

3D. Consideration of Adopting Resolution No. 2023-05 Amending the 2022 Pooled TIF Allocation Plan, increasing the Affordable Housing pooled TIF allocation into TIF District 1-42 and 1-43 by \$80,000, to \$880,000

<p>Prepared by: Economic Development Manager</p>	<p>Meeting Date: 05/10/2023</p>	<p><input checked="" type="checkbox"/> Regular Agenda Item <input type="checkbox"/> Consent Agenda Item</p>
<p>Reviewed by: Community Economic Development Coordinator</p>	<p>Approved by: Community Development Director</p>	

ACTION REQUESTED

Motion to adopt Resolution No. 2023-05 amending the 2022 Pooled TIF Allocation Plan increasing the pooled Affordable Housing TIF allocation into TIF Districts 1-42 and 1-43 by \$80,000, to \$880,000.

REFERENCE AND BACKGROUND

Staff is asking the EDA to consider amending the 2022 Pooled TIF Allocation Plan, increasing the amount of pooled Affordable Housing TIF dollars being transferred into Affordable Housing TIF Districts 1-42 and 1-43 by \$80,000, thereby raising the total pooling into the new Affordable Housing Districts to \$880,000 as per the Amended and Restated Purchase and Development Contracts authorized by the EDA at the regular July 27, 2022, meeting.

The proposed amendment is related to the EDA’s agreement to help cover the contaminated soil study and remediation costs incurred by Headwaters Development as outlined in the approved Purchase and Development Contract for TIF 1-42 and 1-43. The most appropriate source of funding to cover these costs is through the available extra increment in the older TIF Districts that remains available to be pooled into the new TIF Districts. This is also consistent with the overall funding program outlined for the Headwaters project, in which the EDA utilized pooled affordable housing dollars for the land transaction.

The 2022 Pooled TIF Allocation Plan was approved by the EDA at the regular May 25, 2022, meeting. The term “pooling” refers to the use of tax increments for qualified activities located outside of the boundaries of the district from which they were collected. Staff felt that it was critical to articulate in a policy plan the intended use of the available pooled increment that had accumulated in several TIF Districts over time. The adoption of the 2022 Pooled TIF Allocation Plan fulfilled that objective by identifying the available pooled increment from each existing TIF District and outlining the specific policies for use of the pooled increment for other future

projects. The 2022 Pooled TIF Plan utilized projected pooling information to assign the specific project areas and allocation amounts.

The EDA utilized the 2022 Pooled TIF Allocation Plan to evaluate and approve the use of pooled increment from its Affordable Housing TIF Districts to TIF Districts (1-42 and 1-43). As the EDA considers this item, the pooled TIF projections indicate that there is sufficient funding to make this designation within the 2022 Pooled TIF Allocation Plan.

The proposed amendment to the Pooled TIF Allocation Plan will reconcile the allocation total in the Affordable Housing item (No. 2) with the funding assistance commitments that EDA agreed to related to the Headwaters Development affordable housing projects. This is also consistent with the overall funding program outlined for the Headwaters project, in which the EDA utilized pooled affordable housing dollars for the land transaction.

- I. **Budget Impact:** Authorizing the 2022 TIF Plan Amendment does not affect the EDA General Fund budget. The pooled tax increment transfers occur between the specific TIF District Funds set up through the establishment of the TIF Districts. The EDA attorney fees related to background discussion and preparing the EDA resolution are projected to be between \$300 to \$500. The EDA General Fund budget line for legal services has sufficient funding remaining to cover this expenditure. There are sufficient pooled funds available for this allocation.
- II. **Staff Workload Impact:** Staff involved in the tasks related to the proposed 2022 Pooled TIF Allocation Plan amendment include the EDA attorney, Tammy Omdal from Northland Securities and the Community Development Director and the Economic Development Manager. No additional staff are needed for this effort.

STAFF RECOMMENDATION

City staff recommends approval of the proposed amendment to the 2022 Pooled TIF Allocation Plan. The amendment approval step is somewhat of a housekeeping task which will reconcile the sourcing of funds for the EDA assistance commitments (outlined in the approved Development Contract), for certain eligible costs in TIF Districts 1-42 and 1-43.

SUPPORTING DATA

- A. Resolution No. 2023-05
- B. Amended 2022 Pooled TIF Allocation Plan
- C. 2022 Pooled TIF Allocation Plan
- D. TIF Development Contracts - TIF 1-42 and 1-43, Section 3.11 Authority Grant

CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. 2023-05

**RESOLUTION AMENDING THE 2022 POOLED TIF
ALLOCATION PLAN**

BE IT RESOLVED BY the Board of Commissioners (“Board”) of the City of Monticello Economic Development Authority, Monticello, Minnesota (the “Authority”) as follows:

Section 1. Recitals.

1.01. The Authority and the City of Monticello, Minnesota (the “City”) have previously established Tax Increment Financing District Nos. 1-6, 1-19, 1-22, 1-24, 1-29 and 1-30 (the “Pooled TIF Districts”), as well as Tax Increment Financing (Housing) District No. 1-42 (Headwaters Apartment Project) (“TIF 42”) and Tax Increment Financing (Housing) District No. 1-43 (Headwaters Villas Project) (“TIF 43”) and adopted tax increment financing plans therefore.

1.02. On May 25, 2022, the Board approved the 2022 Pooled TIF Allocation Plan (the “Allocation Plan”), which among other things, allocated certain pooled tax increment (“Pooled Increment”) in the amount of \$800,000 from the Pooled TIF Districts to TIF 42 and TIF 43 to pay eligible developer and public costs.

1.03. The Authority proposes to amend the Allocation Plan (the “Amendment”) to increase the amount of Pooled Increment to be allocated from the Pooled TIF Districts to TIF 42 and TIF 43 by \$80,000 to pay certain eligible developer and public costs, including environmental investigation and remediation costs as outlined in the purchase and development contracts related to TIF 42 and TIF 43.

Section 2. Amendment Approved. The Board hereby approves the Amendment and authorizes and directs Authority staff to implement the Amendment and take all actions necessary in connections therewith.

Section 3. Effective Date. This resolution shall be effective upon approval.

Approved by the Board of Commissioners of the City of Monticello Economic Development Authority on May 10, 2023.

President

ATTEST:

Executive Director

2022 Pooled TIF Allocation Plan

05-10-23

The City of Monticello Economic Development Authority (the “EDA”) administers the Tax Increment Financing Districts in the City of Monticello. Several TIF Districts have fulfilled increment payment obligations and show a balance of Extra Pooled Increment dollars as currently available for “Pooled” uses pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, inclusive, as amended (the “TIF Act”). To better utilize the available resource of Pooled Increment dollars, the EDA proposes to identify through a Pooled TIF Allocation Plan in which TIF Districts it will utilize these resources.

The general purpose of the Pooled TIF Allocation Plan is to provide additional assistance to development proposals through the use of the Pooled Increment funds to offset eligible costs related to the identified proposals or projects and also to match the Pooled Increment resources with the efforts being pursued in the EDA Workplan Goals and Objectives. The Pooled Increment must be allocated into like kind TIF District type such as new or pending Affordable Housing or Redevelopment TIF Districts.

The identified source of the Pooled TIF dollars and the proposed new or pending TIF District use is shown below in summary style format. The spreadsheet attached to the Pooled TIF Allocation Plan is a general guidance reference as its accuracy is not guaranteed.

1. Existing Redevelopment TIF Districts – 1-6, 1-20, 1-22 and 1-34:

The EDA will commit Pooled Increment dollars from the above identified Redevelopment TIF Districts into the pending Block 52 Redevelopment TIF District 1-45 in the amount of \$343,000 +/-.

The attached spreadsheet provides an estimate of available Pooled Increment dollars in the identified TIF Districts.

2. Existing Affordable Housing TIF Districts – 1-19, 1-22, 1-24, 1-29, 1-30:

The EDA will commit Pooled Increment dollars from the above identified Affordable Housing TIF Districts into the recently approved (not yet certified) Affordable Housing TIF Districts 1-42 and 1-43 in the amount of \$880,000 +/-.

The attached spreadsheet provides an estimate of available Pooled Increment dollars in the identified TIF Districts.

The EDA is not planning to decertify or close out any of the above identified TIF Districts in authorizing the Pooled TIF Allocation Plan. It is the EDA’s intention to periodically review the TIF Districts identified above in the future for potential additional Pooled Increment as needed. In authorizing the Plan, the EDA, as needed, may amend the budgets set forth in the impacted TIF District Plans as necessary to facilitate the allocation of resources as identified in the Plan.

2022 Pooled TIF Allocation Plan

05-25-22

The City of Monticello Economic Development Authority (the “EDA”) administers the Tax Increment Financing Districts in the City of Monticello. Several TIF Districts have fulfilled increment payment obligations and show a balance of Extra Pooled Increment dollars as currently available for “Pooled” uses pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, inclusive, as amended (the “TIF Act”). To better utilize the available resource of Pooled Increment dollars, the EDA proposes to identify through a Pooled TIF Allocation Plan in which TIF Districts it will utilize these resources.

The general purpose of the Pooled TIF Allocation Plan is to provide additional assistance to development proposals through the use of the Pooled Increment funds to offset eligible costs related to the identified proposals or projects and also to match the Pooled Increment resources with the efforts being pursued in the EDA Workplan Goals and Objectives. The Pooled Increment must be allocated into like kind TIF District type such as new or pending Affordable Housing or Redevelopment TIF Districts.

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The EDA is not planning to decertify or close out any of the above identified TIF Districts in authorizing the Pooled TIF Allocation Plan. It is the EDA’s intention to periodically review the TIF Districts identified above in the future for potential additional Pooled Increment as needed. In authorizing the Plan, the EDA, as needed, may amend the budgets set forth in the impacted TIF District Plans as necessary to facilitate the allocation of resources as identified in the Plan.

Purchase and Development Contract for TIF District 1-42

been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require;

(ii) Developer having delivered to the Authority an investment letter in a form reasonably satisfactory to the Authority.

(iii) Developer having received from the Authority a certificate of occupancy for the Minimum Improvements.

(b) *Terms of TIF Note.* The terms of the TIF Note will be substantially in the form shown in Schedule F in the form of the Resolution approving this Agreement and authorizing the TIF Note (the "Authorizing Resolution"), and the TIF Note will be subject to all terms of the Authorizing Resolution, which are incorporated herein by reference.

(c) *Termination of Right to TIF Note.* Notwithstanding anything to the contrary in this Agreement, if the conditions for delivery of the TIF Note are not met by the date five (5) years after certification of the TIF District, the Authority's obligation to deliver the TIF Note shall terminate; provided that the remainder of this Agreement shall remain in full force and effect.

(d) *Assignment of TIF Note.* The Authority acknowledges that the Developer may assign the TIF Note to one or more lenders that provide part of the financing for the construction of the Minimum Improvements. The Authority consents to such an assignment, conditioned upon the satisfaction of the conditions set forth in the Note, the receipt of an investment letter from such third party in a form reasonably acceptable to the Authority and an assignment in a form approved by the Board of Commissioners of the Authority.

(e) *Qualifications.* The Developer understands and acknowledges that the Authority makes no representations or warranties regarding the amount of TIF Note Available Tax Increment, or that revenues pledged to the TIF Note will be sufficient to pay the principal amount of and the interest on the TIF Note. Developer further acknowledges that estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or this Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely. If the Public Development Costs exceed the maximum aggregate principal amount of the TIF Note, such excess is the sole responsibility of Developer. The TIF Note shall be a special and limited obligation of the Authority and not a general obligation of the Authority or the City, and only TIF Note Available Tax Increments shall be used to pay the principal of the TIF Note.

(f) *Termination of Payments.* The Authority's obligation to make payments on the TIF Note on any Payment Date or any date thereafter shall be conditioned upon the requirement that (i) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement that has not been cured during the applicable cure period, (ii) this Agreement shall not have been terminated pursuant to Section 9.2, and (iii) a certificate of occupancy has been issued for the Project.

Section 3.11. Authority Grant. In addition to the reimbursement of a portion of Developer's Public Development Costs through issuance of the TIF Note, the Authority will reimburse a portion of the Developer's costs incurred to undertake additional environmental investigation relating to the

Development Property by preparing a supplemental Phase II Investigation Report, (the “Phase II Report”) for the Development Property and the Apartments Property (the “Headwaters Property”) and creating and obtaining of the RAP and CCP (the “Study Costs”) to the extent required by and in accordance with all applicable local, state and federal environmental laws and regulations, the RAP and CCP, or other applicable action plan from another appropriate regulatory authority (collectively, the “Remediation Plan”) with a grant to Developer (the “Authority Grant”). Developer agrees that the portion of the Study Costs that Developer incurs in preparing the supplemental Phase II Report and in creating and obtaining regulatory approvals for the Remediation Plan will be capped at \$80,000 for the Headwaters Property. The assistance shall be provided pursuant to and in conformity with the Authority’s Policy Statements for Management of Available Tax Increment Financing Funds, adopted by the Authority on January 10, 2018, the 2022 Pooled TIF Allocation Plan, adopted on May 25, 2022 and the TIF Act. The grant shall be in an amount not to exceed \$80,000 applicable to the Headwaters Property, provided that the grant amount for the Development Property shall be calculated on a pro-rata basis based on the square footage of the Development Property as compared to the square footage of the Headwaters Property. The Authority Grant and shall be disbursed to the Developer in one or more installments upon the Developer having delivered to the Authority evidence of Study Costs paid or incurred, as well as one or more certificates signed by the Developer’s duly authorized representative, containing the following: (A) a statement that each cost identified in the certificate is a Study Cost as defined in this Agreement and that no part of such cost has been included in any previous certification; and (B) reasonable evidence that each identified Study Cost has been paid or incurred by or on behalf of the Developer; and (C) a statement that, to the Developer’s knowledge, no uncured Event of Default by the Developer has occurred and is continuing under this Agreement; the Authority may, if not satisfied that the conditions described herein have been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require.

In the event that the total Study Costs for the Headwaters Property exceed \$80,000, the EDA may increase the amount of assistance for such costs in its sole and absolute discretion subject to approval by the Board of Commissioners or the Developer may terminate this Agreement prior to acquiring the Development Property from the EDA.

Following the Closing Date and the acquisition of the Development Property by the Developer, the Developer may utilize any remaining undisbursed proceeds of the Authority Grant allocable to the Development Property (provided that such Authority Grant shall not exceed \$80,000 for the entire Headwaters Property) to remove or remediate any petroleum products or other pollutants, contaminant, or other Hazardous Material on the Developer Property in accordance with the Remediation Plan or to otherwise comply with and complete all actions required under the Remediation Plan and to obtain a certificate of completion from the MPCA and any other completion or closure letter from any other appropriate regulatory authority that the remediation on the Headwaters Property has been completed to the satisfaction of the MPCA or other authority and in accordance with the Remediation Plan (the “Remediation Costs”), and any no further action, no association, or other liability assurance available from the MPCA or other regulatory authority upon Developer having delivered to the Authority evidence of Remediation Costs paid or incurred, as well as one or more certificates signed by the Developer’s duly authorized representative, containing the following: (A) a statement that each cost identified in the certificate is a Remediation Cost as defined in this Agreement and that no part of such cost has been included in any previous certification; and (B) reasonable evidence that each identified Remediation Cost has been paid or incurred by or on behalf of the Developer; and (C) a statement that,

to the Developer's knowledge, no uncured Event of Default by the Developer has occurred and is continuing under this Agreement; the Authority may, if not satisfied that the conditions described herein have been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require. Except for the portion of the Authority Grant allocable to the Development Property and the TIF Note, the Authority shall not have any obligation to reimburse the Developer for Remediation Costs relating to the Development Property.

Section 3.12. No Business Subsidy. The parties agree and understand that the primary purpose of any financial assistance to the Developer under this Agreement is to facilitate development of housing and is therefore not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995 (the "Business Subsidy Act"). The Developer releases and waives any claim against the Authority and its governing body members, officers, agents, and employees thereof arising from application of the Business Subsidy Act to this Agreement, including without limitation any claim that the Authority failed to comply with the Business Subsidy Act with respect to this Agreement.

Section 3.13. Payment of Administrative Costs. The Authority acknowledges that Developer has deposited with the Authority \$10,000. The Authority will use such deposit to pay "Administrative Costs," which term means out of pocket costs incurred by the Authority together with staff costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Development Property. At Developer's request, but no more often than monthly, the Authority will provide Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within twenty (20) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If any balance of funds deposited remains upon issuance of the Certificate of Completion pursuant to Section 4.4 of this Agreement, the Authority shall promptly return such balance to Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs.

Purchase and Development Contract for TIF District 1-43

knowledge, no uncured Event of Default by the Developer has occurred and is continuing under this Agreement; the Authority may, if not satisfied that the conditions described herein have been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require;

(ii) Developer having delivered to the Authority an investment letter in a form reasonably satisfactory to the Authority.

(iii) Developer having received from the Authority a certificate of occupancy for the Minimum Improvements.

(b) *Terms of TIF Note.* The terms of the TIF Note will be substantially in the form shown in Schedule F in the form of the Resolution approving this Agreement and authorizing the TIF Note (the “Authorizing Resolution”), and the TIF Note will be subject to all terms of the Authorizing Resolution, which are incorporated herein by reference.

(c) *Termination of Right to TIF Note.* Notwithstanding anything to the contrary in this Agreement, if the conditions for delivery of the TIF Note are not met by the date five (5) years after certification of the TIF District, the Authority’s obligation to deliver the TIF Note shall terminate; provided that the remainder of this Agreement shall remain in full force and effect.

(d) *Assignment of TIF Note.* The Authority acknowledges that the Developer may assign the TIF Note to one or more lenders that provide part of the financing for the construction of the Minimum Improvements. The Authority consents to such an assignment, conditioned upon the satisfaction of the conditions set forth in the Note, the receipt of an investment letter from such third party in a form reasonably acceptable to the Authority and an assignment in a form approved by the Board of Commissioners of the Authority.

(e) *Qualifications.* The Developer understands and acknowledges that the Authority makes no representations or warranties regarding the amount of TIF Note Available Tax Increment, or that revenues pledged to the TIF Note will be sufficient to pay the principal amount of and the interest on the TIF Note. Developer further acknowledges that estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or this Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely. If the Public Development Costs exceed the maximum aggregate principal amount of the TIF Note, such excess is the sole responsibility of Developer. The TIF Note shall be a special and limited obligation of the Authority and not a general obligation of the Authority or the City, and only TIF Note Available Tax Increments shall be used to pay the principal of the TIF Note.

(f) *Termination of Payments.* The Authority’s obligation to make payments on the TIF Note on any Payment Date or any date thereafter shall be conditioned upon the requirement that (i) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement that has not been cured during the applicable cure period, (ii) this Agreement shall not have been terminated pursuant to Section 9.2, and (iii) a certificate of occupancy has been issued for the Project.

Section 3.11. Authority Grant. In addition to the reimbursement of a portion of Developer’s

Public Development Costs through issuance of the TIF Note, the Authority will reimburse a portion of the Developer's costs incurred to undertake additional environmental investigation relating to the Development Property by preparing a supplemental Phase II Investigation Report, (the "Phase II Report") for the Development Property and the Villas Property (the "Headwaters Property") and creating and obtaining of the RAP and CCP (the "Study Costs") to the extent required by and in accordance with all applicable local, state and federal environmental laws and regulations, the RAP and CCP, or other applicable action plan from another appropriate regulatory authority (collectively, the "Remediation Plan") with a grant to Developer (the "Authority Grant"). Developer agrees that the portion of the Study Costs that Developer incurs in preparing the supplemental Phase II Report and in creating and obtaining regulatory approvals for the Remediation Plan will be capped at \$80,000 for the Headwaters Property. The assistance shall be provided pursuant to and in conformity with the Authority's Policy Statements for Management of Available Tax Increment Financing Funds, adopted by the Authority on January 10, 2018, the 2022 Pooled TIF Allocation Plan, adopted on May 25, 2022 and the TIF Act. The grant shall be in an amount not to exceed \$80,000 applicable to the Headwaters Property, provided that the grant amount for the Development Property shall be calculated on a pro-rata basis based on the square footage of the Development Property as compared to the square footage of the Headwaters Property. The Authority Grant and shall be disbursed to the Developer in one or more installments upon the Developer having delivered to the Authority evidence of Study Costs paid or incurred, as well as one or more certificates signed by the Developer's duly authorized representative, containing the following: (A) a statement that each cost identified in the certificate is a Study Cost as defined in this Agreement and that no part of such cost has been included in any previous certification; and (B) reasonable evidence that each identified Study Cost has been paid or incurred by or on behalf of the Developer; and (C) a statement that, to the Developer's knowledge, no uncured Event of Default by the Developer has occurred and is continuing under this Agreement; the Authority may, if not satisfied that the conditions described herein have been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require.

In the event that the total Study Costs for the Headwaters Property exceed \$80,000, the EDA may increase the amount of assistance for such costs in its sole and absolute discretion subject to approval by the Board of Commissioners or the Developer may terminate this Agreement prior to acquiring the Development Property from the EDA.

Following the Closing Date and the acquisition of the Development Property by the Developer, the Developer may utilize any remaining undisbursed proceeds of the Authority Grant allocable to the Development Property (provided that such Authority Grant shall not exceed \$80,000 for the entire Headwaters Property) to remove or remediate any petroleum products or other pollutants, contaminant, or other Hazardous Material on the Developer Property in accordance with the Remediation Plan or to otherwise comply with and complete all actions required under the Remediation Plan and to obtain a certificate of completion from the MPCA and any other completion or closure letter from any other appropriate regulatory authority that the remediation on the Headwaters Property has been completed to the satisfaction of the MPCA or other authority and in accordance with the Remediation Plan (the "Remediation Costs"), and any no further action, no association, or other liability assurance available from the MPCA or other regulatory authority upon Developer having delivered to the Authority evidence of Remediation Costs paid or incurred, as well as one or more certificates signed by the Developer's duly authorized representative, containing the following: (A) a statement that each cost identified in the certificate is a Remediation Cost as defined in this Agreement and that no part of such

cost has been included in any previous certification; and (B) reasonable evidence that each identified Remediation Cost has been paid or incurred by or on behalf of the Developer; and (C) a statement that, to the Developer's knowledge, no uncured Event of Default by the Developer has occurred and is continuing under this Agreement; the Authority may, if not satisfied that the conditions described herein have been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require. Except for the portion of the Authority Grant allocable to the Development Property and the TIF Note, the Authority shall not have any obligation to reimburse the Developer for Remediation Costs relating to the Development Property.

Section 3.12. No Business Subsidy. The parties agree and understand that the primary purpose of any financial assistance to the Developer under this Agreement is to facilitate development of housing and is therefore not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995 (the "Business Subsidy Act"). The Developer releases and waives any claim against the Authority and its governing body members, officers, agents, and employees thereof arising from application of the Business Subsidy Act to this Agreement, including without limitation any claim that the Authority failed to comply with the Business Subsidy Act with respect to this Agreement.

Section 3.13. Payment of Administrative Costs. The Authority acknowledges that Developer has deposited with the Authority \$10,000. The Authority will use such deposit to pay "Administrative Costs," which term means out of pocket costs incurred by the Authority together with staff costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Development Property. At Developer's request, but no more often than monthly, the Authority will provide Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within twenty (20) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If any balance of funds deposited remains upon issuance of the Certificate of Completion pursuant to Section 4.4 of this Agreement, the Authority shall promptly return such balance to Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs.