

Resolution No. RS2020-552

A resolution authorizing The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes with respect to a Neighborhood Transit Center to be located at the intersection of Clarksville Pike and 26th Avenue North.

WHEREAS, The Metropolitan Government of Nashville and Davidson County (the “Metropolitan Government”) is vitally interested in the economic welfare of its citizens and wishes to provide the necessary leadership to enhance this area’s capabilities for growth and development; and,

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and,

WHEREAS, pursuant to the Industrial Development Corporations Act, currently codified at Tenn. Code Ann. §§ 7-53-101 through 315 (such act, as heretofore or hereafter amended, referred to as the “Act”), the General Assembly of the State of Tennessee (the “General Assembly”) has authorized the incorporation of public corporations known as “industrial development boards” in municipalities in the State of Tennessee (the “State”); and,

WHEREAS, the Industrial Development Board of The Metropolitan Government of Nashville and Davidson County (the “Board”) has been duly organized and incorporated in compliance with the Act; and,

WHEREAS, the General Assembly has found and declared that the Board is performing a public function on behalf of the Metropolitan Government and that the Board is a public instrumentality of the Metropolitan Government; and,

WHEREAS, the Supreme Court of Tennessee (the “Supreme Court”) has found that the Board is an agency or instrumentality of the Metropolitan Government; and,

WHEREAS, the Act expressly incorporates by reference the statement of public policy set forth in Section 3 of Chapter 209 of the Public Acts of 1955; and,

WHEREAS, Chapter 209 of the Public Acts of 1955 states that the declared purpose of the Act is to do that which the State welfare demands and that which the State public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the State, and to promote the development of commercial, industrial, agricultural, and manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire State; and,

WHEREAS, the General Assembly also has declared that the purposes of the Act include maintaining and increasing employment opportunities by promoting industry, trade, and

commerce by inducing manufacturing, industrial, financial, service, and commercial enterprises to locate or remain in the State; and,

WHEREAS, the Supreme Court has held that the purposes of the Act include the promotion of industry and the development of trade to provide against low wages and unemployment and that such purposes are public in nature; and,

WHEREAS, the Board is empowered pursuant to the Act to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish, "projects" (as defined in the Act), and to lease such projects to others; and,

WHEREAS, the Metropolitan Transit Authority (the "Authority") has proposed to construct a neighborhood transit center on property owned by HOLO 37208 LLC, a Tennessee limited liability company, ("HOLO") located at the intersection of Clarksville Pike and 26th Avenue North (the "Project"),

WHEREAS, the Authority will make a substantial investment of funds, resulting in increased employment and improved public transportation for the citizens of the Metropolitan Government; and

WHEREAS, pursuant to the ground lease between HOLO and the Authority (the "Ground Lease"), the Authority shall be responsible for the payment of ad valorem property taxes on the Project; and

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305, all properties owned by the Board are exempt from ad valorem taxation in the State of Tennessee; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305(b), the Metropolitan County Council (the "Council") has the power to delegate to the Board the authority to negotiate and accept from its lessees payments in lieu of ad valorem taxes, provided that such payments are in furtherance of the Board's public purposes; and,

WHEREAS, the benefits to the Metropolitan Government of the location of the Project within the boundaries of the Metropolitan Government, and in the exercise of its powers above, will provide an opportunity for the Board to acquire, by purchase, exchange, gift or lease, property that will be used with respect to the Project, to lease that property to HOLO, and to enter into one or more agreements with HOLO and the Authority to accept payments in lieu of ad valorem taxes with respect to the property; and,

WHEREAS, the Board may only negotiate and accept payments in lieu of ad valorem taxes with authorization from the Council; and,

WHEREAS, it is in the interest and welfare of the citizens of the Metropolitan Government to delegate authority to the Board to negotiate and execute a payment-in-lieu-of-tax agreement with HOLO.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Council of the Metropolitan Government finds that the Board's acceptance of payments in lieu of ad valorem taxes with respect to the Project is in furtherance of the Board's public purpose of maintaining and increasing employment opportunities, as set forth in Tenn. Code Ann. § 7-53-102, and the other public purposes described above.

Section 2. That the Metropolitan Government hereby delegates to the Board the authority to negotiate and execute an agreement for payments in lieu of real property taxes with respect to the Project for a period of up to seventy (70) years, beginning on the effective date of a lease between the Board and HOLO with respect to the Project. The amount of the payments in lieu of real property taxes that shall be required with respect to that period shall be zero percent (0%) of the Standard Tax owed in connection with the Project. In the event the Ground Lease is terminated at any time prior to the end of the term of the lease between the Board and HOLO, then the amount of the payments in lieu of real property taxes that shall be required with respect to the period following the termination of the Ground Lease shall be one hundred percent (100%) of the Standard Tax owed in connection with the Project.

Section 3. That the term "Standard Tax" shall mean the amount of ad valorem real property tax that HOLO would be required to pay with respect to a given tax year with respect to the real property that is then subject to the payment in lieu of tax arrangement authorized hereby if HOLO owned the Property. HOLO shall be permitted to challenge the assessment of any real property that is then subject to the payment in lieu of tax arrangement authorized hereby in the same manner as if HOLO owned the Property.

Section 4. (a) That the payment in lieu of tax arrangement authorized by this Resolution shall apply to all real property comprising a portion of, or used at or in connection with, the Project.

(b) That the payment in lieu of tax arrangement authorized by this Resolution shall apply to all land, easements or other property rights, buildings, improvements, fixtures, and construction in progress comprising a portion of, or used in connection with, facilities located on the property described above. Such arrangement shall apply to such facilities and such properties in their current scope and configuration and to all replacements, enhancements, additions, expansions, and improvements to such properties and facilities.

Section 5. That the final version of the payment in lieu of tax agreement, the form of which is attached hereto as Exhibit A, authorized by this Resolution must be approved as to legality by the Department of Law of the Metropolitan Government prior to being executed by the Board.

Section 6. That all ordinances or resolutions, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 7. That this Resolution shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY  
OF FUNDS:



Kevin Crumbo, Director  
Department of Finance

APPROVED AS TO FORM AND  
Legality

  
Assistant Metropolitan Attorney

INTRODUCED BY:



Member(s) of Council

## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (this “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2020, by and among **HOLO 37208, LLC**, a Tennessee limited liability company, (the “Company”), and **THE INDUSTRIAL DEVELOPMENT IDB OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE**, a public, not-for-profit corporation organized under the laws of the State of Tennessee (the “IDB”), and the **METROPOLITAN TRANSIT AUTHORITY**, a public, not-for-profit corporation organized under the laws of the State of Tennessee (“MTA”).

In consideration of the premises set forth in Section 1 of this Agreement, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Preliminary Statements. Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

(a) MTA has announced its decision to construct a neighborhood transit center (the “Transit Center”) to be developed by the Authrity on a portion of the property owned by the Company and as described on Exhibit A attached hereto (the “Land”) located within the boundaries of the Metropolitan Government of Nashville and Davidson County, Tennessee (the “Metropolitan Government” the area within such boundaries being referred to as the “County”), thereby making a substantial investment of funds, resulting in increased employment and improved public transportation for the citizens of the County.

(b) The IDB is authorized by the laws of the State of Tennessee, specifically, *inter alia*, Tennessee Code Annotated Section 7-53-305, being a provision of the Tennessee Industrial Development Corporations Act (the “Act”), to negotiate and accept payments in lieu of ad valorem taxes. Pursuant to such authority and in furtherance of this Agreement, the IDB intends to (i) acquire the Project and (ii) enter into the Lease with Company.

(c) The IDB intends to enter into a Facility Lease Agreement (the “Facility Lease”) with the Company. Pursuant to the Facility Lease, the IDB will lease substantially all of the Land, easements, other property rights, buildings, improvements, fixtures, construction in progress, equipment, furniture and other properties of any nature comprising a portion of, or used in connection with (i) the Land; and (ii) such other property as is hereafter subject to the Facility Lease (that portion of the Transit Center that is hereafter constructed and owned by the IDB and leased pursuant to the Facility Lease, including all replacements, enhancements, additions, expansions and improvements thereto that are hereafter owned by the IDB and leased pursuant to the Facility Lease, are referred to collectively herein as the “Project”). The Transit Center will be located in the County and will be more fully described in the Facility Lease.

(d) Pursuant to a Ground Lease Agreement, dated as of \_\_\_\_, 2020, between the Company and MTA (the “MTA Lease”), the Company has agreed to lease the Land to the Company. The initial term of the MTA Lease is fifty (50) years after the “Commencement

Date,” as defined therein. MTA has two (2) options to extend the term of the MTA Lease by ten (10) years for each renewal term. .

(e) Pursuant to Resolution No. RS2020-\_\_\_\_ (the “Resolution”), the Metropolitan County Council (the “Council”) of the Metropolitan Government has delegated to the IDB the authority to negotiate and accept payments in lieu of ad valorem taxes from the Company with respect to the Project.

(f) The IDB is the instrumentality of the Metropolitan Government and is performing a public purpose on its behalf.

(g) The IDB and the Council each has found, based upon information and factors deemed relevant by them, that the IDB's agreement to accept payments in lieu of tax from the Company with respect to the Project will be in furtherance of the IDB's public purposes of maintaining and increasing employment opportunities (as set forth in Tenn. Code Ann. § 7-53-102) and other public purposes of the IDB set forth in the Act and described in the Resolution.

(h) The IDB hereby acknowledges that the execution and delivery of this Agreement has been and is an essential and material inducement to MTA in its determination to construct the Transit Center in the County.

2. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following terms as used herein shall have the following meaning:

(a) “Applicable Ad Valorem Taxes” means any ad valorem taxes on the Project that, but for ownership of the Project by the IDB, would have been due and payable by the Company to the County pursuant to T.C.A. § 67-5-102.

(b) “Effective Date” means the date the last of the parties executes this Agreement.

3. In Lieu of Tax Payments. For each property tax period during the term of the MTA Lease in which the Property is owned by the IDB, MTA shall make the payments in lieu of ad valorem real property taxes on the Project (the “In Lieu of Tax Payments”) to the County, expressed as a Percentage of the Applicable Ad Valorem Taxes, in accordance with the following schedule:

Applicable Year	<u>Percentage of Applicable Ad Valorem Taxes:</u>
Effective Date of Facility Lease through December 31, 2020	100%
January 1, 2021 through December 31, 2040	0%
January 1, 2041 through the end of the term of the MTA Lease*	0%
For any period after December 31, 2040 through the end of the term of the MTA Lease for which State Approval is not obtained	100% - (a PILOT payment equal to all Applicable Ad Valorem Taxes shall be paid)
For any period following the end of the term of the MTA Lease	100% - (a PILOT payment equal to all Applicable Ad Valorem Taxes shall be paid)
*Subject to State Approval pursuant to Section 6.	

All In Lieu of Tax Payments hereunder with respect to any calendar year shall be due on or before the last day of February during the following year and shall be made to the Trustee of the Metropolitan Government.

4. Special Provisions Regarding In Lieu of Tax Payments. Notwithstanding the provisions of Section 3, if the Company is required to pay ad valorem taxes by reason of its leasehold interests in the Project (“Leasehold Taxes”), then the amount of Leasehold Taxes actually paid by the Company shall be deducted from the In Lieu of Tax Payments next due from the Company with respect to the Project until such time as the full amount of Leasehold Taxes actually paid by the Company during the term of the Lease shall have been deducted from In Lieu of Tax Payments.

5. MTA Operation of the Facility Required. Notwithstanding any of the foregoing, in the event the Facility is not being leased by MTA, pursuant to the MTA Lease, and/or not being used as a Transit Center operated by MTA, the Company shall make In Lieu of Tax Payments equal to one hundred percent (100%) of the Applicable Ad Valorem Taxes owed for the Facility for each property tax period during the term of the Facility Lease. For the avoidance of doubt, any ad valorem property tax abatement pursuant to this Agreement shall cease upon the termination of the MTA Lease or upon MTA’s failure to operate a Transit Center at the Facility.

6. State Approval. Pursuant to Section 7-53-305(b)(1)(B) of the Act, the payment in lieu of taxes incentive for any period after December 31, 2040 through the end of the term of the Facility Lease, is subject to the Commissioner of the Department of Economic and Community Development and the Comptroller of the Treasury making a written determination that the extended term of the incentive is in the best interest of the State of Tennessee (“State Approval”).

7. Permitted Contests. It is agreed and understood that the Company, MTA, or any other person (a “Contesting Party”), may in good faith at its own expense, contest the Applicable

Ad Valorem Taxes, or the amount of any In Lieu of Tax Payments based thereon, after giving notice of its intention to do so to the IDB. In the event of any such contest, the Contesting Party may permit the taxes or the In Lieu of Tax Payments so contested to remain unpaid during the period of such contest and any appeal therefrom unless the IDB shall notify the Contesting Party, that by non-payment of such items the Project, or any part thereof, may be imminently subject to loss or forfeiture, in which event such taxes, In Lieu of Tax Payments, assessments or charges shall be promptly paid or secured by the Contesting Party's posting a bond in form and substance satisfactory to the IDB. The IDB shall, if requested by the Contesting Party, and provided that the IDB shall be indemnified and held harmless against and from all costs and expenses (including attorneys' fees) which may be reasonably incurred by the IDB in connection therewith, cooperate fully with the Contesting Party in any such contest.

8. Reports and Document Filing.

(a) Annual Report Pursuant to the Act. Annually, the Company shall file the report required to be filed pursuant to Section 7-53-305(e) of the Act on or before October 1 of each year. A copy of this report shall also be filed with the Davidson County Assessor of Property. This form can be filed online at <https://smartfile.cot.tn.gov/Filing/FilingType/Info/PILOTS>, if desired.

(b) Cost Versus Benefits Analysis. The Company hereby submit the “Cost Versus Benefits Analysis For Payment In Lieu of Ad Valorem Tax” forms, attached hereto as Exhibit B and incorporated herein by this reference, as required by Section 7-53-305(b) of the Act.

9. Miscellaneous. This Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed the same as if such invalid, illegal or unenforceable provision had never been contained herein.

10. Headings. The headings herein are for convenience of reference only and shall not be deemed to be part of the substance of this Agreement.

11. Counterparts. This Agreement may be executed in two or more counterparts which together shall constitute a single instrument.

12. Entire Agreement; Amendment. This Agreement sets forth the entire agreement among the parties with respect to the subject matter hereof This Agreement may be changed or supplemented only by a written agreement signed by all parties hereto.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

THE INDUSTRIAL DEVELOPMENT IDB  
OF THE METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON  
COUNTY, TENNESSEE

HOLO 37208, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Ginger Hausser, Chair  
Date: \_\_\_\_\_

METROPOLITAN TRANSIT AUTHORITY

ATTEST:  
  
\_\_\_\_\_  
\_\_\_\_\_, Secretary  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
Assistant Metropolitan Attorney

Exhibit A

Description of the Land



Exhibit B

Cost Versus Benefits Analysis For Payment In Lieu of Ad Valorem Tax

## Cost Versus Benefit Analysis for Payment In Lieu of Ad Valorem Tax

This form should be included with every PILOT agreement submitted to the Comptroller's Office at <https://www.comptroller.tn.gov/boards/state-board-of-equalization/sboe-services/property-tax-incentive-programs.html>

**Instructions:** Complete fields shaded gray. Additional comments and information about costs or benefits associated with the project may be attached.

Date:

Person Completing the Form: James L Murphy III  
Title: Attorney

Lessor: The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County, Tennessee  
Lessee: HOLO 37208, LLC

Describe Abatement Term: 50 Years  
Lease Term Begin Date:  Lease Term End Date:

Comments/Description: HOLO37218 LLC is subleasing the property subject to the abatement to The Metropolitan Government of Nashville and Davidson County, Tennessee, as property of and for the benefit of the Metropolitan Transit Authority, d/b/a WE GO, for the use as a neighborhood transit center

Industry Group (drop down box): 48-49 Transportation and Warehousing  
NAICS Code (drop down box): 485A00 Transit and ground passenger transportation

<b>Step 1</b>	7	x	\$16.99	x	2080	=	\$247,374	x	2.265	=	\$560,303
	Number of New Jobs		Average Hourly Wage		Hours		Direct Income		Earnings multiplier*		Total New Direct, Indirect & Induced Income
<b>Step 2</b>	7	x	2.0859	=	14.6						
	Number of New Jobs		Employment multiplier*		Total Number of New Direct, Indirect & Induced Jobs						
<b>Step 3</b>	\$560,303	x	0.0942	=	\$52,781						
	Direct, Indirect & Induced Income		New Total Annual State Tax		New Annual State Sales Tax						

<b>First Full Year of Service*</b>	
PILOT Payment County:	<input style="width: 100px;" type="text"/>
PILOT Payment City:	<input style="width: 100px;" type="text"/>
<i>* Please attach essential terms relating to PILOT, including term and method of calculation.</i>	
Total New Direct, Indirect & Induced Jobs:	14.6
Total Direct, Indirect & Induced Income:	\$ 560,303.02
Total of New Annual State & Local Sales Tax:	\$ 37,166.58

**Estimated Project Cost:**  
 Personal Property:   
 Real Property:   
 Total Project Cost: \$

Clawback? Yes or No:

**Delegation Resolution(s)**  
 Date of County Resolution:   
 Date of City Resolution:

\*RIMS II employment and income multipliers for the State of Tennessee Revised 4/2/19 (CERT)