

34 Section 3 – The budget for Fiscal Year 2019-2020 is hereby amended in the
35 accounts and in the amounts as shown on Budget Adjustment No. 043, a copy of which
36 is attached hereto and incorporated herein by reference as “Exhibit B.”
37

38 Section 4 – The City Manager is directed to cause the appropriate accounting
39 entries to be made in the books and records of the City.
40

41 Section 5 – This Ordinance shall be in full force and effect from and after
42 passage.
43

44 Passed at meeting: _____
45

46 _____
47 Mayor
48

49 Attest: _____, City Clerk
50

51 Filed as Ordinance: _____
52

53
54 Approved as to form: _____, Assistant City Attorney
55

56
57 Approved for Council Action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2020-069

FILED: 03-17-20

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: Authorizing the City Manager, or designee, to execute a Preliminary Funding Agreement between the City of Springfield, Missouri, and Kraft Heinz Foods Company; and amending the budget in the amount of \$55,000.00, for the purpose of funding the preparation and review of documents and other actions related to the issuance of Chapter 100 bonds.

BACKGROUND INFORMATION: Industrial Development Revenue ("Chapter 100") bonds provide partial personal property tax abatement on equipment purchases. Chapter 100 bonds do not impose a charge against the general credit of the City or impose any monetary liability upon the City for their repayment.

In 2012, the City authorized issuance of up to \$26 million in Chapter 100 bonds for the purchase of equipment for the Springfield plant of Kraft Foods Group, Inc., (now "Kraft Heinz Food Group"). This equipment, with the approximate total cost of \$49 million, is in use in the Springfield Plant.

In 2016, the City authorized issuance of up to \$36 million in Chapter 100 bonds for the purchase of equipment for the Springfield plant of Kraft Heinz Food Group. This equipment is in use in the Springfield plant, along with approximately 90 additional employees hired as a result of the project.

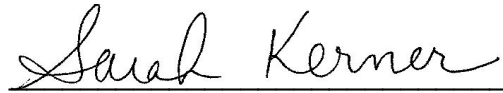
REMARKS: Kraft Heinz is exploring the possibility of another expansion in Springfield and has requested to enter into a Preliminary Funding Agreement by which the City will retain Gilmore & Bell, P.C. to begin preparing the necessary documents for another possible Chapter 100 bond issuance, and Kraft Heinz will pay for the costs of preparing of the documents.

Approval of this funding agreement does not approve the issuance of bonds or any other document than the funding agreement. The funding agreement expressly provides in paragraph 8 that all future approvals are subject to legislative discretion.

The preliminary funding agreement requires that the company deposit an initial \$10,000 with the City, with further deposits at various stages of the process. A budget adjustment is needed to appropriate the funds.

Staff recommends approval.

Submitted by:



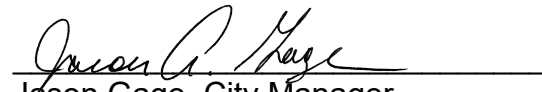
Sarah Kerner, Economic Development Director

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 _____, 2020, between the **CITY OF SPRINGFIELD, MISSOURI** (the “City”), and **KRAFT HEINZ FOOD COMPANY**, a _____ 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 _____ 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 \$51,000,000 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 \$20,000 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 \$15,000 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 \$20,000 would be due at the time the Bond issue is closed (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 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 by mutual written consent to be executed after the Application is approved.

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:

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

To the Developer:

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: _____
Jason Gage, City Manager

(SEAL)

ATTEST:

City Clerk

KRAFT HEINZ FOOD COMPANY

By: _____

Name: _____

Title: _____

