

AN ORDINANCE APPROVING A FUNDING AGREEMENT FOR CONSIDERATION OF THE TEGETHOFF DEVELOPMENT PROPOSAL FOR CHAPTER 353 AND CHAPTER 100 SUPPORT FOR THE PRESERVE AT SYCAMORE CREEK.

WHEREAS, the City has been requested by the Tegethoff Development (the “Developer”) to consider a chapter 353 and Chapter 100 support for the project The Preserve at Sycamore Creek a Development Plan for Sycamore Creek Golf Club under Chapter 353 of the Revised Statutes of Missouri (the “Chapter 353 Act”) to facilitate real property tax abatement (the “353 Plan”); and (ii) a Plan for Industrial Development Project pursuant Sections 100.010 to 100.200 of the Revised Statutes of Missouri (the “Chapter 100 Act”) to facilitate a sales tax exemption on construction materials (the “Chapter 100 Plan”) to provide assistance to the Developer or its affiliate for the construction, reconstruction, installation or rehabilitation of the Sycamore Creek Golf Course into a multi-family development project (the “Project”).

WHEREAS, the City is authorized to enter into all contracts necessary or incidental to the implementation and furtherance of a 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: June 16, 2022

READ SECOND TIME: June 16, 2022

I hereby certify that the above Ordinance No. 22.41 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.

June 16, 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. 22.41.

Michael Harmison
Michael Harmison, Mayor

Tara Berreth
Tara Berreth, City Clerk

ATTEST:



FUNDING AGREEMENT

This FUNDING AGREEMENT ("Agreement") is entered into this 16th day of June 2022, (the "Effective Date") between the CITY OF OSAGE BEACH, MISSOURI (the "City"), and TEGETHOFF DEVELOPMENT, 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 requested that the City consider the approval of: (i) Development Plan for Sycamore Creek Golf Club under Chapter 353 of the Revised Statutes of Missouri (the "Chapter 353 Act") to facilitate real property tax abatement (the "353 Plan"); and (ii) a Plan for Industrial Development Project pursuant Sections 100.010 to 100.200 of the Revised Statutes of Missouri (the "Chapter 100 Act") to facilitate a sales tax exemption on construction materials (the "Chapter 100 Plan") to provide assistance to the Developer or its affiliate for the construction, reconstruction, installation or rehabilitation of the Scyamore Creek Golf Course into a multi-family development project (the "Project"). For purposes of this Agreement, the 353 Plan and the Chapter 100 Plan as proposed by Developer shall be referred to collectively 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 Chapter 353 Plan and Chapter 100 Plan; 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 (the "Policy"); and

WHEREAS, in order for the City to fully consider and evaluate the Application, the policy of the City 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 Chapter 100 Plan and the Chapter 353 Plan, respectively, 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 provide the following City Services (“City Services”):

i. Prepare or consult with the Developer or its designee on the preparation and consideration of the Chapter 100 Plan and the Chapter 353 Plan in accordance with the provisions of the Chapter 100 Act and the Chapter 353 Act, and the Policy, respectively, and other applicable laws, and give all notices, make all publications and hold all hearings as required by the Chapter 100 Act and the Chapter 353 Act and other applicable laws;

ii. Provide necessary staff, legal, financial, and planning assistance to review and evaluate the Chapter 100 Plan and the Chapter 353 Plan for the City, and prepare and present required ordinances to the Board of Aldermen of the City and other applicable governmental authorities;

iii. Provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a definitive agreement between the Developer (or its assignee or designee) and the City for implementation of the proposed Chapter 100 Plan and the proposed Chapter 353 Plan (the "Development Agreement"); and

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

B. The Developer shall:

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

ii. Provide to the City, upon request, 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 Chapter 353 Act and the Chapter 100 Act (the “Development Information”).

2. Initial Deposit.

The City acknowledges receipt of Twenty Thousand Dollars (\$20,000.00) (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.

3. Additional Funding.

A. When it appears to the City that fifty percent (50%) of the Deposit has been drawn or will be disbursed, the City may submit to Developer an invoice for an additional deposit not to exceed \$15,000.00, necessary to perform the City’s obligations hereunder or for any additional obligations or expenditures reasonably estimated to be incurred by the City in connection with this Agreement. The Developer shall pay the City the amount set forth on such invoice (the "Additional Funds") within thirty (30) days of receipt thereof. If such funds are not so received the City shall be relieved of any and all obligations hereunder until paid or may terminate this Agreement pursuant to Section 7.

B. The City and the Developer agree that the Developer shall reimburse the City for its actual 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 advance if it intends to utilize the services of any other consultants, other than special legal counsel, to perform its obligations under the terms of this Agreement.

C. Both the City and the Developer acknowledge that expenses incurred by the City will likely exceed the initial deposit of \$20,000.00. Notwithstanding the foregoing or anything in this Agreement to the contrary, the Developer may, at any time, determine not to pay Additional Funds by providing the City with written notice that the Developer will no longer pay any expenses in excess of the total expenses incurred on the date the City receives notice of the Developer's decision not to proceed. The Developer shall pay all such expenses 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 Additional Funds as Developer's election to withdraw its application for consideration of the Chapter 100 Plan and the Chapter 353 Plan, and terminate this Agreement pursuant to Section 7.

4. Disbursement of Funds.

The City shall timely disburse the Deposit and Additional Funds for reimbursement of costs to the City, 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 pursuant to this Agreement, which shall include a copy of invoices or other information reasonably showing the details of such out-of-pocket expenses.

5. 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 Development Agreement between the Developer and the City.

6. 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.

7. 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 at any time. 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 within ten (10) days of the termination date.

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

8. 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.

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 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 Chapter 353 Act, the Chapter 100 Act (as the case may be) and all applicable laws with respect to development of the property.

Before a vote by the Board of Aldermen for approval or disapproval of the Chapter 100 Plan, the Development Agreement with the Developer, the Chapter 353 Plan, or any other measure associated with the foregoing, the Developer shall deposit with the City, upon notice from the City,

sufficient funds to pay all outstanding expenses incurred hereunder.

10. Notice.

Any notice, approval, request or consent required by or asked to be given under this Agreement shall be in writing and deemed to have been given or made (a) three (3) business days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, (b) upon delivery if delivered by hand, (c) electronic transmission (e-mail) or (d) one (1) business day after presented to a recognized overnight courier service (such as Federal Express), fee prepaid, for next day delivery, and in each case addressed as follows:

To the City:

Jeana Woods
City Administrator
City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Email: jwoods@osagebeach.org

with a copy to:

Edward Rucker
City Attorney
City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Email: erucker@osagebeach.org

To the Developer:

Tegethoff Development
Attn: Jeffrey J. Tegethoff
P.O. Box 6331
Fishers, IN 46038
Email: Jeff@TegethoffDevelopment.com

with a copy to:

Husch Blackwell
Attn: David G. Richardson
190 Carondelet Plaza, Suite 600
Clayton, MO 63105
Email: David.Richardson@huschblackwell.com

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.

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.

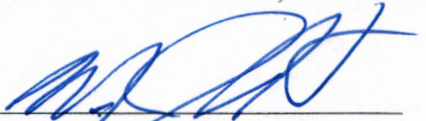
C. No Waiver. Failure of any Party to this Agreement to enforce its rights pursuant to this Agreement shall not be deemed a waiver of any such rights.

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.

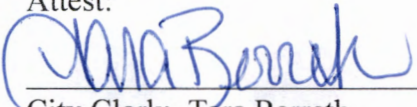
[remainder of page left intentionally blank]

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

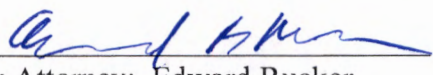
CITY OF OSAGE BEACH, MISSOURI

By: 
Michael Harmison, Mayor


Attest:


City Clerk: Tara Berreth

Approved as to form:


City Attorney: Edward Rucker

TEGETHOFF DEVELOPMENT


Name: Jeffrey J. Tegethoff

Title: President