



Board of Alderman Request for Action

MEETING DATE: 5/17/2022

DEPARTMENT: Administration

AGENDA ITEM: Bill No. 2941-22 Funding Agreement with 110 Smithville, LLC

REQUESTED BOARD ACTION:

Approval of Bill No. 2941-22 , Funding Agreement (the "Agreement") with 110 Smithville, LLC (the "Developer") relating to consideration of the 110 Smithville Tax Increment Financing Plan (the "Plan") for the property located on the southwest corner of West Main Street and North Mill Street.

SUMMARY:

The developer approached the City regarding development of the property located on the Southwest corner of West Main Street and North Mill Street. Since acquisition of the property, the developer, staff and Economic Development Counsel, Gilmore & Bell have been in discussions regarding the proposed project and to ensure proper information and timelines relating to review of the project and incentive requests were transparent to the developers. Earlier this month, the City received the Plan from the Developer. Gilmore & Bell and staff have reviewed the plan and have submitted comments requesting additional information to the Developer.

In order to facilitate review of the Plan, a Funding Agreement provides funds for the legal services completed by Gilmore & Bell, financial advisory services provided by Piper Sandler and Co. and other necessary costs associated with ensuring the evaluation, review and consideration of the Plan. Upon the execution of the Agreement, the Developer will provide a deposit of \$20,000 to the City to be held in a separate account to be used for these services. As costs for services are incurred, the Developer will be invoiced to provide additional funding to maintain a minimum of \$20,000 in the account.

PREVIOUS ACTION:

POLICY OBJECTIVE:

Click or tap here to enter text.

FINANCIAL CONSIDERATIONS:

The Funding Agreement provides funds for costs associated with review of the Plan submitted.

ATTACHMENTS:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Ordinance | <input checked="" type="checkbox"/> Contract |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Plans |
| <input type="checkbox"/> Staff Report | <input type="checkbox"/> Minutes |
| <input type="checkbox"/> Other: | |

**AN ORDINANCE APPROVING A FUNDING AGREEMENT FOR
THE 110 SMITHVILLE TAX INCREMENT FINANCING PLAN.**

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, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 through 99.865 of the Revised Statutes of Missouri (the "**TIF Act**"), the City has been requested to consider a tax increment financing plan (the "**TIF Plan**") to fund the redevelopment of property generally located the southwest corner of West Main Street and North Mill Street in the City (the "**Redevelopment Area**"), and will commence the public hearing process before the Tax Increment Financing Commission of the City of Smithville, Missouri for consideration of the TIF Plan; and

WHEREAS, 110 Smithville, LLC (the "**Developer**") is working with the City to develop a plan to provide for the funding of certain improvements of the development, in accordance with the TIF Act, Missouri law and applicable City Code requirements; and

WHEREAS, Developer may also request that the City approve a community improvement district ("**CID**") for the project (the Developer's requests related to the project approval and CID approval are collectively referenced herein as the "**Application**"); and

WHEREAS, in order for the City to fully consider and evaluate the Application, the City will need to engage consultants to review, evaluate, process and consider the sources of public and private funding for the proposed Redevelopment Area and CID and the experience of the Developer to complete the project contemplated; 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 Application, including but not limited to 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 Application, 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 Application; 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 ____ day of May 2022.

(SEAL)

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

First Reading: 05/17/2022

Second Reading: 06/07/2022

EXHIBIT A
TO ORDINANCE NO. _____

FUNDING AGREEMENT

FUNDING AGREEMENT

This **FUNDING AGREEMENT** ("**Funding Agreement**") is entered into this ____ day of May, 2022, between the **CITY OF SMITHVILLE, MISSOURI** (the "**City**"), and **110 SMITHVILLE, LLC**, a Missouri limited liability company (the "**Developer**," and collectively with the City and the Developer being 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 Developer is a Missouri limited liability company and is authorized to conduct business in the State of Missouri; and

WHEREAS, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 through 99.865 of the Revised Statutes of Missouri (the "**TIF Act**"), the City has been requested to consider a tax increment financing plan (the "**TIF Plan**") to fund the redevelopment of property generally located the southwest corner of West Main Street and North Mill Street in the City (the "**Redevelopment Area**"), and will commence the public hearing process before the Tax Increment Financing Commission of the City of Smithville, Missouri for consideration of the TIF Plan; and

WHEREAS, Developer is working with the City to develop a plan to provide for the funding of certain improvements of the development, in accordance with Missouri law and applicable City Code requirements; and

WHEREAS, Developer may also request that the City approve a community improvement district ("**CID**") for the Project (the Developer's requests for the TIF projects approval and CID approval are collectively referenced herein as the "**Application**"); and

WHEREAS, in order for the City to fully consider and evaluate the Application, the City will need to engage consultants to review, evaluate, process and consider the sources of public and private funding for the proposed Redevelopment Area and CID and the experience of the Developer to complete the project contemplated; 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 Application, including, but not limited to 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 Application, 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 Application.

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 on the preparation and consideration of an application in accordance with applicable State law for the requested public funding methods, give all notices, make all publications and hold hearings as required by State law and other applicable laws;
 - B. Provide necessary staff, legal, financial, and planning assistance to evaluate, process and consider the Application and the public funding sources;
 - C. If the Developer's requested actions are approved, provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for the implementation of the proposed public funding sources requested in the Application;
 - D. If a development agreement is entered into, provide the necessary staff, legal, financial and planning assistance to implement and administer the TIF Plan, the CID and any contract executed to provide for the operation and administration of the approved public funding tools; and
 - E. Engage appropriate outside consultants and attorneys to carry out the tasks described above.
2. **Initial Deposit.** The City acknowledges receipt of \$20,000 (the "**Deposit**") from the Developer upon the execution of this Funding Agreement. The City shall disburse the Deposit as set forth in **Section 4** and shall bill the Developer pursuant to **Section 3** to re-establish the Deposit so that there is always a minimum cash balance of \$20,000 available, from which additional disbursements may be made as required.
3. **Additional Funding.**

A. The City shall submit an itemized statement for actual expenses incurred to perform its obligations hereunder or for any additional obligations or expenditures incurred by the City in accordance with this Funding Agreement. 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 (the "**Additional Funds**") 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 Additional Funds in a timely manner so that City activities may continue without interruption.

B. 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 Bond Counsel and the fees and expenses of Piper Sandler & Co., as municipal advisors, and other consultants as approved according to this paragraph. The City shall advise the 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 the 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 the Developer shall negotiate in good faith to resolve the 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 and the Developer shall have no obligation to pay for such service under the terms of this Funding Agreement.

C. The Deposit and all Additional Funds shall be treated as funds that may be reimbursed from TIF revenues generated by the TIF Plan, provided that the TIF Plan is approved, and the Developer and the City enter into a development agreement which provides for such reimbursement.

D. Before a vote by the Board of Aldermen for approval or disapproval of the Application, including the TIF Plan, approval of a redevelopment agreement with the Developer or approval of a CID or any other measure associated the Application, the Developer shall deposit with the City, upon notice from the City, sufficient Additional Funds to pay all outstanding expenses incurred hereunder and replenish the amount on deposit with the City as provided in **Section 2**.

4. **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.

5. **Project Administration.** In addition to the services set forth in **Section 1**, the City may be required to provide services from time to time for the continuing administration of the funding mechanisms that are approved as part of the Application, and any contracts entered into in furtherance of the Application. Upon appropriate itemization, the City shall be reimbursed by the Developer for actual meeting expenses and other expenses that are reasonable or incidental to the general operations of the City and its consultants with respect to administration of such funding mechanisms, and any contracts entered into in furtherance of the Application. The provisions of this section shall apply until such time as the City and the Developer execute an agreement which provides for the termination of this Funding Agreement and the terms and conditions under which the City's ongoing services shall be funded. It is anticipated that, if approved, any such agreement will include provisions necessary for reimbursement of such funds to the Developer.

6. **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, and any other agreement between the parties, 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 Application. 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 Application. 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 Application is not reached, 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 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 Consolidation into a Development Agreement. Unless otherwise terminated as provided in paragraphs A, B or C of this **Section 6**, this Funding Agreement shall stay in full force and effect until it is specifically terminated as set forth in an agreement between the City and Developer, and thereafter the terms and conditions of the agreement shall provide for the continued funding arrangements by Developer with respect to the Application.

7. **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:

Megan Miller
Gilmore & Bell, P.C., Suite 1100
2405 Grand Blvd.
Kansas City, Missouri 64108

To Developer:

110 Smithville, LLC

With a copy to:

Andrew Lonard
Levy Craig Law Firm
4520 Main Street, Suite 1600
Kansas City, Missouri 64111

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.

8. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's zoning ordinances, subdivision regulations and all planning or infrastructure requirements related to the development of any property. The Developer agrees that execution of this Funding Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Developer must comply and does not in any way constitute prior approval of any future proposal for development. The Developer acknowledges that the City may not lawfully contract away its police powers and that approval of any zoning, subdivision and similar development applications cannot be contractually guaranteed. This Funding Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider any application in accordance with all applicable laws with respect to the development of any property.

9. **Legal Representation.** The Developer understands and acknowledges that this arrangement is an accommodation to the Developer in which the City's special legal counsel is not providing legal representation to the Developer and that no attorney-client relationship between the Developer and the City's special legal 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. **Subsequent Developers.** In the event the City selects another developer of record pursuant to a request for proposals, the City shall require the subsequent developer to assume all obligations of the Developer under this Funding Agreement as of the date that the subsequent developer is designated as the developer of record and to reimburse the Developer for its expenditures under this Funding Agreement.

11. **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.

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

110 SMITHVILLE, LLC

By: _____

Name: _____

Title: _____