

BY: Councilmember Hein
FIRST READING: January 3, 2024
SECOND READING: January 17, 2024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIDGETON, MISSOURI, AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE A PRELIMINARY FUNDING AGREEMENT, SUBSTANTIALLY IN THE FORM ATTACHED HERETO, BETWEEN THE CITY OF BRIDGETON AND IPX CLAYTON MARYLAND 423-109, LLC REGARDING IPX CLAYTON'S ADVANCE OF FUNDS TO ENABLE THE CITY TO PAY CERTAIN COSTS IN CONNECTION WITH IPX CLAYTON'S REDEVELOPMENT OF CERTAIN PROPERTY LOCATED WITHIN THE CITY OF BRIDGETON, MISSOURI

WHEREAS, IPX Clayton Maryland 423-109, LLC ("IPX Clayton") is the current owner of certain property including the former K-Mart and the former Sports Authority along St. Charles Rock Road in the City of Bridgeton ("Property");

WHEREAS, IPX Clayton intends to submit a proposal to the City to redevelop the Property; and

WHEREAS, the City Council and the City of Bridgeton, because they have determined that it is in the best interests of the City to do so, intend to enter into the Preliminary Funding Agreement, substantially in the form attached hereto as Exhibit A, which provides that IPX Clayton will advance funds to the City to enable the City to pay certain costs in connection with the redevelopment of the Property.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIDGETON, MISSOURI, AS FOLLOWS:

- SECTION 1.** The City Council does hereby find and determine that it is in the City's best interests to enter into the Preliminary Funding Agreement with IPX Clayton 23-109, LLC, substantially in the form attached hereto as Exhibit A.
- SECTION 2.** The City Council hereby authorizes the Mayor and City Clerk to execute the Preliminary Funding Agreement substantially in the form attached hereto as Exhibit A.
- SECTION 3.** The Mayor and the City Clerk are hereby authorized and empowered to approve and execute for the City of Bridgeton any and all documents that are necessary or appropriate to carry out the provisions of this Ordinance.
- SECTION 4.** This Ordinance will be in full force and effect from and after its passage and approval.

BILL NO. 6420

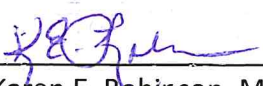
ORDINANCE NO. 24-09

PASSED THIS 17TH DAY OF JANUARY, 2024.

PASSED THIS 17TH DAY OF JANUARY, 2024.


Terry W. Briggs, Mayor

ATTEST:


Karen E. Robinson, MRCC-S/CMC
City Clerk

PRELIMINARY FUNDING AGREEMENT

THIS PRELIMINARY FUNDING AGREEMENT ("Agreement") is made and entered into as of January¹⁹, 2024, by IPX CLAYTON MARYLAND 423-109, LLC, a Missouri limited liability company (the "Developer") for the benefit of THE CITY OF BRIDGETON, MISSOURI, a constitutional charter city of the State of Missouri (the "City").

RECITALS

A. The Developer proposes to redevelop certain property including the former K-Mart and the former Sports Authority along St. Charles Rock Road in the City (the "Project"). The Developer has advised the City that the Project will not be financially feasible without certain economic development incentives.

B. Developer has requested that the City take certain actions, including but not limited to, consideration of an amendment to an existing Development Agreement relating to the Project (the "Development Agreement") and related actions concerning the provision of certain potential economic incentives with respect to the Project.

C. Subject to the terms of this Agreement, the City desires the Developer to advance funds to the City to enable the City to pay certain costs in connection with its consideration and analysis of the proposed amendment to the Development Agreement and Project, and the Developer has agreed to advance such funds in accordance with this 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. Developer to Reimburse City Costs. The Developer shall, within thirty (30) days after the City's request therefor, pay or reimburse the City or the City's counsel, the law firms of Husch Blackwell LLP ("HB") and Gilmore & Bell, P.C. ("GB"), on behalf of the City as directed by the City, for payment of actual third-party costs incurred by the City for legal fees, administrative services, economic development consulting services and planning services, preparing and negotiating this Agreement, considering, negotiating, preparing, approving and implementing the Redevelopment Agreement or the Project, and any additional redevelopment agreements or plans that may be necessary to implement the foregoing; evaluating and considering proposals submitted in connection with the Redevelopment Agreement or the Project; preparing, publishing and issuing notices; preparing redevelopment ordinances necessary or appropriate to implement the Redevelopment Agreement or the Project pursuant to laws applicable thereto; and all other necessary or appropriate activities and documentation related to the foregoing, all in the City's sole discretion, it being understood that the Developer's reimbursement of the City in connection with the foregoing shall not obligate the City to implement or approve any of the foregoing (collectively, the "Redevelopment Activities" and the costs thereof collectively, "City Costs").

2. Advance Funds. Concurrent with its execution of this Agreement (if not done prior to), the Developer has delivered to the City a check payable to the City in the amount of

Fifty Thousand Dollars (\$50,000.00) ("Preliminary Funds") to be used in accordance with this Agreement. The City shall use the Preliminary Funds only to apply to the Developer's obligations hereunder to pay the City Costs. The Preliminary Funds are not a cap on Developer's liability under this Agreement. In the event the costs incurred by the City for the City Costs related to the Redevelopment Activities exhaust or exceed the Preliminary Funds, Developer shall deliver a check payable to the City in the amount of the City Costs for such additional Preliminary Funds.

3. Disbursement. The City shall use Preliminary Funds for fees and expenses incurred by or to reimburse the City for fees and expenses incurred by the City in connection with Redevelopment Activities. The parties acknowledge and agree that charges for legal fees and expenses will be based on the standard hourly rates and disbursements generally charged from time to time by HB or GB to their respective clients.

4. No Obligations to Repay Preliminary Funds Expended. Notwithstanding anything to the contrary contained herein, if the City does not approve the Redevelopment Agreement, the Project, or any other Redevelopment Activities, neither the City, nor GB, nor HB shall have any obligation to refund any Preliminary Funds or other City Costs to Developer, except as provided in Section 5 hereof to the extent of any excess funds remaining after the payment of expenses of the City.

5. Right of Termination. The Developer shall have the right to terminate this Agreement upon giving the City fifteen (15) days written notice; whereupon fifteen (15) days following Developer's delivery of said notice, this Agreement shall be deemed terminated. During such fifteen (15) day period, the City may use Preliminary Funds (or any additional funds advanced to City by Developer) to reimburse costs previously incurred, but shall use all reasonable efforts to avoid incurring any new costs, other than those costs involved in terminating this Agreement. The City may terminate this Agreement upon giving the Developer ten (10) days' written notice if (a) a development agreement is not executed by June 30, 2024 or (b) the balance from the initial Preliminary Funds or subsequent funds advanced hereunder falls below \$10,000 and the Developer does not provide subsequent funds in the amount of at least \$25,000.00 to the City within fourteen (14) days after written request from the City. If the City rejects or otherwise elects to terminate further consideration of implementation of the Redevelopment Activities with Developer, which the City shall have and retain the absolute right to do in its sole and absolute discretion, the City shall have the right to terminate this Agreement. In the event the City terminates this Agreement, the City may use Preliminary Funds (or any additional funds advanced to City by Developer) to reimburse costs previously incurred, but shall use all reasonable efforts to avoid incurring any new costs, other than those costs involved in terminating this Agreement. Notwithstanding anything to the contrary stated in this Agreement, in the event of a termination of this Agreement, or in the event all Redevelopment Activities have been concluded and the City has not expended all of the Preliminary Funds or other City Costs advanced to City by Developer, the City shall refund to Developer the unexpended balance of the Preliminary Funds or any additional City Costs advanced to the City by the Developer within thirty (30) days after ascertainment and payment by the City of all fees and expenses incurred by the City in connection with Redevelopment Activities, which ascertainment and payment shall occur within thirty (30) days after the City's receipt or giving of notice of termination of this Agreement or the conclusion of all Redevelopment Activities.

6. Applicability of Section 285.530, RSMo. Developer acknowledges and agrees that, if it receives a state-administered or subsidized tax credit, tax abatement, or loan from the state, it shall, by sworn affidavit and provision of documentation, comply with the requirements of Section 285.530, RSMo. and affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the project and sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the project benefitting from any incentive specified in Sec. 285.530.

7. No Third-Party Beneficiaries. This Agreement constitutes a contract solely between the City and the Developer. No third party has any beneficial interest in or derived from this Agreement.

8. Notices. All notices and correspondence hereunder shall be in writing and shall be delivered by (a) hand delivery, (b) email, but only at the addresses provided below, followed by a confirmatory notice sent in another manner permitted hereunder, or (c) first class mail, postage prepaid and certified, to the parties as set forth below:

If to the City:

City of Bridgeton, Missouri
12355 Natural Bridge Road
Bridgeton, Missouri 63044
ATTN: Kevin Bookout
kbookout@bridgetonmo.com

with a copy to:

Husch Blackwell LLP
8001 Forsyth Boulevard, Suite 1500
St. Louis, Missouri 63105
ATTN: David A. Linenbroker, Esq.
david.linenbroker@huschblackwell.com

If to the Developer:

IPX Clayton Maryland 423-109, LLC
c/o Savoy Properties, L.L.C.
1034 S. Brentwood Blvd., Suite 1200
St. Louis, Missouri 63117
ATTN: Matt Gambrell
mgambrell@savoyproperties.com

with a copy to:
Lewis Rice LLC
1010 Walnut Street, Suite 500
Kansas City, Missouri 64106
ATTN: Doug Stone, Esq.
dstone@lewisricekc.com

9. Miscellaneous.

a. Governing Law; Counterparts. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri; and may be signed in counterparts.

b. Severability. If any provision(s) of this Agreement is illegal or unenforceable, then the remainder of this Agreement shall not be affected thereby and shall be enforced as if such provision were not contained herein.

c. No Waiver. Failure of either party to enforce its rights hereunder at any time shall not be deemed a waiver of any such rights.

d. Assignment; Successors and Assigns. This Agreement may not be assigned by any party without the prior written consent of the other party. No assignment, unless specifically provided for in the consent thereto, shall relieve the assigning party of any liability hereunder. This Agreement shall be binding upon the parties hereto and their heirs, successors and permitted assigns.

e. Representations and Warranties. The parties hereby represent and warrant that they have full right and authority to execute and deliver this Agreement; and that this Agreement has been duly executed by them or on their behalf, as the case may be, pursuant to due authorization, and is not in violation of any such party's governing documents, charter or ordinances, as the case may be. The parties further represent and warrant that no consents are necessary for the execution, delivery, and performance of this Agreement by such party, and that this Agreement is valid, binding and enforceable against such party in accordance with its terms.

f. Limitation of Liability. Notwithstanding any provision herein to the contrary, the City, its officials, agents, employees, and representatives, GB and HB shall not be liable to the Developer for damages or otherwise if this Agreement is declared invalid or unconstitutional in whole or in part by the final judgment of any court of competent jurisdiction (as to which all rights of appeal have expired or have been exhausted), and by reason thereof the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges contemplated hereunder.

g. Irrevocability. This Agreement, when executed by the Developer, shall constitute an irrevocable offer to enter this Agreement which may not be revoked by Developer for thirty (30) days.

h. Records. Within thirty (30) days of request by Developer, the City shall send to Developer a record of the amounts and payees for each disbursement made pursuant

to this Agreement, provided that, Developer's right to such information shall be limited to amounts, dates, and payees, and in no event shall Developer have the right to receive or review individual time entries or invoices.

10. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 RSMo., Developer certifies that it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.


11. Entire Agreement. This Agreement hereby amends and restates the Preliminary Funding Agreement dated January 9, 2024 entered into by the parties.

[Signature page follows.]

IN WITNESS WHEREOF, parties have caused this Agreement to be duly executed as of the date first above written.


DEVELOPER:

IPX CLAYTON MARYLAND 423-109, LLC,
a Missouri limited liability company

By:  _____
Authorized Signatory

CITY:

CITY OF BRIDGETON, MISSOURI, a
constitutional charter city of the State of Missouri

By:  _____
Name: Terry W. Briggs
Title: Mayer