

Emer. _____
P. Hrngs. _____
Pgs. 10
Filed: 11-08-16

Sponsored by: Schilling

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 255

SPECIAL ORDINANCE NO. _____

AN ORDINANCE

1 AUTHORIZING the City Manager, or his designee, to execute a Preliminary
2 Funding Agreement between the City of Springfield, Missouri, and
3 3M Company; authorizing the execution of documents; and the
4 taking of actions consistent therewith; and amending the budget
5 provided for the Department of Planning and Development for
6 Fiscal Year 2016-2017, in the amount of \$25,000.
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9 WHEREAS, the City of Springfield, Missouri, has received an application from
10 3M Company ("3M") for the use of incentives under the provisions of Sections 100.010
11 to 100.200 ("Application") of the Missouri Revised Statutes, as amended (the "Act"); and
12

13 WHEREAS, the City desires to retain certain consultants to assist in evaluating
14 the Application and to prepare certain documents in connection therewith; and
15

16 WHEREAS, the City does not have a source of funds to finance costs to retain
17 such consultants, and 3M (together with its successors or assigns, the "Applicant") has
18 agreed to deposit funds with the City for that purpose; and
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20 WHEREAS, the City and the Applicant desire to enter into a Preliminary Funding
21 Agreement to establish the terms of such deposit of funds; and
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23 WHEREAS, an amendment to the budget for the Department of Planning and
24 Development for Fiscal Year 2016-2017 has been approved and recommended by the
25 City Manager.
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27 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
28 SPRINGFIELD, MISSOURI, as follows, that:
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30 Section 1 – The City Manager, or his designee, is hereby authorized to execute a
31 Preliminary Funding Agreement with 3M, said agreement to be substantially in the form
32 and content as that document attached hereto and incorporated herein by reference as
33 "Exhibit A."

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Section 2 – The City Manager, City Clerk, and other appropriate officers of the City are hereby authorized and directed to execute, attest, acknowledge, and deliver for and on behalf of, and as the act and deed of the City, the Preliminary Funding Agreement and 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 – The City Manager shall be, and hereby is, authorized and directed to execute all documents and take such actions as he may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance, and to carry out, comply with, and perform the duties of the City with respect to the Preliminary Funding Agreement, to make alterations, changes, or additions thereto, and any other agreements, statements, instruments, and other documents herein approved, authorized, and confirmed which he may approve.

Section 4 – The budget for Fiscal Year 2016-2017 of the Department of Planning and Development is hereby amended in the accounts and in the amounts as shown on Budget Adjustment No. 0019, a copy of which is attached hereto and incorporated herein by reference as “Exhibit B.”

Section 5 – The City Council hereby finds that the budget adjustment made above has been recommended by the City Manager.

Section 6 – The City Manager is directed to cause the appropriate accounting entries to be made in the books and records of the City.

Section 7 – The sections of this Ordinance shall be severable. In the event any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections of this Ordinance shall be deemed valid, unless the court finds the valid sections of this Ordinance are so essentially and inseparably connected with, and so dependent upon the void sections, that it cannot be presumed that City Council would have enacted the valid sections without those deemed invalid; or unless the court finds that the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 8 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

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Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: *A. Chalupka*, Assistant City Attorney

Approved for Council Action: *Greg Bunt*, City Manager

EXPLANATION TO COUNCIL BILL NO: 2016- 255

FILED: 11-08-16

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: To authorize the City Manager, or his designee, to execute on behalf of the City of Springfield, Missouri, a Preliminary Funding Agreement between the City and 3M Company ("3M"); authorizing the execution of documents; and the taking of actions consistent therewith; and amending the budget provided for the Planning and Development Department of the City of Springfield, Missouri, for Fiscal Year 2016-2017, in the amount of \$25,000. (Staff recommends approval subject to Council approval of a related Resolution of Intent.)

BACKGROUND INFORMATION: In a separate agenda item, City Council has considered a Resolution of Intent related to Chapter 100 Bonds for 3M. To move forward with the items contemplated by the Resolution of Intent, and consistent with City policy and recent practice, the City will retain Gilmore & Bell, P.C. to begin preparing necessary documents. This Ordinance will approve a Preliminary Funding Agreement ("Agreement") whereby the developer will pay for the preparation of the documents.

Approval of this Agreement does not approve the issuance of bonds or any document other than the Agreement. The Agreement expressly provides in paragraph 8 that all future approvals are subject to Council's approval and discretion.

The Agreement requires that 3M deposit \$25,000 with the City in order to fund legal costs associated with the bond issuance.

This Ordinance supports the following Field Guide 2030 goal(s): Chapter 3, Economic Development; Major Goal 2, Aggressively use Economic Development Incentives to encourage investment in the community and to encourage job creation and retention; Objective 2b, Continue to explore creative and flexible methods to attract and retain jobs and business investment in the community.

REMARKS: Staff recommends approval, provided that Council approves the related Resolution of Intent also on Council's agenda. In the event that Council votes down the Resolution of Intent, there would be no reason to move forward with this Ordinance.

Submitted by:



Sarah Kerner, Interim Economic Development Director

Mary Lilly Smith

Mary Lilly Smith, Planning and
Development Director

Greg Burris

Greg Burris, City Manager

Exhibit A

PRELIMINARY FUNDING AGREEMENT

This **PRELIMINARY FUNDING AGREEMENT** (“Agreement”) is entered into this _____ day of _____, 2016, between the **CITY OF SPRINGFIELD, MISSOURI** (the “City”), and **[3M COMPANY]**, a [Delaware] corporation (together with its successors or assigns the “Developer”).

RECITALS

WHEREAS, the City is a constitutional charter city incorporated and exercising governmental functions and powers pursuant to its charter and the Constitution and the Revised Statutes of the State of Missouri; and

WHEREAS, the Developer is a [Delaware] corporation and is authorized to conduct business in the State of Missouri; and

WHEREAS, the City has been requested by the Developer to consider an application (the “Application”) for the City to issue a series of bonds (the “Bonds”) in the approximate amount of \$15,000,000 for the purpose of financing a project for industrial development under the provisions of Sections 100.010 to 100.200 of the Revised Statutes of Missouri (the “Act”); and

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 Application through its completion; and

WHEREAS, the City does not have 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 resulting from activities necessary to review, evaluate, process and consider the Application; 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 Developer seeks to deposit funds with the City to be used by the City to pay for actual out-of-pocket expenses necessary to perform a full evaluation of the Application 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. **Services to be Performed by Gilmore & Bell, P.C. on Behalf of the City.**

Gilmore & Bell, P.C., on behalf of the City shall:

- A. Prepare a proposed plan for industrial development conforming with the Act (the “Plan”);
- B. Prepare a bond ordinance (the “Ordinance”) and resolution of intent (the “Resolution of Intent”) for consideration by the City Council of the City; and

C. Prepare a bond trust indenture (the “Indenture”), lease-purchase agreement (the “Lease Agreement”) and PILOT Agreement (the “PILOT Agreement”) for the transaction.

2. **Expenses.** The cost of preparing the Chapter 100 Plan and the cost-benefit analysis and preparing the Resolution of Intent will be \$5,000, which amount is due upon the later of the adoption of the Resolution of Intent or the execution of both parties of this Agreement (the “Deposit”). An additional \$5,000 would be due upon the distribution by Gilmore & Bell, P.C. of the initial drafts of the Ordinance, Indenture and Lease Agreement, and a further additional amount of \$15,000 would be due at the time the Bond issue is closed or termination of this Preliminary Funding Agreement, whichever first occurs (collectively, the “Additional Funds”).

3. **Additional Funding.**

A. The City shall submit statements to the Developer for the amounts due as set forth under **Section 2**. The Developer shall pay the City the amounts set forth on such statements within ten (10) days of receipt thereof, provided that the final \$15,000 payment shall be paid concurrently with the closing of the Bonds. 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 Agreement pursuant to **Section 6**. Developer shall supply the Deposit and Additional Funds in a timely manner so that City activities may continue without interruption.

B. The City and the Developer agree that the expenses incurred hereunder will be related to the City retaining Gilmore & Bell, P.C., for special legal counsel and bond counsel services. The parties agree that Gilmore & Bell, P.C. will represent only the City in the transaction and that an attorney-client relationship will exist between Gilmore & Bell, P.C. and the City.

4. **Disbursement of Funds.** The City shall disburse the Deposit and Additional Funds for payment in accordance with its normal procedures.

5. **Further Administration and Expenses.** The documents authorizing the issuance of the Bonds are anticipated to commit the Developer to payment of certain ongoing fees and expenses as shall be set forth therein.

6. **Termination.**

A. In the event the Developer fails to perform any of its obligations herein, the City may terminate this 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 Agreement, including, but not limited to, the City’s processing of Developer’s Application and preparation, review and processing of the Documents. Upon such termination, the City shall retain the Deposit and Additional Funds, if any, necessary to pay or 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 may terminate any other agreement between the parties and 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 and any monies due and owing to the City pursuant to any other agreement.

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 within ten (10) days an amount equal to the City's unreimbursed expenses in connection with this Agreement. 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.

7. **Notice.** Any notice, approval, request or consent required by or asked to be given under this 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:

City of Springfield, Missouri
840 Boonville
Springfield, Missouri 65801
Attn: City Attorney

With a copy to:

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

To the Developer:

[3M Company

Attn: _____]

With a copy to:

[_____

_____]

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 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 with which the Developer must comply 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 Developer's property.

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

CITY OF SPRINGFIELD, MISSOURI

By: _____
Greg Burris, City Manager

(SEAL)

ATTEST:

City Clerk

Approved as to form:

City Attorney

[3M COMPANY]

By: _____

Name: _____

Title: _____

CITY OF SPRINGFIELD, MO
BUDGET ADJUSTMENT

Exhibit B

BA Number 0019

Revenues:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
10110	17	60210	414110	TBD	00000	25,000.00	Reimbursements from 3M
Net Revenue Adjustment						25,000.00	

Expenditures:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
10110	17	60210	504580	TBD	00000	25,000.00	Other Professional Services
Net Expenditure Adjustment						25,000.00	

Fund Balance Appropriation:

Fund	Title	Amount

Explanation: This budget adjustment is for a funding agreement between the City of Springfield and 3M.

Requested By:

Janah Kerner 11/8/16
Department Head Date

Approved By:

DJ Hill 11/8/16
Interim Director of Finance Date

City Manager Date

Authorization:

Council Bill No. 2016-255
Ordinance No. _____
1st Reading _____
2nd Reading _____
Journal Imp No. _____