

MUNICIPAL ORDER 03-2022

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH VAF 1937 LEITCHFIELD ROAD, LLC, PROVIDING FOR THE CONSENSUAL ANNEXATION OF UNINCORPORATED PROPERTY LOCATED IN DAVIESS COUNTY AT 1937 LEITCHFIELD ROAD, CONTAINING 2.237 ACRES, MORE OR LESS; AND FURTHER PROVIDING THAT THE CITY SHALL REIMBURSE VAF 1937 LEITCHFIELD ROAD, LLC ONE HUNDRED PERCENT (100%) OF THE TOTAL AD VALOREM (EXCLUDING SCHOOL TAX), NET PROFITS, AND GENERAL FUND OCCUPATIONAL TAX REVENUES DERIVED FROM THE PROPERTY OVER A DESIGNATED FIVE (5) YEAR PERIOD AND PROVIDE ONE (1) TRANSIT BUS SHELTER AND PUBLIC TRANSPORTATION SERVICE TO THE LOCATION.

WHEREAS, VAF 1937 Leitchfield, LLC (VAF) is the owner of real property consisting of approximately 2.237 acres, more or less, and having an address of 1937 Leitchfield Road; and

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

WHEREAS, VAF'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 applicable municipal services; 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.

WHEREAS, as an incentive to VAF to incorporate the entirety of the real property into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the City desires to reimburse VAF in the amount of one hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and general fund occupational tax revenues derived from the property located therein, over a designated five (5) year period; and provide one (1) Transit Bus Shelter and public transportation service to the location.

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 VAF 1937 Leitchfield, LLC setting forth the terms and conditions by which the 2.237 acre tract of land located at 1937 Leitchfield Road, will be consensually annexed into the City of Owensboro in consideration for the City agreeing to reimburse VAF 1937 Leitchfield, LLC in an amount of one-hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and general fund occupational tax revenues derived from the property located therein, over a designated five (5) year period; and provide one (1) Transit Bus Shelter and public transportation service to the location. 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 18th day of January, 2022.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this _____ day of _____, 2021, 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 VAF 1937 LEITCHFIELD ROAD LLC, 1554 N Beverly Drive, Beverly Hills, CA 90210 (hereafter referred to as "Developer"). City and Developer are each a "Party" and collectively the "Parties".

RECITALS

WHEREAS, Developer is the owner of a certain tract of real property consisting of approximately 2.237 acres, more or less, which is located at 1937 Leitchfield Rd, Owensboro, KY (hereinafter referred to as "Subject Property"); 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; 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 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 Subject Property 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 unrestricted ad valorem (excluding school tax), net profits, and general fund occupational tax revenues derived from any property located therein, over a designated five (5) year period; and provide one (1) Transit Bus Shelter to provide public transportation service to this location.

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

SECTION 1. ANNEXATION: Subject Property shall be annexed into the City pursuant to KRS 81A.412. In consideration of the foregoing, Subject

Property shall remain a private development within the property to be annexed, including streets, alleys, curbs, gutters, parks, bicycle/pedestrian trails, and public infrastructure (including sanitary sewers, stormwater drains, inlets, and retention basins, and common areas), 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.

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 general fund 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, general fund 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, 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:

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

(E) It is agreed that in the event the Developer sells, transfers and/or leases any part of 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 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 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 unrestricted Tax Revenues collected by the City over a designated five (5) year period.

SECTION 3. TERM: This Agreement shall commence upon its execution by both the Parties and the reimbursement term shall begin within one (1) year of execution. This Agreement shall remain in full force and effect for the duration of the designated period, or until such time as all terms and conditions set forth herein have been satisfied, whichever first occurs. At the end of the reimbursement term, this Agreement shall be null and void.

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. 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, nor shall the City's total liability ever exceed one hundred percent (100%) of the total verified sum of all unrestricted Tax Revenues collected by the City from Subject Property.

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:

VAF 1937 LEITCHFIELD ROAD LLC
1554 N Beverly Drive
Beverly Hills, CA 90210

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 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 affected 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 Davis, City Clerk

VAF 1937 LEITCHFIELD ROAD LLC:

By _____
Robert Pardo, Manager