

MUNICIPAL ORDER 29-2019

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH SYF PROPERTIES, LLC, PROVIDING FOR THE CONSENSUAL ANNEXATION OF UNINCORPORATED PROPERTY LOCATED IN DAVIESS COUNTY AT 2065 EAST PARRISH AVENUE, CONTAINING 4.527 ACRES, MORE OR LESS; AND FURTHER PROVIDING THAT THE CITY SHALL REIMBURSE SYF PROPERTIES, LLC ONE-HUNDRED PERCENT (100%) OF THE TOTAL AD VALOREM, NET PROFITS, AND OCCUPATIONAL TAX REVENUES DERIVED FROM THE PROPERTY OVER A DESIGNATED FIVE (5) YEAR PERIOD AND PROVIDE SANITATION SERVICES DURING THAT SAME PERIOD.

WHEREAS, SYF Properties, LLC (SYF) is the owner of real property consisting of approximately 4.527 acres, more or less, and having an address of 2065 East Parrish Avenue, more or less; and

WHEREAS, said property is zoned B-4 General Business zoning classification for commercial development; and

WHEREAS, SYF's property, which is presently located in an unincorporated area of Daviess County that is contiguous to the corporate boundaries of the City, when annexed, developed, and/or sold, will utilize and benefit from, various municipal services, including public safety, sanitary sewer, water, and electric utilities; and

WHEREAS, the social and economic wellbeing of the City is directly related to, and in many respects dependent upon, the substantial growth of the City and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to

taxpayers, the City deems it to be in its best interest to encourage and induce contiguous industrial, commercial, and/or residential developments to become citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and he hereby is authorized and directed to execute a Memorandum of Agreement with SYF Properties, LLC, setting forth the terms and conditions by which the 4.527 acre tract of land located at 2065 East Parrish Avenue will be consensually annexed into the City of Owensboro in consideration for the City agreeing to reimburse SYF Properties, LLC in an amount of one-hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, over a designated five (5) year period; and provide sanitation service in the amount of two 8 yard dumpsters, serviced 3 times per week for the five (5) year period of the annexation agreement. A copy of said Memorandum of Agreement is attached hereto and incorporated by reference herein.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 19th day of November, 2019.

Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this 7th day of October, 2019, by and between CITY OF OWENSBORO, KENTUCKY, a municipality of the home rule class, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter referred to as "City"), and SYF PROPERTIES, LLC, P.O. Box 88, Inglefield, IN 47618 (hereafter referred to as "Developer"). Collectively, City and Developer may be referred to as the "Parties."

RECITALS

WHEREAS, Developer is the owner of a certain tract of real property with consisting of approximately 4.527 acres, more or less (hereinafter referred to as the "Subject Property"), which is located at 2065 East Parrish Ave in Owensboro, Daviess County, Kentucky; and

WHEREAS, Developer's property is presently located in an unincorporated area of Daviess County that is contiguous to the corporate boundaries of the City and, when annexed, developed, and/or sold, will utilize and benefit from various municipal services, including public safety, sanitary sewer, water, and electric utilities; and

WHEREAS, the City of Owensboro has established an annexation incentive program for a development for the purposes of eligibility for incentives; and

WHEREAS, Developer wishes to grant his or her consent and voluntarily participate in the City annexation incentive program whereby the Subject Property shall be annexed into the corporate limits of the City of Owensboro; and

WHEREAS, the social and economic well being of the City is directly related to, and in many respects dependent upon, the growth of the City and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous commercial developments to become citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto; and

WHEREAS, as an incentive to Developer to incorporate the entirety of the development into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the Parties enter into an agreement by which the City will reimburse the Developer in an amount of one-hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, over a designated five (5) year period; and provide sanitation service in the amount of (two (2) eight (8) yard dumpsters, serviced five (5) times per week) for the five (5) year period of the annexation agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the Parties agree as follows:

SECTION 1. ANNEXATION: The Subject Property shall be annexed into the City pursuant to KRS 81A.412. In consideration of the foregoing, the City or its designated agency, has, and as each phase is designated in accordance with the provisions herein, shall, accept and assume maintenance of, all public facilities approved by the City Engineer and constructed by or for the Developer within the property to be annexed, including streets (both city and state maintained), alleys, curbs, gutters, parks, bicycle/pedestrian trails, and public infrastructure (including sanitary sewers, stormwater drains, inlets, and retention basins, but excluding common areas), or other public improvements or right-of-way dedicated to public use and maintenance on the final development plan and the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed of record in the Office of the Daviess County Clerk, (hereafter referred to as "Public Facilities". Once fully completed to the approved specifications, all maintenance of the Public Facilities required hereunder shall be performed by the City according to its approved maintenance schedule, as may be changed from time to time.

SECTION 2. INCENTIVES; CALCULATION OF TAX REVENUES; LIMITATIONS.

(A) Under the terms of this Agreement, the City will reimburse the Developer in an amount of one-hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and occupational tax revenues

derived from any property located therein, over a designated five (5) year period.

(B) Expenses to be reimbursed by City to Developer under this Agreement shall be paid solely from all real and personal property, occupational, and net profits tax/fee revenues (excluding school taxes/fees, franchise bank deposit taxes, any and all in lieu of present or future taxes/fees, and any taxes levied and restricted to a specific purpose) derived by the City from the Subject Property, (hereafter referred to as "Tax Revenues"), over a maximum period of five (5) years (the "Reimbursement Term"). The City's obligation to reimburse Developer shall commence on the first day of the next fiscal quarter after the five (5) year term begins.

(C) It is understood that all reimbursements provided in this Agreement shall be made solely to the present Developer and not to any subsequent developer, purchasers, tenants, or other interests present or future.

(D) Accounting: The Director of Finance and Support Services is authorized and directed to collect and deposit all Tax Revenues derived by the City from the Subject Property annexed hereby, in a separate, dedicated account established for the Subject Property incorporated by the City through consensual annexation, for the five (5) year period designated herein. To assist the Finance Department in tracking Tax Revenues derived from the development, sale, and/or lease of real and personal property within the Subject Property, Developer shall, at its own

expense, promptly provide the City with a copy of the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed in the Office of the Daviess County Clerk, any deeds of conveyance, and the names and mailing addresses of any person, firm or corporation with a leasehold interest in any portion of Subject Property. During the term of this Agreement, Developer shall also notify the City's Director of Finance and Support Services of the sale, transfer, and/or lease of any portion of Subject Property to any other person or entity for commercial development or other use by providing a copy of the deed of conveyance or the name and mailing address of any person, firm or corporation with a leasehold interest.

(E) It is agreed that in the event the Developer sells, transfers and/or leases any part of the Subject Property, Developer shall continue to receive the incentive payments as defined in this Agreement. It is understood that the incentive payments are to be paid directly to the Developer regardless as to who owns and/or leases the Subject Property provided the Developer is in compliance with all terms of this Agreement.

(F) Payment under this Agreement is contingent upon those entities or persons from whom such Tax Revenues were derived, properly reporting such to the City of Owensboro. In the event that an entity or person does not properly report such Tax Revenues in a sufficient format to enable the City to attribute those Tax Revenues to the Subject Property, the payment will be withheld until a proper reporting has been received and processed.

City and Developer agree that both shall immediately utilize any and all available means or authority to require those entities or persons to immediately and properly report such Tax Revenues so as not to delay further payment to Developer.

(G) Limitation on Reimbursement of Expenses:

1. The City's maximum liability to Developer for reimbursement shall not exceed one-hundred percent (100%) of the total verified sum of all Tax Revenues, as established in SECTION 2.(A) and (B), collected by the City from the Subject Property, over the designated five (5) year period. Additionally, Developer shall not be eligible for additional future reimbursement based upon an existing business relocating to a new property located in an unincorporated area of Daviess County being annexed pursuant to this Agreement.

SECTION 3. TERM: This Agreement shall commence upon its execution by both the Parties and the five (5) year reimbursement term shall begin in two (2) phases, the first on 1/1/2020 for Phase 1 (McAlister's Deli & Moe's Southwestern Grill), and 1/1/2023 for Phase 2 (all remaining rental space). If Developer is unable to begin development within that period, he/she may request an extension of time from City. City will consider and not unreasonably deny request for extension of an additional one (1) year in which to begin the reimbursement term. In the absence of a default by either party, this Agreement shall remain in full force and effect for the duration of the designated five (5) year period, or until such time as all terms and conditions set forth herein have been

satisfied, whichever first occurs. At the end of the five (5) year reimbursement term, this Agreement shall be null and void.

Table 1	
Phase	Reimbursement Term Start Date
Phase 1	January 1, 2020 (McAlister's & Moe's)
Phase 2	January 1, 2023 (All Remaining Space)

SECTION 4. DEFAULT; REMEDIES: This Agreement may be terminated by the City, by written notice, in the event Developer breaches any one or more of the terms and conditions set forth herein, including failure to timely complete all public improvements as per applicable ordinances, Planning and Zoning requirements, and the City's Private Development Policy which is incorporated herein by reference as "Attachment 1", and fails to cure said breach within a reasonable time after written notice thereof. This Agreement may be terminated by Developer in the event the City fails to reimburse Developer on the terms and conditions set forth herein, and fails to cure said breach within a reasonable time after written notice thereof by Developer.

Upon a material breach of this Agreement by either party, the non-breaching party shall be entitled to all remedies at law or equity, including but not limited to, specific performance or mandatory injunctive relief, rescission, or compensatory and consequential damages arising therefrom; provided, however, a material breach by the City notwithstanding, under no circumstances shall the City be required to de-annex property annexed pursuant to this Agreement, which process is a discretionary and non-negotiable legislative function, nor shall the City's total liability ever exceed one-hundred percent (100%) of the total

verified sum of all Tax Revenues collected by the City from the Subject Property, whichever is less.

SECTION 5. NOTICES: Any written notices or requests required under the terms of this agreement shall be given to the following:

CITY:

City of Owensboro
Attention: City Manager
P. O. Box 10003
101 East 4th Street
Owensboro, Kentucky 42302-9003

DEVELOPER:

SYF Properties, LLC
P.O. Box 88
Inglefield, IN 47618

SECTION 6. AGREEMENT NULL AND VOID: This Agreement shall terminate, and otherwise become null and void, and neither party shall have any further liability to the other, if the Subject Property described herein is not incorporated into the City by the Owensboro Board of Commissioners or the Commonwealth of Kentucky through consensual annexation or, if for any reason, the Subject Property is de-annexed at any time.

SECTION 7. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer, or representative of either party hereto. There are no promises, representations, covenants, undertakings, restrictions, or conditions, other than those expressly set forth herein. Any subsequent amendment hereto shall be in writing and executed by authorized

representatives of both Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns, provided, however, that this Agreement shall not be transferred or assigned at any time by Developer without the express written consent of the City.

SECTION 8. SEVERABILITY: The provisions of this Agreement are independent of and severable from each other, and no provision shall be effected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions herein may be invalid or unenforceable, in whole or in part. If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable as written, a court may interpret, construe, rewrite or revise such provision, to the fullest extent allowed by law, so as to make it valid and enforceable consistent with the intent of the Parties. In the event a court of competent jurisdiction finally determines that any portion of this Agreement is invalid or unenforceable as written, neither party shall have any liability to the other as a result thereof.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the day and year first hereinabove written.

CITY OF OWENSBORO:

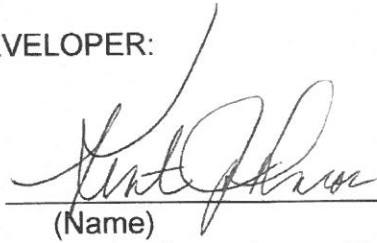
By _____
Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk

DEVELOPER:

By


(Name)

10-7-19

SXF Properties, LLC