

Emer. _____
P. Hrngs. _____
Pgs. 10
Filed: 04-16-19

Sponsored by: Simpson

First Reading: _____

Second Reading: _____

COUNCIL BILL 2019-100

SPECIAL ORDINANCE _____

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 RW Development, LLC; and amending the budget of the
4 Department of Planning and Development for Fiscal Year 2018-
5 2019, in the amount of \$100,000, for the purpose of funding the
6 preparation and review of certain documents related to utilizing
7 public funding mechanisms.
8
9

10 WHEREAS, RW Development, LLC, has approached the City requesting
11 consideration of pursuing public funding mechanisms for The Ridge (Ward Farm),
12 generally located at the northwest corner of Campbell Avenue and Weaver Road, to
13 assist with funding public infrastructure improvements; and
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15 WHEREAS, RW Development, LLC, proposes to develop the property as a
16 mixed-use development; and
17

18 WHEREAS, the City desires to retain certain consultants to assist in evaluating
19 the proposal and to prepare certain documents in connection therewith; and
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21 WHEREAS, the City does not have a source of funds to finance costs to retain
22 such consultants, and RW Development, LLC, has agreed to deposit funds with the City
23 for that purpose; and
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25 WHEREAS, the City and RW Development, LLC, desire to enter into a
26 Preliminary Funding Agreement to establish the terms of such deposit of funds; and
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28 WHEREAS, an amendment to the budget for Fiscal Year 2018-2019 has been
29 approved and recommended by the City Manager in connection with said Preliminary
30 Funding Agreement.
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32 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
33 SPRINGFIELD, MISSOURI, as follows, that:

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Section 1 – The City Manager, or his designee, is hereby authorized to execute a Preliminary Funding Agreement with RW Development, LLC, said agreement to be substantially in the same form and content as that document attached hereto and incorporated herein by reference as “Exhibit A.”

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 2018-2019 is hereby amended in the accounts and in the amounts as shown on Budget Adjustment No. 0031, a copy of which is attached hereto and incorporated herein by reference as “Exhibit B.”

Section 5 – 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 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: *Paul Ryskowski*, Assistant City Attorney

Approved for Council Action: *Jason A. Hays*, City Manager

EXPLANATION TO COUNCIL BILL 2019-100

FILED: 04-16-19

ORIGINATING DEPARTMENT: Planning and Development Department

PURPOSE: Authorizing the City Manager, or his designee, to execute a Preliminary Funding Agreement between the City of Springfield, Missouri, and RW Development, LLC; and amending the budget for Fiscal Year 2018-2019, in the amount of \$100,000; for the purpose of funding the preparation and review of certain documents related to utilizing public funding mechanisms.

BACKGROUND INFORMATION: Tax Increment Financing (“TIF”) provides for the redirection of the incremental increase in sales and property tax revenue resulting from a redevelopment project to be used for approved project-related costs, infrastructure and capital improvements. TIF is based on the premise that there will be an increase in the value of real property, new jobs and other economic activity within the redevelopment area as redevelopment occurs. As the property is improved, the assessed value of real property in the redevelopment area increases above the base level. By applying property taxes to the increase in the assessed value of the property over the base level, a tax increment is produced. These tax increments, also referred to as “payments in lieu of taxes” or PILOTS, are transferred to a special allocation fund that is administered by the City. The City and County also transfer 50% of all incremental sales tax revenues to this fund. The money collected in the special allocation fund is then used to pay directly for the redevelopment project costs or to retire bonds or other obligations issued to pay such costs. City Economic Development Policy recommends the use of CID to accelerate the repayment of TIF-reimbursable expenses. RW Development, LLC, also intends to seek establishment of a Transportation Development District (“TDD”) as part of the development.

REMARKS: The owners/developers of The Ridge (Ward Farm) have requested that the City of Springfield consider preparing a TIF Plan and review the proposed use of other incentive tools (Community Improvement District “CID,” TDD) to assist with funding for public infrastructure required by the development. This ordinance would approve a preliminary funding agreement whereby the developers would pay for the studies and redevelopment plan associated with a TIF application, but the consultants and legal counsel would be working on the City’s behalf. Because the City has an ongoing obligation on most incentives it establishes, but particularly on TIFs, the City needs to assure that the Plan and accompanying documents adequately address City and community concerns. The best way to do this is for the consultants to report to the City. The preliminary funding agreement establishes a mechanism for the developers to deposit funds with the City for paying legal fees and hiring consultants for this project, and for replenishing that fund as fees are paid.

Approval of this funding agreement does not approve establishment of a TIF or any other incentive. The funding agreement expressly provides in paragraph 8 that the

consideration of the TIF is subject to legislative discretion. Accordingly, once the TIF Plan is prepared, it will go through the normal process of public hearings and consideration at the TIF Commission and City Council.

The preliminary funding agreement requires that the developers deposit \$15,000 with the City and that the account be replenished as needed to retain a \$15,000 balance. The budget adjustment for \$100,000 is intended to allow for the periodic replenishment of the preliminary funding agreement account balance.

Submitted by:



Sarah Kerner, Economic Development Director

Recommended by:



Mary Lilly Smith, Director

Approved by:



Jason Gage, City Manager

Exhibit A

PRELIMINARY FUNDING AGREEMENT

This **PRELIMINARY FUNDING AGREEMENT** (“**Agreement**”) is entered into this _____ day of ____, 20__, among the **CITY OF SPRINGFIELD, MISSOURI** (the “**City**”), and RW Development, LLC, a Missouri Limited Liability Company (the “**Developer**”) (collectively the “**Parties**”).

RECITALS

WHEREAS, the City is a constitutional charter 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 the owner or has the right to purchase approximately 100 acres of real property generally located the northwest corner of Campbell Avenue and Weaver Road, and proposes to develop this property for a mixed-use development (the “**Development**”); and

WHEREAS, the Developer is a Missouri Limited Liability Company and is authorized to conduct business in the State of Missouri; and

WHEREAS, Developer is working with the City to develop a plan to provide for the funding of the design and construction of transportation and related infrastructure improvements to serve the Development, in accordance with Missouri law and applicable City Code requirements; and

WHEREAS, Developer proposes to use one or more sources of public funding mechanisms to pay for the public improvements that will serve the Development, such as tax increment financing, a community improvement district, transportation development district and possibly other economic development tools; and

WHEREAS, in order for the City to fully consider and evaluate all of Developer’s proposals to fund the public improvements to serve the Development, the City will need to engage consultants to research and analyze applicable law regarding economic incentive tools and financing options and work with Developer and City staff to arrange for the most appropriate mix of funding sources for the public improvements; 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 research, analyze and plan for the most appropriate mix of public funding sources; and

WHEREAS, it is the City’s policy that landowners and developers who desire assistance from the City in a public-private partnership or through the use of economic incentive tools must 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, Developer seeks to deposit funds with the City to be used by the City to pay for administrative expenses and actual consultant expenses necessary to research, analyze, plan for and develop the incentive tools and financing options for the public improvements that will serve the Development.

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. Consult with Developer on the most appropriate mix of economic incentive tools and financing options and arrange for the research, analysis and development of public funding sources for the public improvements to serve the Development in accordance with applicable law;

B. Provide necessary staff, legal, financial, and other assistance to plan for the most appropriate mix of economic incentive tools and financing options;

C. Provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a development agreement between Developer and the City to implement the selected mix of economic incentive tools and financing options to fund the public improvements that will serve the Development;

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

2. **Initial Deposit.** The City acknowledges receipt of Fifteen Thousand Dollars (\$15,000.00) (the “**Deposit**”) from the Developer upon the execution of this 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 Fifteen Thousand Dollars (\$15,000.00) 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 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 Agreement pursuant to **Section 5**. Developer shall supply the Additional Funds in a timely manner so that City activities may continue without interruption.

B. Developer shall reimburse the City for its administrative expenses and actual out-of-pocket expenses necessary to perform the City’s obligations hereunder, using Gilmore & Bell, P.C., for special legal counsel, 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 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 Agreement and Developer shall have no obligation to pay for such service under the terms of this Agreement.

C. The parties agree that the funds advanced to the City under this Agreement shall be reimbursed to Developer, to the extent allowed by law, through any economic incentive tools that may result from the discussions and approved by the City Council.

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 become due. Upon reasonable notice, the City shall make its records available for inspection by the Property Owners and the Developer with respect to such disbursements.

5. **Termination.**

A. In the event Developer fails to perform any of its obligations herein, and if Developer fails to cure the default within ten (10) days after written notice of the default is sent by the City to Developer, then the City may terminate this Agreement at its sole discretion. Termination by the City shall also terminate any duties and obligations of the City with respect to this Agreement.

B. Developer may abandon its plans for the Development and Developer may terminate this agreement upon the delivery of written notice to the City.

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 Property Owners and the Developer shall reimburse the City as set forth in **Section 3**. After termination of this Agreement, 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. After all amounts have been paid to consultants by the City, the remainder of such funds shall be delivered to Developer.

D. The Parties acknowledge that a subsequent funding arrangement among the City and Developer may be entered into, whereby the City's expenses going forward will be reimbursed pursuant to that arrangement. In the event that such other agreement is executed, this Agreement may terminate in accordance with that subsequent agreement.

6. **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
840 North Boonville
Springfield, Missouri 65802
Attn: City Manager

With a copy to:

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

To Developer:

Trip Rhodes and Titus Williams
RW Development, LLC
1414 E. Primrose, Suite 100
Springfield, MO 65804

With a copy to:

Rob Preston
Spencer Fane
1 N. Brentwood Blvd.
St. Louis, MO 63105

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.

7. **City Requirements and Prior Approval.** 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. Developer agrees that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which Developer must comply and does not in any way constitute prior approval of any future proposal for development. 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 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.

[Remainder of this Page Intentionally Left Blank]

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: _____
Jason Gage, City Manager

(SEAL)

ATTEST:

City Clerk

[DEVELOPER]

By: _____

Name: _____

Title: _____

CITY OF SPRINGFIELD, MO
BUDGET ADJUSTMENT

Exhibit B

Budget Adjustment
0031

Revenues:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
22330	17	60210	414100	000000	00000	100,000	RW Development, LLC
Net Revenue Adjustment						100,000	

Expenditures:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
22330	17	60210	504580	000000	00000	100,000	RW Development, LLC
Net Expenditure Adjustment						100,000	

Fund Balance Appropriation:

Fund	Title	Amount

Explanation: This budget adjustment is for a preliminary funding agreement with RW Development, LLC for the City to consider a Tax Increment Financing Plan (TIF).

Requested By:

Mary Kelly Smith 4/17/19
Department Head Date

Approved By:

[Signature] 4/17/19
Director of Finance or Acting Director Date

Authorization:

Council Bill No. 2019-100
Ordinance No. _____
1st Reading _____
2nd Reading _____
Journal Imp No. _____

City Manager Date