

3A. PUBLIC HEARING: Consideration of Adopting Resolution No. 2023-43 authorizing an Amendment to the UMC MIF (Minnesota Investment Fund) Grant Agreement and the MIF Loan Agreement extending the job creation compliance timeline from June 30, 2023 to June 30, 2024

<p>Prepared by: Economic Development Manager</p>	<p>Meeting Date: 5/22/2023</p>	<p><input type="checkbox"/> Consent Agenda Item <input checked="" type="checkbox"/> Public Hearing Item <input type="checkbox"/> Regular Agenda Item</p>
<p>Reviewed by: Community Development Director</p>	<p>Approved by: City Administrator</p>	

ACTION REQUESTED

Motion to adopt Resolution No. 2023-43 authorizing an amendment to the UMC MIF (Minnesota Investment Fund) Grant Agreement extending the job creation compliance timeline from June 30, 2023 to June 30, 2024.

PREVIOUS COUNCIL ACTION

September 28, 2020: Adopted Resolution 2020-65 amending UMC MIF grant and loan agreement to adjust project completion date and new hire timeframe.

REFERENCE AND BACKGROUND

In 2020 UMC received funding assistance through the MN Department of Employment and Economic Development’s Minnesota Investment Fund (MIF) for its 58,000 sq. ft. facility expansion. As a condition of receiving the funds, the company is required to create 43 new full-time equivalent jobs.

The \$300,000 UMC MIF Grant was awarded to the City. The City in turn provided the funds to UMC as a forgivable loan in exchange for completing the \$10,831,000 facility expansion project and creating 43 new jobs. The MIF funds distributed were used to purchase equipment. If UMC achieves its hiring goals, the loan is 100 percent forgiven (becomes a grant). If UMC falls short of its job creation goals, a pro-rata portion (\$6,976.75 per new job) of the funding is forgiven. The balance would need to be repaid to the State.

Upon completion of the new building in January 2022, UMC began installing equipment and hiring new staff. In a recent update to City staff regarding progress in meeting its hiring objectives, UMC reported that it has not yet achieved the job creation goals. Company officials

indicated that this is a very challenging time to add new staff. While they have added several new hires, when factoring in retirements and attrition, they have not yet been able to tally a staff headcount that translates to 43 new employees as required under the grant.

UMC is eligible to have the grant performance timeline extended by 12 months, and company leadership indicated they would like to pursue extending the deadline from June 2023 to June 2024. This requires amending the MIF Grant Agreement with the MN-DEED as well as the MIF Loan Agreement between the City and UMC to reflect the timeline extension. A resolution incorporating timeline extension language for both documents was prepared by the EDA attorney. It is attached to this report as exhibit A. If the City Council adopts the resolution, it will be provided to MN-DEED staff, and they in turn will send City staff a MIF Grant Agreement Amendment form that can be executed by the Mayor and City Administrator.

The proposed amendments are the second amendments of the MIF Grant Agreement and the Loan Agreement. The first amendments to both those documents, revising the expansion project timeline, were authorized by the City Council on September 28, 2020, after being requested by UMC due to its delayed project construction start.

Per Minnesota Statutes governing use of MIF assistance dollars and the Business Subsidy statutes, a public hearing is required to be held as part of the City Council's consideration of the requested MIF Grant Agreement Amendment and Loan Agreement Amendment.

- I. **Budget Impact:** The budget impact related to presenting the MIF Grant Agreement Amendment and the Loan Agreement Amendment to the City Council is relatively minor. The work tasks consisted of the drafting the resolution along with the public hearing notice publication costs. The total cost for these items is expected to be approximately \$1,400 to \$1,600.
- II. **Staff Workload Impact:** Tasks related to consideration of the proposed Amendments consisted of document drafting and report completion. Staff involved in the effort included the EDA attorney, the Community Development Director, Community Economic Development Coordinator, and the Economic Development Manager. No additional staff are required to be involved in this effort.
- III. **Comprehensive Plan Impact:** Continuing to support Monticello industrial users who meet the city's goals for employment and tax base is consistent with the Monti 2040 Value Statement for "A diversified and strong local economy competitive at regional, state and national levels." The Monti 2040 Plan's Economic Development chapter includes numerous statements aligning with the UMC expansion project, including those for business retention, reinvestment, tax base growth and workforce development.

STAFF RECOMMENDATION

City staff supports adopting the Resolution authorizing Amendments to the UMC MIF Grant Agreement and the MIF Loan Agreement. Workforce recruitment has been and continues to be challenging for the manufacturing sector; the extension amendments will provide UMC with more time to add the required 43 new FTE staff to their pre-project baseline employee total of 200 FTEs.

SUPPORTING DATA

- A. City Council Resolution No. 2023-43
- B. MIF Second Amendment to Loan Agreement
- C. Public Hearing Notice

CITY OF MONTICELLO

RESOLUTION NO. 2023-43

**RESOLUTION APPROVING A SECOND AMENDMENT TO MINNESOTA
INVESTMENT FUND GRANT AND LOAN AGREEMENTS IN CONNECTION
WITH UMC REAL ESTATE, LLC AND A COMPLIANCE DATE EXTENSION
TO A BUSINESS SUBSIDY PROVIDED THEREIN**

Section 1. Recitals.

1.01. To assist UMC Real Estate, LLC, a Minnesota limited liability company (the “Borrower”), in financing the purchase of machinery and equipment (the “Equipment”) in connection with an expansion of its existing manufacturing facility (the “Facility”) on real property located in the City of Monticello, Minnesota (the “City”), the City previously applied for and received a Minnesota Investment Fund (“MIF”) grant and entered into a Grant Agreement (the “Original Grant Agreement”) with the Minnesota Department of Employment and Economic Development (“DEED”) in connection with the grant of MIF funds in the amount of \$300,000 (the “MIF Grant”), which the City loaned to the Borrower to finance a portion of the Equipment pursuant to a Minnesota Investment Fund Loan Agreement (the “Original Loan Agreement”) between the City and the Borrower, which provided the MIF Grant to the Borrower as a forgivable loan.

1.02. The Borrower previously requested an extension of the required time to construct the Facility and to purchase the Equipment, and DEED and the City entered into a First Amendment to the Grant Agreement, dated as of September 28, 2020 (the “First Grant Agreement Amendment” and with the Original Grant Agreement, the “Grant Agreement”) and the City and the Borrower entered into a corresponding First Amendment to the Loan Agreement, dated as of September 28, 2020 (the “First Loan Agreement Amendment” and with the Original Loan Agreement, the “Loan Agreement”).

1.03. The Grant Agreement and the Loan Agreement include business subsidy agreements under Minnesota Statutes, Sections 116J.993 to 116J.995, as amended (the “Business Subsidy Act”), which set forth certain job and wage goals to be satisfied by the Borrower prior to the compliance date as set forth in the Grant Agreement and the Loan Agreement (the “Compliance Date”).

1.04. The Borrower has requested an extension of the Compliance Date for up to one year and the City Council of the City (the “Council”) held a duly noticed public hearing on this date hereof as required by Section 116J.994, subdivision 5 of the Business Subsidy Act regarding the extension of the Compliance Date.

1.05. DEED has agreed to the extension of the Compliance Date and is preparing a Second Amendment to the Grant Agreement (the “Second Grant Agreement Amendment”), and there has been prepared a corresponding Second Amendment to the Loan Agreement (the

“Second Loan Agreement Amendment”) to extend the Compliance Date for Council consideration and approval.

Section 2. Approval of Second Grant Agreement Amendment and Second Loan Agreement Amendment.

2.01. The City hereby finds, determines and declares that the extension of the Compliance Date requested by Borrower is in the public interest of the City.

2.02. The Second Loan Agreement Amendment, as presented to the Council in substantially the form submitted, and the Second Grant Agreement Amendment, to be prepared by DEED in a form consistent with the intent of this resolution and approved by the attorney to the City of Monticello Economic Development Authority, together with any related documents necessary in connection therewith (collectively, “Amendment Documents”), are hereby in all respects approved and the Mayor and City Administrator are hereby authorized and directed to execute the Amendment Documents to which the City is a party, on behalf of the City and to carry out, on behalf of the City, the City’s obligations thereunder when all conditions precedent thereto have been satisfied.

2.03. The approval hereby given to the Amendment Documents includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by legal counsel to the City and by the officers authorized herein or by the City to execute said documents prior to their execution; and said officers are hereby authorized to approve said changes on behalf of the City. The execution of any instrument by the appropriate officers of the City shall be conclusive evidence of the approval of such document in accordance with the terms hereof. In the event of absence or disability of the officers, any of the documents authorized to be executed by this Resolution may be executed without further act or authorization of the Council by any duly designated acting official, or by such other officer or officers of the Council as, in the opinion of the City Attorney, may act in their behalf.

2.04. Upon execution and delivery of the Amendment Documents, the officers and employees of the City are hereby authorized and directed to take or cause to be taken such actions as may be necessary on behalf of the City to implement the Amendment Documents, when all conditions precedent thereto have been satisfied.

Approved by the City Council of the City of Monticello this 22nd of May, 2023.

Mayor

ATTEST:

City Clerk

SECOND AMENDMENT TO LOAN AGREEMENT

This Second Amendment to Loan Agreement (“Amendment”) is made this __ day of May, 2023, between UMC Real Estate, LLC, a Minnesota limited liability company ("Borrower") and the City of Monticello, a Minnesota municipal corporation ("Lender").

RECITALS

A. Lender has received Minnesota Investment Fund (“MIF”) assistance from the Minnesota Department of Employment and Economic Development (“DEED”) in the amount of \$300,000, for the purpose of assisting the Borrower with the acquisition of certain machinery and equipment (the “Equipment”) necessary for the expansion of its light manufacturing facility (the “Facility”) in the City of Monticello, Minnesota (the “City”), pursuant to a Minnesota Investment Fund Grant Contract, Grant Number CDAP-20-0004-H-FY20, between DEED and the Lender, dated as of February 7, 2020, as amended by that certain First Amendment to Grant Agreement, dated September 28, 2020 (collectively, the “Grant Agreement”).

B. The MIF assistance is structured as a forgivable loan by the Lender to the Borrower, as provided in the Loan Agreement between Lender and Borrower dated as of March 9, 2020, as amended by that certain First Amendment to Loan Agreement, dated September 28, 2020 (collectively, the “Loan Agreement”).

C. The Grant Agreement and the Loan Agreement contain a Business Subsidy Agreements (the “Subsidy Agreement”) which sets forth certain job and wage goals in accordance with Minnesota Statutes, Section 116J.993 to 116J.995, as amended (the “Business Subsidy Act”). The Subsidy Agreement required the Developer to meet certain job and wage goals within two years of the June 30, 2021 (the “Compliance Date”).

D. In accordance with the Business Subsidy Act and the Grant Agreement, the City may, after receiving approval from DEED and a duly noticed public hearing, extend the Compliance Date by up to one year.

E. DEED has approved an extension of the Compliance Date and has agreed to amend the Grant Agreement and the City has determined, after holding a duly noticed public hearing May 22, 2023, to execute this Amendment to extend the Compliance Date by one year to June 30, 2024.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to the following amendments to the Loan Agreement:

1. Amendment to Section 2(b) of Loan Agreement. Section 2(b) of the Loan Agreement is amended as follows:

(b) Payments of principal shall be deferred until June 30, 2024 (the “Compliance Date”). All principal payable on the Loan shall be forgiven if the Borrower creates the

required number of jobs at the agreed wages, as described in Section 4 of this Agreement, by the Compliance Date.

2. Amendment to Section 2(c) of Loan Agreement. Section 2(c) of the Loan Agreement is amended as follows:

(c) If the Borrower fails to meet the job and wage goals by the extended Compliance Date, the amount of the Loan shall be reduced as described in Section 4(c), and the Borrower shall be required to repay all or a pro rata share of the Loan on an accelerated basis. If the Borrower is required to repay a pro rata share, the amount shall be determined as described in Section 4(c) of this Agreement.

3. Amendment to Section 4(b) of the Loan Agreement. Section 4(b) of the Loan Agreement is amended as follows:

(b) *Job and Wage Goals.* The “Benefit Date” of the assistance provided in this Agreement is June 30, 2021. By or before June 30, 2024 (the “Compliance Date”), the Borrower shall cause to be created at least 43 full-time jobs permanent to the Facility. The Borrower shall cause the average hourly wage of 4 of the new jobs to be at least \$15 per hour, and the average hourly wage of 39 of the new jobs to be at least \$17 per hour, exclusive of benefits. Notwithstanding anything to the contrary herein, if the wage and job goals described in this paragraph are met by the Compliance Date, those goals are deemed satisfied despite the Borrower’s continuing obligations under Sections 3.8(a)(6) and 3.8(d).

4. Amendment to Promissory Note. The Promissory Note delivered to the Lender by the Borrower in connection with the Loan is hereby amended as provided in Exhibit A to this Amendment. The Borrower shall provide the amended Promissory Note as soon as practicable, but in no event later than August 1, 2023, to the Lender, and the Lender shall deliver the cancelled Promissory Note to the Borrower.

5. Loan Agreement in Full Force and Effect. Except as amended by this Amendment, the Loan Agreement shall remain unchanged and in full force and effect. In case of any conflict between the terms and provisions of the Loan Agreement and of this Amendment, the terms and provisions of this Amendment shall control.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the proper officers thereunto duly authorized on the day and year first written above.

CITY OF MONTICELLO, MINNESOTA

By: _____

Its Mayor

By: _____

Its City Clerk

[SIGNATURE PAGE TO SECOND AMENDMENT TO LOAN AGREEMENT – CITY OF MONTICELLO]

UMC REAL ESTATE, LLC

By: _____

Title: _____

[SIGNATURE PAGE TO SECOND AMENDMENT TO LOAN AGREEMENT – UMC REAL ESTATE, LLC]

PROMISSORY NOTE

-\$300,000-

April 1, 2020

-0.0%-

UMC Real Estate, LLC, a Minnesota limited liability company (“Maker”), for value received, hereby promises to pay to the City of Monticello, a Minnesota municipal corporation or its assigns (City and any assigns are collectively referred to herein as "Holder"), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of Three Hundred Thousand and no/100ths Dollars (\$300,000) or so much thereof as may be advanced under this Note, without interest, in any coin or currency that at the time or times of payment is legal tender for the payment of private debts in the United States of America. The principal of this Note shall be forgiven or paid as described in the Loan Agreement between Maker and Holder dated as March 9, 2020, as amended (the “Loan Agreement”):

1. Payments of principal shall be deferred until June 30, 2024. If Maker has fully complied with its obligation to create jobs at the wage levels set forth within the Loan Agreement, the entire amount of principal due and payable under this Note shall be forgiven.

2. If Maker fails to comply with its job and wage obligations as described in the Loan Agreement, the Maker shall be required to repay upon demand from the Holder a pro rata portion of this Note as described in Section 4(c) of the Loan Agreement.

3. The Maker shall have the right to prepay the principal of this Note, in whole or in part, on any date.

4. This Note is given pursuant to the Loan Agreement and a personal guaranty of Donald J. Tomann (the “Guaranty”). If any such security is found to be invalid for whatever reason, such invalidity shall constitute an Event of Default hereunder.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, the Guaranty, or any other instrument securing this Note are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If an Event of Default occurs and continues beyond any applicable cure period under the Loan Agreement, the Guaranty, or any other instrument securing this Note, then the Holder of this Note may at its right and option, without notice, declare immediately due and payable the principal balance of this Note, together with reasonable attorneys fees and expenses incurred by the Holder of this Note in collecting or enforcing payment hereof, whether by lawsuit or otherwise, and all other sums due hereunder or any instrument securing this Note. The Maker of this Note agrees that the Holder of this Note may, without notice to and without affecting the liability of the Maker, accept additional or substitute security for this Note, or release any security or any party liable for this Note or extend or renew this Note.

5. The remedies of the Holder of this Note as provided herein, and in the Loan Agreement, the Guaranty, or any other instrument securing this Note shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

6. If any term of this Note, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

7. It is intended that this Note is made with reference to and shall be construed as a Minnesota contract and is governed by the laws thereof. Any disputes, controversies, or claims arising out of this Note shall be heard in the state or federal courts of Minnesota, and all parties to this Note waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

8. The performance or observance of any promise or condition set forth in this Note may be waived, amended, or modified only by a writing signed by the Maker and the Holder. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right, or remedy.

9. IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of the _____ day of _____, 2023.

UMC REAL ESTATE, LLC

By: _____

Title: _____

NOTICE OF PUBLIC HEARING

**CITY OF MONTICELLO
WRIGHT COUNTY, MINNESOTA**

NOTICE IS HEREBY GIVEN that the City Council (the "Council") of the City of Monticello, Minnesota (the "City") will meet on Monday, May 22, 2023 at approximately 6:30 P.M. or as soon thereafter as the matter may be heard, in the Mississippi Room of the Monticello Community Center located at 505 Walnut Street in the City to conduct a public hearing regarding a business subsidy previously granted by the City to UMC Real Estate, LLC, a Minnesota limited liability company (the "Recipient"), pursuant to Minnesota Statutes, Sections 116J.993 through 116J.995, as amended (the "Business Subsidy Act").

The business subsidy previously granted by the City to the Recipient was a Minnesota Investment Fund forgivable loan from the Minnesota Department of Employment and Economic Development in the amount of \$300,000 in connection with the purchase of machinery and equipment for a new manufacturing facility in the City. The purpose of the public hearing is to discuss an extension for the compliance date for the Recipient to meet the job and wage goals provided in the Loan Agreement, dated as of February 7, 2020, and as amended by the First Amendment to Loan Agreement, dated as of September 28, 2020, by and between the City and the Recipient, which would extend the date of compliance for up to one year.

Information about the business subsidy and the proposed extension is available for inspection at the office of the City Clerk at City Hall during regular business hours. After the public hearing the Council will consider extending the business subsidy pursuant to the Business Subsidy Act. A person with residence in or the owner of taxable property in the City may file a written complaint with the City if the City fails to comply with the Business Subsidy Act, and no action may be filed against the City for the failure to comply unless a written complaint is filed.

All interested persons may appear at the hearing and present their views on the matter orally or provide their comments prior to the meeting in writing.

Dated: May 11, 2023

BY ORDER OF THE CITY COUNCIL

/s/ _____
City Clerk