof, including without limitation maintenance facilities, consisting of (i) the initial 2.1 mile (+/-) starter line running generally along Main Street from River Market to Crown Center/Union Station (the “Starter Line”), initially developed and initially funded by the existing Kansas City Downtown Streetcar Transportation Development District (the “Starter Line District”), and (ii) certain additional expansion routes of such fixed-rail streetcar and/or light rail system as finally determined by the City (the “Expansion Routes”), which Expansion Routes will connect to the Starter Line or to another Expansion Route, and are expected to run generally along (i) Independence Avenue, east from the Starter Line, (ii) Main Street, south from the Starter Line but not further than the general vicinity of the University of Missouri – Kansas City’s Volker campus, and (iii) Linwood Boulevard, east from the Main Street Expansion Route;

and

Subproject 2: The acquisition of express bus vehicles to implement a bus rapid transit route (the “BRT Route”), and related capital items that assist in implementing the BRT Route, to be owned and operated by an entity other than the District. No District revenues will be used to operate the BRT Route and the Project does not include the operational costs of the BRT Route. The BRT Route will run generally along Prospect Avenue and Twelfth Street.

Specific Description of the Proposed Funding Methods:

(a) Real Property Assessments: Levy of special assessments for no more than twenty-five (25) consecutive “Assessment Years” (as defined below), upon real property within the District that is specially benefitted by Subproject 1 as determined by the Board of Directors

of the District, and that is located (x) within the boundary of the existing Starter Line District, or (y) within an area no further than one-third mile (or greater, if determined by the Board of Directors of the District to be appropriate in order to include the entirety of a block otherwise partially included within such one-third mile distance, or to include the remainder of a recognized cohesive commercial, institutional or mixed-use area partially within such one-third mile distance) of either side of, or the terminus of, an Expansion Route (the “Real Property Assessments”) based upon the following schedule:

(i) *Residential Property*: With respect to real property categorized on January 1 of any Assessment Year by the “County Assessor” (as defined below) as residential real property or agricultural or horticultural real property for ad valorem tax purposes under applicable Missouri law (“Residential Property”) (unless subject on January 1 of the applicable Assessment Year to an “Exemption”, as defined below, in which event the provisions of subsection (a)(iv) below shall apply), the Real Property Assessment may be imposed for each applicable Assessment Year, in an annual amount not to exceed the sum obtained by (x) multiplying the market value of such Residential Property, as determined by the County Assessor as of January 1 of the applicable Assessment Year, by 0.0019 (such product being referred to as the “Residential Assessable Value”), and then (y) multiplying the Residential Assessable Value of such Residential Property by a rate established from time to time by the Board of Directors of the District, such rate not to exceed Seventy Cents (\$0.70) with respect to any Assessment Year (the “Residential Property Assessment”).

a. *Commercial Property*: With respect to real property categorized on January 1 of any Assessment Year by the County Assessor as utility, industrial, commercial or railroad for ad valorem tax purposes under applicable Missouri law, and all other real property not included in subclasses (1) and (2) of class 1 within the meaning of Article X, Section 4(b) of the Missouri Constitution, Rev. 2006, as amended (“Non-Residential Property”) (unless subject on January 1 of the applicable Assessment Year to an Exemption, in which event the provisions of subsection (a)(iv) below shall apply), the Real Property Assessment may be imposed for each applicable Assessment Year, in an annual amount not to exceed the sum obtained by (x) multiplying the lesser of (A) One Hundred Fifty Three Million and 00/100 Dollars (\$153,000,000.00) increased by two percent (2%) cumulatively commencing on January 1, 2015, and continuing on each second January 1 thereafter, and (B) the market value of such Non-Residential Property, as determined by the County Assessor as of January 1 of the applicable Assessment Year, by 0.0032 (such product being referred to as the “Commercial Assessable Value”), and then (y) multiplying the Commercial Assessable Value of such Non-Residential Property by a rate established from time to time by the Board of Directors of the District, such rate not to exceed Forty-Eight Cents (\$0.48) with respect to any Assessment Year (the “Commercial Property Assessment”).

b. *City Property*: Notwithstanding the provisions of subsections (a)(i) and (a)(ii) above, with respect to real property owned on January 1 of any Assessment Year by the City or any agency or authority established by the City, including without limitation, the Tax Increment Financing Commission, the Planned Industrial Expansion Authority and the Land Clearance for Redevelopment Authority, that is otherwise exempt from the imposition of an ad valorem real property tax (“City Property”), the City will pursuant to a Cooperation Agreement to be entered into between the District and the City, agree to pay, subject to annual appropriation, a Real

Property Assessment imposed for each applicable Assessment Year, in an annual amount equal to the sum obtained by (x) multiplying the market value of such City Property, as determined by the County Assessor as of January 1 of the applicable Assessment Year by 0.0032 (such product being referred to as the “City Assessable Value”), and then (y) multiplying the City Assessable Value of such City Property by One and 04/100 Dollars (\$1.04) (the “City Property Assessment”).

c. *Tax Exempt Property:* With respect to real property subject on January 1 of any Assessment Year to an Exemption (“Tax Exempt Property”), the Real Property Assessment may be imposed for each applicable Assessment Year, in an annual amount not to exceed the sum obtained by (x) multiplying the “Tax Exempt Property Market Value” (as defined below) as of January 1 of the applicable Assessment Year by (A) 0.0032 in the case of Tax Exempt Property that is Non-Residential Property, and (B) 0.0019 in the case of Tax Exempt Property that is Residential Property (such product being referred to as the “Tax Exempt Assessable Value”), and then (y) multiplying the Tax Exempt Assessable Value of such Tax Exempt Property by a rate established from time to time by the Board of Directors of the District, such rate not to exceed Forty Cents (\$0.40) with respect to any Assessment Year (the “Tax Exempt Property Assessment”).

For purposes of this ballot question, the following terms have the following meanings:

(A) “Assessment Year” means each respective period from January 1 through December 31 while the Real Property Assessment is in effect;

(B) “County Assessor” means the Director of Records for Jackson County, Missouri (or any successor officer with the same or similar duties in the event the office of Director of Records for Jackson County, Missouri is abolished);

(C) “Exemption” means an exemption from ad valorem taxation (1) on the basis that such real property is not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, for agricultural and horticultural societies, or for veterans’ organizations, or (2) on the basis that such real property is owned by The University of Missouri or the Curators thereof, all according to the official records of the County Assessor as of January 1 of the applicable Assessment Year; and

(D) “Tax Exempt Property Market Value” means that portion, and only that portion, of the market value of such Tax Exempt Property, as determined by the County Assessor as of January 1 of the applicable Assessment Year that is (A) equal to or less than Fifty One Million and 00/100 Dollars (\$51,000,000.00) increased by two percent (2%) cumulatively commencing on January 1, 2015, and continuing on each second January 1 thereafter, but (2) greater than Three Hundred Thousand and 00/100 Dollars (\$300,000.00).

(b) Sales Tax: Imposition of a sales tax, not in excess of one percent (1%), and for a period no longer than thirty (30) years from the date such sales tax is first collected, on all retail sales made in the District that are subject to taxation by the State of Missouri pursuant to the provisions of Sections 144.010 through 144.525 of the Act, except such transportation development district sales tax shall not apply to the sale or use of motor vehicles, trailers, boats

or outboard motors nor to all sales of electricity or electrical current, water and gas, natural or artificial, nor to sales of service to telephone subscribers, either local or long distance.

(c) Surface Pay Parking Lot Assessment: In addition to the Commercial Property Assessment, the Residential Property Assessment, the City Property Assessment, and the Tax Exempt Property Assessment, the levy of special assessments, for no more than twenty-five (25) consecutive Assessment Years, upon real property within the District that is (i) subject to the Real Property Assessment, and (ii) used as a “Surface Pay Parking Lot” (as defined below) during the applicable Assessment Year, in an annual amount not to exceed for any Assessment Year the sum of Fifty-Four and 75/100 Dollars (\$54.75) multiplied by the number of “Pay Parking Spaces” (as defined below) located on each such Surface Pay Parking Lot during such Assessment Year (the “Surface Parking Assessment”). A Surface Pay Parking Lot shall be exempt from the Surface Parking Assessment if it is in, under or otherwise a part of a multi-story structure, or if it shares common or affiliated ownership with, and primarily exists to serve the employees or patrons of, a business enterprise or place of interest such as (by way of example and not as a limitation) a museum, train station, or theater, which business enterprise or place of interest is located on the same or a neighboring property as the parking area under consideration.

For purposes of this ballot question, the following terms have the following meanings:

(A) “Pay Parking Space” means an off-street parking space on a Surface Pay Parking Lot for which a fee (whether hourly, daily, weekly or monthly, or some multiple thereof) is charged for the ability to park a motor vehicle thereon; and

(B) “Surface Pay Parking Lot” means an off-street place, parcel of ground, or yard that is made available in whole or in part for the parking of motor vehicles on the surface thereof and for which a fee (whether hourly, daily, weekly or monthly, or some multiple thereof) is charged for the ability to park a motor vehicle thereon.

The revenue sources of the District shall not be collected until (a) the Starter Line District is abolished, terminated or dissolved, or merged with or into the District, or its revenue sources reduced to zero by action of the Board of Directors of the Starter Line District or otherwise, in accordance with then applicable law, and (b) the Board of Directors of the District determines that there are sufficient funds to be derived from sources other than revenue of the District in order to make the construction of a substantial portion of the Project financially viable when aggregated with revenue of the District.

Specific legal description of the District:

All that territory in the corporate limits of Kansas City, Jackson County, Missouri, described as follows:

Beginning at a point where the Western boundary line of the State of Missouri intersects the center line of the main channel of the Missouri River, said intersection being the “Point of Beginning” for the boundary of the Transportation Development District and the same point as the Point of Commencement referenced in Ordinance No. 10349, passed September 3rd, 1946; Thence South along the Western corporate limits line of the City of Kansas City, Missouri, said line also being the Western boundary line of the State of Missouri, to a point where the center

line of the right of way of 46th Street, as now established, intersects the Western corporate limits line of the City of Kansas City, Missouri; Thence Easterly and Southerly along said center line of the right of way of 46th Street to a point where it intersects the center line of the right of way of Holly Street, as now established; Thence South along said center line of the right of way of Holly Street to a point where it intersects the center line of the right of way of Ward Parkway, as now established; Thence Southwesterly along said center line of the right of way of Ward Parkway to a point where it intersects the center line of the right of way of Westwood Road, as now established; Thence Southeasterly along said center line of the right of way of Westwood Road to a point where it intersects the center line of the channel of Brush Creek; Thence Northeasterly along said center line of channel of Brush Creek to a point where it intersects the center line of the right of way of Roanoke Parkway, as now established; Thence Southeasterly along said center line of the right of way of Roanoke Parkway to the point where Roanoke Parkway becomes Summit Street; Thence continuing along Summit Street to a point where it intersects the center line of the right of way of Ward Parkway, as now established; Thence Northeasterly along said center line of the right of way of Ward Parkway to a point where it intersects the center line of the right of way of 49th Street, as now established; Thence Southeasterly along said center line of the right of way of 49th Street to a point where it intersects the center line of the right of way of Sunset Drive, as now established; Thence Northeasterly along said center line of the right of way of Sunset Drive to a point where it intersects the northerly prolongation of the west line of Lot 8, Hemphurst Terraces; Thence Southeasterly along said west line of Lot 8, Hemphurst Terraces to the north right of way line of vacated West 49th Street; Thence South fifteen (15) feet to the north line of the southeast ¼ of the southeast ¼ of Section 30, T49N, R33W; Thence West along said north line of the SE ¼ of the SE ¼ of Sec 30, T49N, R33W to a point where it intersects the northerly prolongation of the west line of Lot 10, Amended Plat of Monticello; Thence South twenty-five (25) feet along said northerly prolongation of the west line of Lot 10, Amended Plat of Monticello, to the south right of way line of vacated West 49th Street; Thence continuing South along the west line of Lot 10, Amended Plat of Monticello, to a point seventeen (17) feet south of the south right of way line of vacated West 49th Street; Thence East along a line seventeen (17) feet south of and parallel to the south right of way line of vacated West 49th Street to a point at the northwest corner of Lot 1, Block 1, Alameda Towers Subdivision, point being marked as N 1,045,713.23 E 473,592.69 on said plat; Thence East along the north line of Lot 1, Block 1, Alameda Towers Subdivision, to a point at the northeast corner of Lot 1, Block 1, Alameda Towers Subdivision and on the west right of way line of Wornall Road as now established, point being marked as N 1,045,707.44 E 473,936.75 on said plat; Thence South along said west right of way of Wornall Road to a point where it intersects the center line of the right of way of 49th Terrace, as now established; Thence East along said center line of the right of way of 49th Terrace to a point where it intersects the center line of the right of way of Wornall Road, as now established; Thence South along said center line of the right of way of Wornall Road to a point where it intersects the center line of the right of way of 50th Street, as now established; Thence East along said center line of the right of way of 50th Street to a point where it intersects the center line of the right of way of Wyandotte Street, as now established; Thence South along said center line of the right of way of Wyandotte Street to a point where it intersects the center line of the right of way of 51st Street, as now established; Thence East along said center line of the right of way of 51st Street to a point where it intersects the center line of the right of way of Brookside Boulevard, as now established; Thence Southeasterly along said center line of the right of way of Brookside Boulevard to a point where it intersects the center line of

the right of way of 52nd Street, as now established; Thence Easterly along said center line of the right of way of 52nd Street to a point where it intersects the center line of the right of way of Holmes Street, as now established; Thence South along said center line of the right of way of Holmes Street to a point where it intersects the center line of the right of way of 53rd Street, as now established; Thence East along said center line of the right of way of 53rd Street to a point where it intersects the center line of the right of way of Paseo, as now established; Thence South and Southwesterly along said center line of the right of way of Paseo to a point where it intersects the center line of the right of way of 63rd Street, as now established; Thence East along said center line of the right of way of 63rd Street to a point where it intersects the east right of way line of Bushman Drive, as now established; Thence Southeasterly along said east right of way line of Bushman Drive \Paseo\E Meyer Boulevard to a point where it intersects the center line of the right of way of Paseo (northbound), as now established; Thence Southwesterly along said center line of the right of way of Paseo to a point where it intersects the center line of the right of way of Gregory Boulevard, as now established; Thence Easterly along said center line of the right of way of Gregory Boulevard to a point where it intersects the center line of the right of way of Lakeside Drive, as now established; Thence Northeasterly along said center line of the right of way of Lakeside Drive to a point where it intersects the center line of the right of way of Gregory Boulevard, as now established; Thence Easterly along said center line of the right of way of Gregory Boulevard to a point where it intersects the center line of the right of way of Inter-State 435, as now established; Thence Northerly along said center line of the right of way of Inter-State 435 to a point where it intersects the center line of the right of way of Raytown Road, as now established; Thence Southeasterly along said center line of the right of way of Raytown Road to a point where it intersects the center line of the right of way of Blue Ridge Cutoff, as now established; Thence North along said center line of the right of way of Blue Ridge Cutoff to a point where it intersects the center line of the right of way of Inter-State 70, as now established; Thence Northwesterly along said center line of the right of way of Inter-State 70 to a point where it intersects the center line of the right of way of Inter-State 435, as now established; Thence Northerly along said center line of the right of way of Inter-State 435 to a point where it intersects the center line of the main channel of the Missouri River; Thence Westerly, with the meanderings of the center line of the main channel of the Missouri River, to the Point of Beginning.

