

CITY OF KEARNEY, MISSOURI
FUNDING AGREEMENT FOR
[PROJECT NAME]

This **FUNDING AGREEMENT FOR THE [PROJECT NAME]** (“**Funding Agreement**”) is entered into this ____ day of _____, 20__, between the **CITY OF KEARNEY, MISSOURI** (the “**City**”), and **[DEVELOPER]**, ____, a _____ (the “**Developer**”).

RECITALS

WHEREAS, cities, counties, towns and villages in Missouri are authorized, pursuant to [Statutory Authority] (the “**Act**”) to [Incentive Description]; and

WHEREAS, the City is a fourth-class city and political subdivision of the State of Missouri, incorporated and exercising governmental functions and powers pursuant to the Constitution and the Revised Statutes of the State of Missouri, with its legislative power residing in the Board of Aldermen; and

WHEREAS, the Developer is authorized to conduct business in the State of Missouri; 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 services rendered to the Developer to review, evaluate, consider and process the application to construct a project in the City (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, the City has been requested by the Developer to prepare or consult on the preparation of documents necessary to _____ (the “**Incentive**”) for a project within the City, and to consider the project in accordance with the Act and, if such Incentive is approved by the City, to provide such other services and assistance as may be required to implement and administer the Incentive through its completion. [Describe incentive benefit, ex: Ad valorem taxes on bond-financed property may be abated so long as the bonds are outstanding.] Such [tax abatement/reimbursement/additional tax] may result in significant financial benefit to the Developer; and

WHEREAS, the City does not have a source of funds to finance costs incurred by them, in the form of additional City staff time; legal fees (Bond Counsel, Special Counsel and/or City Attorney), fiscal, planning consultants; direct out-of-pocket expenses and other costs resulting from, services rendered to the Developer to review, evaluate, process and consider a request for the Incentive pursuant to the Act.

AGREEMENT

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. **[Chapter 100 Bond Issuance.** The Developer understands:

A. The Bond Issue may be completed for the purpose of _____ in the City and will be limited obligations of the City, payable solely from lease payments and revenues received from Developer;

B. The City is the sole client of Gilmore & Bell, P.C. (the “Bond Counsel”) in the contemplated Bond Issue, and although the Bond Counsel does not represent the Developer, the Developer will be responsible for paying the legal fees of the Bond Counsel. Based upon an estimated principal amount of \$[PRINCIPAL AMOUNT], the fee as Bond Counsel, including the Bond Issue process, will be \$ _____, assuming the Developer buys their own bonds. The fees will be payable as follows: \$ _____ for the Chapter 100 Plan, the Development and Performance Agreement between the City and the Developer and related work, which will be payable within 10 days of Board of Aldermen consideration of the Chapter 100 Plan for approval and is not contingent upon approval of the Chapter 100 Plan. The balance of the fee as Bond Counsel will be \$ _____ payable at the time of issuance of the Bonds; and

C. The legal fees of the Bond Counsel are separate and distinct from the Deposit.]

1. **Services to be Performed by the City.** The City shall:

A. Prepare or consult with the Developer on the preparation and consideration of the Application in accordance with applicable State law for the requested public funding methods;

B. Give all notices, make all publications and hold hearings as may be required by applicable laws in order to consider the Application;

C. Provide the necessary staff, legal, financial, and planning assistance to prepare, evaluate, process, negotiate, and consider the Application and the public funding sources;

D. If the Board of Aldermen of the City approves the project [and the issuance of bonds], the City will provide necessary staff, legal, financial, and planning assistance to prepare, evaluate, negotiate and present the requested actions to the City and to prepare and present required ordinances to the Board of Aldermen for the Application;

E. If the Developer’s requested actions are approved, 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 Application, which may also include related contracts for the other approved public funding sources; and

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

2. **Application Fee & Initial Deposit.** The City acknowledges receipt of [DEPOSIT AMOUNT] (\$ _____) (the “Deposit”) from the Developer in connection with this Funding Agreement as the Application Fee. The Deposit shall be treated as a deposit with the City pursuant to the terms and conditions of this Funding Agreement. The City shall disburse the Deposit as set forth in [Section 3] and shall bill the Developer pursuant to [Section 3] to re-establish the Deposit so that there is always a minimum cash balance of [DEPOSIT AMOUNT] (\$ _____) available, from which additional disbursements may be made as required.

3. Additional Funding.

A. The City shall submit an itemized statement for actual and reasonable out-of-pocket third-party expenses necessary to perform its obligations hereunder or for any additional reasonable obligations or expenditures incurred by the City, including copies of paid invoices for such obligations and expenditures. 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 accrue interest at the rate of two percent (2%) per month until paid, but in no event shall such interest exceed twenty-four percent (24%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Funding Agreement pursuant to [Section 6]. Developer shall supply the Additional Funds in a timely manner so that City activities may continue without interruption.

B. The City and the Developer agree that the Developer shall reimburse the City for its actual and reasonable out-of-pocket expenses necessary to perform the City's obligations hereunder, including additional consultants.

C. Before a vote by the Board of Aldermen for approval or disapproval of the incentives, approval of the Agreement with the Developer, or approval of any other measure associated the Application, the Developer shall deposit with the City, upon notice from the City, sufficient Additional Funds to pay all outstanding expenses incurred hereunder and replenish the amount on deposit with the City as provided in [Section 2].

4. Disbursement of Funds. The City shall disburse the Deposit and Additional Funds for reimbursement of actual and reasonable costs to the City on or before the thirtieth (30th) day of each month, and for actual and reasonable consulting fees and the payment of all actual and reasonable out-of-pocket third-party expenses incurred by the City in connection with the performance of its obligations under this Funding Agreement as payment for such expenses become due. The City shall send to the Developer a copy of the record for each disbursement made to the Developer pursuant to this Funding Agreement within five (5) business days of such disbursement along with documents evidencing such expenses.

5. Project 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 incentive and any contracts entered into in furtherance of the Application. Upon appropriate itemization, the City shall be reimbursed by the Developer for actual meeting expenses and other expenses that are reasonable or incidental to the general operations of the City and its consultants with respect to administration of the incentive, and any contracts entered into in furtherance of the Application. The provisions of this section shall apply until such time as the City and the Developer execute an Agreement which provides for the termination of this Funding Agreement and the terms and conditions under which the City's ongoing services shall be funded. It is anticipated that, if approved, any such Agreement will include provisions necessary for reimbursement of such funds to the Developer.

6. Termination of this Funding Agreement.

A. Termination by the City. In the event the Developer fails to perform any of its obligations herein, the City may terminate this Funding 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 Funding Agreement, including, but not limited to, the City's processing of Developer's Application. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

B. Termination by the Developer. The parties hereto acknowledge that the Developer may determine to abandon the Application. Upon written notice of abandonment by the Developer, this Funding Agreement shall terminate, and the City may terminate any other agreement between the parties. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

C. Mutual Termination. The parties agree that if at any time an agreement regarding the Application is not reached, either party may terminate this Funding Agreement. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

D. Wrap-Up After Early Termination. Upon termination pursuant to paragraphs A, B, or C of this Section, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all actual and reasonable expenses incurred under this Funding Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement with the Developer. Upon such termination, 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 Funding Agreement pursuant to paragraphs A, B, or C of this Section, any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by the City, or reimbursed to the City, shall be returned to the Developer.

E. Termination by Consolidation into Incentive Agreement. Unless otherwise terminated as provided in paragraphs A, B, or C of this [Section 6], this Funding Agreement shall stay in full force and effect until it is specifically terminated as set forth in the Incentive Agreement, and thereafter the terms and conditions of the Agreement shall provide for the continued funding arrangements by Developer with respect to the Application.

7. Notice. Any notice, approval, request or consent required by or asked to be given under this Funding 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 Kearney
City Hall, 100 E. Washington St.
Kearney, Missouri 64060
Attn: Economic Development Director

To the Developer:

Attn:

With a copy to:

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

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 Funding 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. 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 projects cannot be contractually guaranteed. This Funding Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider the Application and approvals for the Application in accordance with all applicable laws any other projects with respect to development of the redevelopment area and Developer's property.

9. 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 expenses under this Funding Agreement. Developer further understands that legal counsel paid pursuant to this Funding Agreement is legal counsel for the City and acknowledges the duties of confidentiality and loyalty to the City.

10. Assignment. This Funding Agreement may not be assigned by any party without the prior written consent of the other party. No assignment, unless specifically provided for in such consent, shall relieve the assigning party of any liability pursuant to this Funding Agreement. This Funding Agreement shall be binding upon the parties and their successors and permitted assigns.

[Remainder of this Page Intentionally Left Blank]

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

CITY OF KEARNEY, MISSOURI

By: _____
Mayor

(SEAL)

ATTEST:

City Clerk

[DEVELOPER]

By: _____

Name: _____

Title: _____