

AN ORDINANCE APPROVING A FUNDING AGREEMENT FOR CONSIDERATION OF THE ARAPAHO LLC AND GRAND TETON MOUNTAIN INVESTMENTS LLC, PROPOSAL FOR A COMMUNITY IMPROVEMENT DISTRICT AND A TRANSPORTATION DEVELOPMENT DISTRICT FOR IMPROVEMENTS TO BEACH ROAD AND OTHER PROJECTS.

WHEREAS, the City has been requested by the Arapaho LLC and Grand Teton Mountain Investments LLC, (the "Developer") to consider a Community Improvement District in accordance with the "Community Improvement District Act" in Sections 67.1401 through 67.1571 of the Revised Statutes of Missouri (the "CID Act") and a Transportation Development District, in accordance with the "Missouri Transportation Development District Act", Sections 238.200 through 238.275 (the "TDD Act"); and,

WHEREAS the City is authorized to enter 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 desires to enter into an agreement to ensure that the City has 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 Application.

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

1. The Funding Agreement attached as Exhibit A is approved and may be executed by the Mayor on behalf of the City.
2. This Ordinance shall take effect immediately upon passage by the Board of Aldermen Aldermen and approval by the Mayor.

READ FIRST TIME: April 7, 2022 READ SECOND TIME May 5, 2022

I hereby certify that the above Ordinance No. 22.16 was duly passed on May 5, 2022, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:	6	Nays:	0
Abstentions:	0	Absent:	0

This Ordinance is hereby transmitted to the Mayor for his signature.

May 5, 2022
Date

Tara Berreth
Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker
Edward B. Rucker, City Attorney

I hereby approve Ordinance No. 22.16.

ATTEST:

Michael Harmison
Michael Harmison, Mayor

Tara Berreth
Tara Berreth, City Clerk

"Exhibit A"

PRELIMINARY FUNDING AGREEMENT

This PRELIMINARY FUNDING AGREEMENT ("Agreement") is entered into this 5th day of May, 2022 (the "Effective Date"), by and between the CITY OF OSAGE BEACH, MISSOURI (the "City"), and GRAND TETON MOUNTAIN INVESTMENTS, LLC, a Missouri limited liability company (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 advised the City of its desire to develop and/or redevelop certain property located within City (the "Project Area"); and

WHEREAS, in connection with the Developer's proposed development and/or redevelopment of the Project Area, the Developer has requested that the City, among other things, explore the feasibility of approving economic development incentives in furtherance of the development and/or redevelopment of the Project Area to include (i) a community improvement district created pursuant to the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the "CID Act"), (ii) a transportation development district pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.280 of the Revised Statutes of Missouri, as amended (the "TDD Act"), and (iii) drafting and negotiating a cooperation agreement with the Developer relating to the Project Area and any approved economic development incentives relating to the CID Act and the TDD Act (collectively, the "Incentives"); and

WHEREAS, the City is willing to explore the feasibility of financing a portion of the costs of developing and/or redeveloping the Project Area through the use of a community improvement district and a transportation development district, if the Developer advances funds to pay the City's costs of exploring such Incentives; and

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 the Incentives in accordance with the CID Act and the TDD Act, as applicable, and all other applicable laws, and give all notices, make all publications and hold hearings as required by the CID Act and the TDD Act, as applicable, and all other applicable laws;

ii. Provide necessary staff, legal, financial, and planning assistance to review and evaluate the Incentives 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 Incentives (the "Cooperation Agreement");

iv. Provide the necessary staff and legal, financial and planning assistance to consider the Incentives; and

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

B. The Developer shall:

i. Assist and cooperate with the City in its consideration of the Incentives;

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 Incentives.

2. Initial Deposit.

The City acknowledges receipt of \$15,000.00 (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. The parties acknowledge, agree, and understand that such amount is a substantial sum and agree to use their best efforts to work together to reduce the total costs to be paid out of the Deposit and any Additional Funds described in Section 3 hereof.

3. Additional Funding.

A. When it appears to the City that Seventy Five Percent (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, which reasonable out-of-pocket expenses are included within the herein-defined Expense Cap. 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. If the Developer objects to the use of a specific consultant, the Developer may terminate this Agreement in accordance with Section 8 of this Agreement.

C. Both the City and the Developer acknowledge that expenses incurred by the City will likely exceed the initial deposit of \$15,000.00. Both parties agree to a pre-authorized expense budget of \$15,000.00 (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 Developer's 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 the Incentives for consideration.

4. Disbursement of Funds.

The City shall disburse the Deposit and Additional Funds for reimbursement of reasonable costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all reasonable 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, which will include the time incurred and related amount of costs expended. If the Developer has questions regarding any disbursement records, the Developer shall direct such question in writing to the City Attorney within 30 days of the Developer's receipt of the aforementioned disbursement records; thereafter, the City and the Developer shall in good faith attempt to resolve any questions raised as soon as reasonably possible, and to the extent necessary, communicate or negotiate with the appropriate third party submitting the payment request in order to do so. Notwithstanding anything herein to the contrary, the contents of this Section 4 are in no way intended and shall not be interpreted to waive any attorney-client protections by either the City or the Developer.

5. Reimbursement.

Nothing in this Agreement shall prohibit the Developer from seeking reimbursement for its fees and expenses incurred under this Agreement including the Deposit and the Additional Funds, to the extent permitted under the CID Act and the TDD Act, as applicable, if any portion of the Incentives are approved.

6. Incentive 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 Incentives, 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 Incentives and any development that results from the Incentives, 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 Cooperation 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 twenty (20) 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. Any portion of the Deposit and Additional Funds not necessary to reimburse the City of all expenses incurred under this Agreement to the date of termination shall be promptly returned to Developer. Upon the City giving such termination notice described in this subsection, the City shall cease incurring expenditures under this Agreement, unless agreed to by the Developer.

B. The parties hereto acknowledge that the Developer may determine to abandon the Incentives. Upon written notice of abandonment by the Developer, (i) this Agreement shall terminate, (ii) 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, and (iii) the City shall cease incurring expenditures under this Agreement. Any portion of the Deposit and Additional Funds not necessary to reimburse the City of all expenses incurred under this Agreement to the date of termination shall be promptly returned to Developer.

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 Cooperation Agreement that is executed by the City and the Developer.

9. 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 Incentives. The parties understand that the City may not lawfully contract away its police powers and that approval of the Incentives, if any, 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 Incentives and all applicable laws any other applications with respect to development of the property.

10. 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:

Jeana Woods
City Administrator

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065

With a copy to:

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

To the Developer:

Gary Prewitt
12 Allen Road
Eldon, Missouri 65026

With a copy to:

Armstrong Teasdale LLP
2345 Grand Boulevard, Suite 1500
Kansas City, Missouri 64108
Attn: Rachel Orr

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 five (5) days written notice of such change.

11. 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.

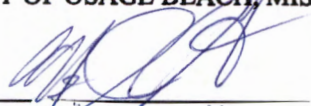
C. **No Waiver.** Failure of any Party to this Agreement to enforce its rights pursuant to this Agreement shall not be deemed a waiver of any such rights.

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.

(Remainder of page left blank.)

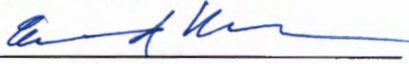
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF OSAGE BEACH, MISSOURI


By: 
Name: Michael Harmison / Mayor

Attest:

City Clerk Tara Berreth

Approved as to form:

City Attorney Edward Rucker

GRAND TETON MOUNTAIN INVESTMENTS,
LLC

By: 
Name: Gary D. Prewitt
Title: Managing member