



Board of Alderman Request for Action

MEETING DATE: 1/18/2022

DEPARTMENT: Administration

AGENDA ITEM: Bill No. 2929-22 – Funding Agreement Relating to Bond Issuance for Marketplace TIF

REQUESTED BOARD ACTION:

Approve Bill No. 2929-22, approving a funding agreement relating to the bond issuance for the Marketplace TIF. Mayor Boley has sponsored this Bill as an Emergency Ordinance to be approved by two readings at the January 18 Board of Aldermen meeting.

SUMMARY:

In October of 2021, the developers of the Marketplace TIF approached the City's special counsel with a request to determine the City's interest in allowing the developer to issue tax increment revenue bonds (TIF Bonds) to make payment of reimbursable project costs to the Developer relating to the Marketplace TIF. Staff has met with special counsel Gilmore and Bell as well as financial advisors Piper Sandler to understand the overall process and steps that are expected of the City.

Issuance of TIF Bonds would be completed by the City, with all costs related to the financing to be paid from the proceeds of the TIF Bonds. The TIF bonds would be secured and payable solely by TIF revenues generated by the project available after all distributions are made to the City and other taxing districts. No City obligation would exist to cover any revenue shortfall.

To complete the process of issuing TIF Bonds, a Funding Agreement was drafted to ensure certain costs were paid by the Developer and not provided by the City. These costs include the payment of legal fees, financial advisory fees and the cost of a revenue study to determine if the projected future revenues of the Marketplace TIF will sufficiently cover the debt service of the TIF Bonds. The first of a series of payments from the developer to cover costs associated with review and implementation of a bond issuance is \$25,000. As costs are accumulated and funds are drawn down from the initial \$25,000 payment, the developer will continue to deposit funds to the City to maintain a \$25,000 total. The developer has indicated that this initial payment is ready to be submitted to the City.

Approval of the Funding Agreement does not bind the Board of Aldermen to a decision relating to issuance of bonds, but allows further review of the feasibility of such bond issuance and the impact on the City of Smithville financial standing.

Part of the issuance of the bonds will include a Bond Revenue Study. The execution of this study will require the City to release a Request for Proposal. Staff is currently working on RFP documents to be released.

PREVIOUS ACTION:

August 1, 2017 – Approval of the Smithville Commons Tax Increment Financing Plan

August 1, 2017 – Approval of a Reimbursement Agreement with the Smithville Area Fire Protection District

November 21, 2017 – Approval of the First Amendment to the Smithville Commons Tax Increment Financing Development Plan

November 21, 2017 – Approval of the Original Redevelopment Agreement

July 17, 2017 – Approval of a Reimbursement Agreement with the Northland Regional Ambulance District

POLICY OBJECTIVE:

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FINANCIAL CONSIDERATIONS:

Click or tap here to enter text.

ATTACHMENTS:

☒ Ordinance

☐ Resolution

☐ Staff Report

☒ Other: Funding Agreement

☐ Contract

☐ Plans

☐ Minutes

ORDINANCE APPROVING A FUNDING AGREEMENT FOR THE SMITHVILLE COMMONS TAX INCREMENT FINANCING PROJECT

WHEREAS, the City is a fourth-class city and political subdivision of the State of Missouri, incorporated and exercising governmental functions and powers pursuant to the Constitution and the Revised Statutes of the State of Missouri, with its legislative power residing in the Board of Aldermen; and

WHEREAS, the City approved the Smithville Commons Tax Increment Financing Plan on August 1, 2017 (the "**Original Redevelopment Plan**") to provide incentives for the construction of a project (the "**Project**"); and

WHEREAS, the City approved the First Amendment to the Smithville Commons Tax Increment Financing Development Plan on November 21, 2017 (the "**First Amended Plan**," together with the Original Redevelopment Plan the "**Redevelopment Plan**") to provide for a capital contribution to the Smithville School District; and

WHEREAS, the City entered into a Tax Increment Financing Redevelopment Agreement dated August 1, 2017 (the "**Original Redevelopment Agreement**") with Development Associates Smithville, LLC (the "**Developer**") implementing the Redevelopment Plan; and

WHEREAS, on November 21, 2017, the City and the Developer entered into the First Amendment to Tax Increment Financing Development Agreement (the "**First Amended Redevelopment Agreement**," together with the Original Redevelopment Agreement, the "**Redevelopment Agreement**") to implement the First Amended Plan;

WHEREAS, the City also entered to a Reimbursement Agreement with the Northland Regional Ambulance District on July 17, 2017 and a Reimbursement Agreement with the Smithville Area Fire Protection Agreement on August 1, 2017 to provide for reimbursement of revenues to the respective taxing jurisdiction (the "**Reimbursement Agreements**"); and

WHEREAS, pursuant to the Redevelopment Agreement, the City may issue obligations to reimburse the Developer for costs related to the Project; and

WHEREAS, Developer proposes that the City issue Tax Increment Revenue Bonds (the "**Bonds**") to reimburse the Developer (the "**Proposal**") for costs related to the development of the Project; and

WHEREAS, in order for the City to fully consider and evaluate the Proposal, the City will need to engage consultants to draft, review, evaluate, process and consider all

documents, studies, and other necessary and appropriate documentation related to the Bonds and the Proposal; and

WHEREAS, the City does not have a source of funds to pay for costs incurred for additional legal, financial and other consultants or for direct out-of-pocket expenses and other costs resulting from services to review, evaluate, process and consider the Proposal, including, but not limited to the engagement of a firm to draft a revenue study for the Project, the engagement of the legal services of Gilmore & Bell, P.C. ("**Bond Counsel**") to provide legal services for the City and the engagement of Piper Sandler & Co. to provide municipal advisory services for the City; and

WHEREAS, the City desires developers who request assistance from the City in a public-private partnership or through the use of economic incentive tools to demonstrate the financial ability to allow for the full and fair evaluation by the City of all development proposals and requests for economic incentives from the City; and

WHEREAS, in order for the City to fully consider and evaluate the Proposal, the Developer seeks to deposit funds with the City to be used by the City to pay for the City's expenses necessary to perform a full evaluation of the Proposal; and

WHEREAS, the City and the Developer desire to enter into a Funding Agreement (the "**Funding Agreement**") to provide for the payment and funding of the expenses.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:

Section 1. Approval of Agreement. The Funding Agreement by and between the City and the Developer, in substantially the form attached hereto as **Exhibit A** incorporated herein by reference, are hereby approved and the Mayor is hereby authorized to execute the agreement on behalf of the City.

Section 2. Further Authority. The Mayor, the City Administrator, and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force from and after its passage and adoption by the Board of Alderman and approval by the Mayor.

PASSED by the Board of Aldermen, and **APPROVED** by the Mayor, of the City of Smithville, Missouri, this 18th day of January, 2022.

(SEAL)

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

First Reading: 1/18/2022

Second Reading: 1/18/2022

EXHIBIT A
TO ORDINANCE NO. _____

FUNDING AGREEMENT

FUNDING AGREEMENT

This **FUNDING AGREEMENT** (“**Funding Agreement**”) is entered into this 18th day of January, 2022, between the **CITY OF SMITHVILLE, MISSOURI** (the “**City**”), and **DEVELOPMENT ASSOCIATES SMITHVILLE, LLC**, a Missouri limited liability company (the “**Developer**”) (collectively the “**Parties**”).

RECITALS

WHEREAS, the City is a fourth-class city and political subdivision of the State of Missouri, incorporated and exercising governmental functions and powers pursuant to the Constitution and the Revised Statutes of the State of Missouri, with its legislative power residing in the Board of Aldermen; and

WHEREAS, the City approved the Smithville Commons Tax Increment Financing Plan on August 1, 2017 (the “**Original Redevelopment Plan**”) to provide incentives for the construction of a project (the “**Project**”); and

WHEREAS, the City approved the First Amendment to the Smithville Commons Tax Increment Financing Development Plan on November 21, 2017 (the “**First Amended Plan**,” together with the Original Redevelopment Plan the “**Redevelopment Plan**”) to provide for a capital contribution to the Smithville School District; and

WHEREAS, the City entered into a Tax Increment Financing Redevelopment Agreement dated August 1, 2017 with the Developer (the “**Original Redevelopment Agreement**”) implementing the Redevelopment Plan; and

WHEREAS, on November 21, 2017, the City and the Developer entered into the First Amendment to Tax Increment Financing Development Agreement (the “**First Amended Redevelopment Agreement**,” together with the Original Redevelopment Agreement, the “**Redevelopment Agreement**”) to implement the First Amended Plan;

WHEREAS, the City also entered to a Reimbursement Agreement with the Northland Regional Ambulance District on July 17, 2017 and a Reimbursement Agreement with the Smithville Area Fire Protection Agreement on August 1, 2017 to provide for reimbursement of revenues to the respective taxing jurisdiction (the “**Reimbursement Agreements**”); and

WHEREAS, pursuant to the Redevelopment Agreement, the City may issue obligations to reimburse the Developer for project costs; and

WHEREAS, Developer proposes that the City issue Tax Increment Revenue Bonds (the “**Bonds**”) to reimburse the Developer (the “**Proposal**”) for costs related to the development of the Project; and

WHEREAS, in order for the City to fully consider and evaluate the Proposal, the City will need to engage consultants to draft, review, evaluate, process and consider all documents, studies, and other necessary and appropriate documentation related to the Bonds and the Proposal; and

WHEREAS, the City does not have a source of funds to pay for costs incurred for additional legal, financial and other consultants or for direct out-of-pocket expenses and other costs resulting from services to review, evaluate, process and consider the Proposal, including, but not limited to the engagement of a firm to draft a revenue study for the Project, the engagement of the legal services of Gilmore & Bell, P.C.

(“**Bond Counsel**”) to provide legal services for the City and the engagement of Piper Sandler & Co. to provide municipal advisory services for the City; and

WHEREAS, the City desires developers who request assistance from the City in a public-private partnership or through the use of economic incentive tools to demonstrate the financial ability to allow for the full and fair evaluation by the City of all development proposals and requests for economic incentives from the City; and

WHEREAS, in order for the City to fully consider and evaluate the Proposal, the Developer seeks to deposit funds with the City to be used by the City to pay for the City’s expenses necessary to perform a full evaluation of the Proposal.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Services to be Performed by the City.** The City shall:

A. Prepare or consult with the Developer as it relates to the authorization and issuance of the Bonds;

B. Engage a firm to prepare a revenue study for the Project;

C. Provide necessary staff, legal, financial, and planning assistance to evaluate, process and consider the Proposal;

D. If the Developer’s requested actions are approved, provide the necessary staff and legal, financial and planning assistance to prepare authorizing proceedings and other legal documents necessary or appropriate to the authorization, issuance and delivery of the Bonds and coordinate the authorization and execution of documents;

E. Engage appropriate outside consultants and attorneys to carry out the tasks described above.

2. **Initial Deposit.** The City acknowledges receipt of \$25,000 (the “**Deposit**”) from the Developer upon the execution of this Funding Agreement. The City shall disburse the Deposit as set forth within this Funding Agreement and shall bill the Developer to re-establish the Deposit so that there is always a minimum of \$25,000 available, from which additional disbursements as discussed below may be made as required. The City and Developer agree that acceptance of the initial Deposit and execution of this Funding Agreement does not constitute a decision to issue Bonds or act as an acceptance of the Developer’s Proposal.

3. **Legal Fees.** Although the City is Bond Counsel’s client, the Developer will be responsible for paying legal fees. The Bonds constitute a complex financing transaction, and due to the uncertainty of whether the closing of the financing will occur, Bond Counsel will be entitled to legal fees in accordance with the following terms:

- A. \$23,750 after Bond Counsel has distributed a first draft of documents for the Bonds.
- B. \$23,750 after Bond Counsel has distributed a substantially final draft of documents for the Bonds.
- C. \$23,750 after the City adopts an ordinance authorizing the issuance of the Bonds.
- D. \$23,750 at the closing of the transaction.

4. **Revenue Study Fees.** The City shall submit an itemized statement for actual expenses incurred to engage a firm to prepare a revenue study for the Project. If necessary, such statements shall be submitted on a regular periodic basis, but no more often than monthly. Developer shall pay the City the amounts set forth on such statements within thirty (30) days of receipt thereof. If such funds are not so received, the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed twenty-four percent (24%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Funding Agreement pursuant to **Section 6**. Developer shall supply the payment in a timely manner so that City activities may continue without interruption.

5. **Additional Fees.** The City and the Developer agree that the Developer shall reimburse the City for its administrative expenses and actual out-of-pocket expenses necessary to perform the City's obligations hereunder, including the fees and expenses of Piper Sandler & Co., as municipal advisors, and other consultants as approved according to this paragraph. The City shall advise Developer in writing if it intends to utilize the services of any other consultant to perform its obligations under the terms of this Funding Agreement. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the cost expected. If Developer, in writing, within five (5) business days from receipt of the City's notice, objects to either the consultant named or the service to be performed, the City and Developer shall negotiate in good faith to resolve Developer's objections. If the Parties cannot agree on the consultant to be used or the service to be performed, the City shall have no obligation to perform that service under the terms of this Funding Agreement or proceed with the issuance of the Bonds and Developer shall have no obligation to pay for such service under the terms of this Funding Agreement.

6. **Disbursement of Funds.** The Deposit and any Additional Funds will be held in escrow pending disbursement as provided herein. The City shall disburse the Deposit and Additional Funds for reimbursement of costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all out-of-pocket expenses incurred by the City in connection with the performance of its obligations under this Funding Agreement as payment for such expenses become due. Upon reasonable notice, the City shall make its records available for inspection by Developer for such disbursements.

7. **Termination of this Funding Agreement.**

A. **Termination by the City.** In the event the Developer fails to perform any of its obligations herein, the City may terminate this Funding Agreement at its sole discretion if the Developer fails to cure the default within ten (10) days after written notice to the Developer of the default. Termination by the City shall also terminate any duties and obligations of the City with respect to this Funding Agreement, including, but not limited to, the City's processing of the Proposal. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

B. Termination by the Developer. The parties hereto acknowledge that the Developer may determine to abandon the Proposal. Upon written notice of abandonment by the Developer, this Funding Agreement shall terminate and the City may terminate any other agreement between the parties. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

C. Mutual Termination. The parties agree that if at anytime an agreement regarding the Proposal, either party may terminate this Funding Agreement. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

D. Wrap-up after early termination. Upon termination pursuant to paragraphs A, B or C of this Section, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City or to pay for all expenses incurred under this Funding Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement with the Developer. Upon such termination, in the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City payable hereunder, the Developer shall reimburse the City as set forth in **Section 3**. After termination of this Funding Agreement pursuant to paragraphs A, B or C of this Section, any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by the City, or reimbursed to the City, shall be returned to the Developer.

E. Termination by Issuance of Bonds. Unless otherwise terminated as provided in paragraphs A, B or C of this **Section 7**, this Funding Agreement shall stay in full force and effect until the issuance of Bonds at the closing date. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by the City, or reimbursed to the City, shall be returned to the Developer.

8. **Notice.**

Any notice, approval, request or consent required by or asked to be given under this Funding Agreement shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

Anna Mitchell, Assistant City Administrator
City Administrator's Office
City of Smithville, Missouri
107 West Main Street
Smithville, MO 64089

With a copy to:

E. Sid Douglas III
Gilmore & Bell, P.C., Suite 1100
2405 Grand Blvd.
Kansas City, Missouri 64108

To Developer:

Development Associates Smithville, LLC
c/o Cadence Commercial Real Estate
10985 Cody, Suite 220
Overland Park, Kansas 66210

With a copy to:

Matt Moriarity
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

9. **Legal Representation.** The Developer understands and acknowledges that this arrangement is an accommodation to the Developer in which Bond Counsel is not providing legal representation to the Developer and that no attorney-client relationship between the Developer and Bond Counsel shall exist by any reason including, but not limited to, the Developer's payment of the City's expenses under this Funding Agreement. Developer further understands that legal counsel paid pursuant to this Funding Agreement is legal counsel for the City and acknowledges the duties of confidentiality and loyalty to the City.

10. **Assignment.** This Funding Agreement may not be assigned by any party without the prior written consent of the other party. No assignment, unless specifically provided for in such consent, shall relieve the assigning party of any liability pursuant to this Funding Agreement. This Funding Agreement shall be binding upon the parties and their successors and permitted assigns.

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The parties hereto have caused this Funding Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF SMITHVILLE, MISSOURI

By: _____
Damien Boley, Mayor

(SEAL)

ATTEST:

Linda Drummond, City Clerk

DEVELOPMENT ASSOCIATES SMITHVILLE,
LLC

By: William D. Cosentino

Name: William D. COSENTINO

Title: MEMBER