

RESOLUTION 2010-09

A RESOLUTION APPROVING A MASTER DRAFT FUNDING AGREEMENT VERSION 2 FOR USE BY DEVELOPERS ASKING FOR CONSIDERATION OF A PROPOSED TAX INCREMENT FINANCING PLAN UNDER THE REAL PROPERTY TAX INCREMENT ALLOCATION REDEVELOPMENT ACT PURSUANT TO THE CITY'S TIF POLICY.

WHEREAS, the City has adopted a TIF Policy to guide the review of applications the City may receive for a tax increment financing redevelopment plan within the City, in accordance with the "Real Property Tax Increment Allocation Redevelopment Act" in Sections 99.800 to 99.865 of the Revised Statutes of Missouri (the "TIF Act"); and

WHEREAS, pursuant to Section 99.820 of the Revised Statutes of Missouri, the City is authorized to enter into all contracts necessary or incidental to the implementation and furtherance of a redevelopment plan or redevelopment project; and

WHEREAS, pursuant to Section 70.220 of the Revised Statutes of Missouri, the City is authorized to contract and cooperate with any private person for the planning, development, construction and operation of any public improvement or facility; and

WHEREAS, the Board of Aldermen approved the Tax Increment Financing Policy (the "Policy") to provide guidance to developers and other potential TIF applicants regarding the process and standards that will be applied by the City to evaluate proposed TIF plans; and

WHEREAS, the Board of Aldermen desires to publish this Version 2 master draft funding agreement reflecting the most recent changes and amendments as proposed by staff for use by those parties considering submitting an application to the City under the TIF Policy to provide to the City a source of funds to finance costs incurred for additional legal, financial and other consultants or for direct out-of-pocket expenses and other costs to review, evaluate, process and consider the TIF Application; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI, AS FOLLOWS:

1. The Master Draft Funding Agreement Version 2 attached as **Exhibit A** is approved and applicants are directed to use this draft when submitting a Funding Agreement and Application under the City's TIF policy.
2. The City Administrator is authorized to make the draft available on the City's website and to disburse it in any other appropriate manner.
3. This Resolution shall take effect immediately upon passage by the Board of Aldermen.

I hereby certify that the above RESOLUTION 2010-09 was duly passed on October 7, 2010 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes 6

Nays 0

Abstaining 0

Absent 0

19/1/10
Date

Diann Warner
Diann Warner, City Clerk

Approved as to form:

Edward B. Rucker
Edward B. Rucker,
City Attorney

EXHIBIT A
MASTER DRAFT FUNDING AGREEMENT

Master Draft
FUNDING AGREEMENT

This FUNDING AGREEMENT ("Agreement") is entered into this ___ day of _____, 20___, between the CITY OF OSAGE BEACH, MISSOURI (the "City"), and _____ (the "Developer").

RECITALS

WHEREAS, the City is a fourth-class city incorporated and exercising governmental functions and powers pursuant to the Constitution and the Revised Statutes of the State of Missouri; and

WHEREAS, the Developer is a Missouri limited liability company and is authorized to conduct business in the State of Missouri; and

WHEREAS, The Developer has requested that the City consider the approval of the _____ Tax Increment Financing Plan (the "Plan") in accordance with Sections 99.800 to 99.865, Revised Statutes of Missouri ("RSMo"), as amended (the "Act"), said Plan proposing reimbursement to Developer for Redevelopment Project Costs (the "Redevelopment Project Costs"). For purposes of this Agreement, the Plan as proposed by Developer shall be referred to as the "Application".

WHEREAS, if the Application is approved by the City, the City may be requested to provide such other services and assistance as may be required to implement and administer the Plan through completion; and

WHEREAS, it is the City's policy that a Developer who desires assistance from the City in a public-private partnership or through the use of economic incentive tools shall 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 TIF Policy adopted by the City (the "TIF Policy") requires the Developer to deposit funds with the City to be used by the City to pay expenses necessary to perform a full evaluation of the Plan and engage consultants as needed for such evaluation.

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. City and Developer Services.

A. The City shall:

i. Prepare or consult with the Developer on the preparation and consideration of a Plan in accordance with the provisions of the Act, the TIF Policy and other applicable laws, give all notices, make all publications and hold hearings as required by the Act and other applicable laws;

ii. Provide necessary staff, legal, financial, and planning assistance to review and evaluate the Plan for the City and to prepare and present required ordinances to the Board of Aldermen of the City;

iii. Provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for implementation of the proposed Plan (the "TIF Agreement");

iv. Provide the necessary staff and legal, financial and planning assistance to consider a proposed Special District in connection with consideration and approval of the Plan; and

v. If a TIF Agreement is entered into, provide the necessary staff, legal, financial and planning assistance to administer the TIF Agreement.

B. The Developer shall:

i. Assist and cooperate with the City in providing the City Services;

ii. Provide to the City a copy of surveys, planning documents, economic projections, engineering work, environmental studies and other information obtained or to be obtained by the Developer containing information that the City will reasonably need or would otherwise be required for the consideration of the Application for approval by the City pursuant to the Act (the "Development Information").

2. Initial Deposit.

The City acknowledges receipt of _____ Thousand Dollars (\$ __,000.00) (the "Deposit") from the Developer. The City shall disburse the Deposit as set forth in Section 4 and shall notify the Developer when necessary to re-establish the Deposit in accordance with Section 3 hereof, from which additional disbursements may be made as needed, it being agreed that there will always a minimum cash balance of _____ Thousand Dollars (\$ __,000.00) available.

3. Additional Funding.

A. When it appears to the City that Seventy Five Per Cent (75%) of the Deposit has been drawn or will be disbursed, the City shall submit to Developer an itemized

statement for actual out-of pocket expenses necessary to perform its obligations hereunder or for any additional obligations or expenditures reasonably estimated to be incurred by the City. Such statements shall be submitted on a regular periodic basis, but no more often than monthly. The 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 the City shall be relieved of any and all obligations hereunder until paid or may terminate this Agreement pursuant to Section 8.

B. The City and the Developer agree that the Developer shall reimburse the City for its actual reasonable out-of-pocket expenses necessary to perform the City's obligations hereunder, using special legal counsel, a financial advisor and/or 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 consultants to perform its obligations under the terms of this Agreement. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the cost expected.

C. Both the City and the Developer acknowledge that expenses incurred by the City will likely exceed the initial deposit of \$ __,000. Both parties agree to a pre-authorized expense budget of \$50,000, (the "Expense Cap"). If the developer determines that the expenses have exceeded the Expense Cap, the developer will provide the City with written notice, that the developer will no longer pay any expenses in excess of the total expense incurred on the date the city receives notice of the developer's decision not to proceed. The Developer shall pay all such expenses in excess of the Expense Cap incurred before the developers notice to the city of the decision not to proceed.. The City may treat such election by Developer not to pay expenses in excess of the Expense Cap as Developer's election to withdraw its application for consideration of the Plan.

4. Disbursement of Funds.

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 Agreement as payment for such expenses as they become due. The City shall send to the Developer a copy of the record for each disbursement made to the Developer pursuant to this Agreement.

5. Reimbursement from TIF.

If the Plan is approved and the Developer is selected to implement the Plan, the Developer shall be entitled to reimbursement from tax increment financing revenues from the redevelopment area that are collected in the special allocation fund established pursuant to the Plan and the Act or the proceeds of any bond issued pursuant to the Plan

(the "TIF Bonds") for such actual costs expended under the terms of this agreement which are also considered to be reimbursable project costs under the Plan. The Developer shall provide invoices for the costs and shall be reimbursed in accordance with the TIF Agreement.

6. Application 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 Application, if approved by the Developer. Upon appropriate itemization, the City shall be reimbursed by the Developer for actual meeting expenses and other third party expenses that are reasonable or incidental to the general operations of the City with respect to administration of the Application and any development that results from the Application, but specifically excluding any amount attributable to the time of any salaried staff member of the City. The provisions of this section shall apply until such time as the City and the Developer agree to and execute a TIF Agreement between the Developer and the City.

7. 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 legal expenses. Developer further understands that legal counsel paid pursuant to this agreement is legal counsel for the City and acknowledges the duties of said counsel to the City of confidentiality and loyalty.

8. Termination.

A. In the event the Developer fails to perform any of its obligations herein, the City may terminate this 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. Upon such termination, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Agreement to the date of termination.

B. The parties hereto acknowledge that the Developer may determine to abandon the Application. Upon written notice of abandonment by the Developer, this Agreement shall terminate and the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Agreement up to the date of termination.

C. Upon termination of this Agreement, 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 Agreement, any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

D. This Agreement may be terminated by mutual agreement of the City and the Developer pursuant to a TIF Agreement that is executed by the City and the Developer.

9. Subsequent Developers.

In the event the City selects another developer pursuant to a request for proposals to carry out the Plan or any Project described therein, the City shall require the subsequent developer to assume all obligations of the Developer under this Agreement as of the date it is designated as the Developer and to reimburse the Developer for its expenditures under this Agreement, which must first be submitted to and approved by the City.

10. 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 Developer's property. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies and does not in any way constitute prior approval of any future proposal for development, including the Application. The parties understand that the City may not lawfully contract away its police powers and that approval of the Application and any zoning, subdivision and similar development applications cannot be contractually guaranteed. This Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider the Application in accordance with the Act and all applicable laws any other applications with respect to development of the property.

Before a vote by the Board of Aldermen for approval or disapproval of the TIF Plan, the TIF Agreement with the Developer, or any other measure associated the TIF Plan, the Developer shall deposit with the City, upon notice from the City, sufficient funds to pay all outstanding expenses incurred hereunder and such other funds as the City's outside legal counsel and financial consultant may estimate are necessary for the completion of their services related to Plan approval.

11. Notice.

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

To the City:

Nancy Viselli
City Administrator
City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065

To the Developer:

With a copy to:

(Developer's Counsel)

Edward Rucker
City Attorney
City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065

The City or Developer (each a "Party") may specify that notice be addressed to any other person or address by giving to the other Party ten (10) days written notice of such change.

12. Miscellaneous.

- a. Governing Law, Counterparts. This Agreement shall be governed by Missouri law and may be executed in counterparts.
- b. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforced as if such provision were not contained in this Agreement.
- c. No Waiver. Failure of any Party to this Agreement to enforce its rights pursuant to this Agreement shall not be deemed a waiver of any such rights.
- d. Successors and Assigns. This Agreement may not be assigned by any Party without the prior written consent of all Parties. No assignment, unless specifically provided for in such consent, shall relieve the assigning Party of any liability pursuant to this Agreement. This Agreement shall be binding upon the Parties and their successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF OSAGE BEACH, MISSOURI

By: _____

Name: Penny Lyons, Mayor

Attest:

Approved as to form:

City Clerk Diann Warner

City Attorney Edward Rucker

By:

Name: _____

Title: _____