

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

AGENDA

Thursday, October 27, 2022 at 4:00 p.m.
Council Chambers
Governmental Services Building

1. ROLL CALL
2. MINUTES – Approval or correction
 - 2.1 July 28, 2022 HEDA Minutes
3. MOTIONS
4. RESOLUTIONS
 - 4.1 2022-10H Resolution Approving A Preliminary Development Agreement Between P&R Properties Twin Ports, LLC And The Hermantown Economic Development Authority
 - 4.2 2022-11H Resolution Accepting The Proposal From Ehlers, Inc For Tax Increment Financing Services
 - 4.2 2022-12H Resolution Approving An Agreement For Consulting Services To Provide Investigative Services For Hermantown Enwalls TIF Analysis With LHB, Inc In An Amount Not To Exceed \$12,500.00
5. WORK SESSION – Project Updates
6. RECESS

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

AGENDA

Thursday, July 28, 2022 at 5:00 p.m.
Council Chambers
Governmental Services Building

ROLL CALL: Commissioners Geissler, Nelson, Ronchetti, Haapanen, Mayor Boucher

CITY STAFF: John Mulder, City Administrator; Eric Johnson, Community Development Director; Steve Overom, Attorney

ABSENT: Commissioners Peterson and Hauschild

VISITORS: Heidi Timm-Bijold

MINUTES – Motion by Commissioner Haapanen, second by Commissioner Rhoncetti to approve the minutes of the June 8, 2022 Joint City Council and HEDA meeting. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

MOTIONS

Motion by Commissioner Nelson, second by Commissioner Geissler to establish the amount of bond at \$300,000 required to be provided by the Treasurer. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

Motion by Commissioner Nelson, second by Commissioner Haapanen to approve a report to the City Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

Motion by Commissioner Geissler, second by Commissioner Rhoncetti to approve for submission to the City Council a budget for the succeeding year of HEDA. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

Motion by Commissioner Nelson, second by Commissioner Geissler to approve a report to the City Council on the Enabling Resolution. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

Motion by Commissioner Haapanen, second by Commissioner Rhoncetti to appoint depositories. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

Motion by Commissioner Geissler, second by Commissioner Nelson to approve an audit to submit to the City Council. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

RESOLUTIONS

2022-06H Resolution Approving A Consent Related To The Development Contract Between The Hermantown Economic Development Authority, The City Of Hermantown And KTJ 360, LLC For The Pillars Of Hermantown Senior Living Project

Motion by Commissioner Rhoncetti, second by Commissioner Nelson to adopt Resolution 2022-06H, Resolution Approving A Consent Related To The Development Contract Between The Hermantown Economic Development Authority, The City Of Hermantown And KTJ 360, LLC For The Pillars Of Hermantown Senior Living Project. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

2022-07H Resolution Approving An Agreement For Consulting Services To Provide An Alternative Urban Areawide Review With Braun Intertec Corporation In An Amount Not To Exceed \$86,925.00

Motion by Commissioner Geissler, second by Commissioner Haapanen to adopt Resolution 2022-07H, Resolution Approving An Agreement For Consulting Services To Provide An Alternative Urban Areawide Review With Braun Intertec Corporation In An Amount Not To Exceed \$86,925.00. Motion passed unanimously on a roll call vote: 5-0. Commissioners Peterson and Hauschild, absent.

2022-08H Resolution Approving An Agreement For Consulting Services With Mammoth Sports Construction To Design And Develop A Multi Use Development In An Amount Not To Exceed \$110,000.00

Motion by Commissioner Geissler, second by Commissioner Haapanen to adopt Resolution 2022-08H, Resolution Approving An Agreement For Consulting Services With Mammoth Sports Construction To Design And Develop A Multi Use Development In An Amount Not To Exceed \$110,000.00. Motion passed unanimously on a roll call vote: 5-0. Commissioners Peterson and Hauschild, absent.

2022-09H Resolution Approving A Consent To The Assignment And Assumption Agreements Between KTJ 360, LLC And Pillars Of Hermantown LLC And Authorizing And Directing The President And Secretary Of HEDA To Execute And Deliver The Consent On Behalf Of HEDA

Motion by Commissioner Haapanen, second by Commissioner Nelson to adopt Resolution 2022-09H, Resolution Approving A Consent To The Assignment And Assumption Agreements Between KTJ 360, LLC And Pillars Of Hermantown LLC And Authorizing And Directing The President And Secretary Of HEDA To Execute And Deliver The Consent On Behalf Of HEDA. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

WORK SESSION

Discussion on P& R Properties: The HEDA Board discussed the proposed project at the Engwall's site. No formal plans or financial data have been provided to date to the City. P& R has been told that they will need to get zoning approval before HEDA or the City would consider an application for business subsidy. P&R has been asked to enter into an inducement agreement and provide some escrow to cover the initial costs that the City might incur for legal services or financial analysis.

RECESS

Next meeting was set for August 25, 2022 at 5:00 p.m.

Motion by Commissioner Nelson, second by Commissioner Geissler, to recess the Hermantown Economic Development Authority meeting at 6.27 p.m. Motion passed unanimously on a voice vote: 5-0. Commissioners Peterson and Hauschild, absent.

Recorded by:

John Mulder, City Administrator

TO: HEDA Members
FROM: John Mulder, Executive Director



DATE: October 20, 2022 **Meeting Date:** 10/27/2022
SUBJECT: Tax Increment Financing – **Agenda Item:** 4
P&R Properties

REQUESTED ACTION

Approve several contracts related to business subsidy application for the P&R Properties development at the former Engwall’s site at 4747 Hermantown Road.

BACKGROUND

HEDA has received an application for a business subsidy and a seven page document entitled “The Greenhouse Development Proposal” (“Proposal”) for a project on certain real estate located at 4747 Hermantown Road within the City of Hermantown (“City”).

That application will require the City to engage several consultants to review to determine if the project is eligible for tax increment financing (TIF) and if so, to what extent. We are also proposing a preliminary development agreement outlining the City’s expectations for that development up front with the developer before either party gets too far down the path.

SOURCE OF FUNDS (if applicable) Expenses would be covered by escrow amounts provided by P& R.

ATTACHMENTS

Resolution 2022-10 Preliminary Development Agreement
Resolution 2022-11 Ehlers Proposal
Resolution 2022-12 LHB Inc Contract

Hermantown Economic Development Authority
Resolution No. 2022-10H

HEDA Commissioner _____ introduced the following resolution and moved its adoption:

**RESOLUTION APPROVING A PRELIMINARY DEVELOPMENT AGREEMENT
BETWEEN P&R PROPERTIES TWIN PORTS, LLC AND THE HERMANTOWN
ECONOMIC DEVELOPMENT AUTHORITY**

WHEREAS, P & R Properties Twin Ports, LLC, the “Developer” submitted to HEDA on September 22, 2022 an incomplete Application for Business Subsidy (“Application”) and a seven (7) page document entitled “The Greenhouse Development Proposal” (“Proposal”) for a project on certain real estate located at 4747 Hermantown Road within the City of Hermantown (“City”).

WHEREAS, the Developer has informed HEDA and the City that without financial assistance in the form of tax increment financing, as permitted under Minnesota law, the construction and operation of the Project set forth in the Proposal would not be economically feasible.

WHEREAS, HEDA and the City desire to work with the Developer in an effort to refine the nature and scope of the Project and to determine the level of tax increment financing assistance, if any, that might be provided to the Developer in connection with the Project.

WHEREAS, HEDA and the City have determined that in order to provide tax increment financing assistance in connection with the Project, it will be necessary for the City to create a tax increment district under Minnesota Statutes, §§ 469.170-469.178

WHEREAS, the Developer provided City and HEDA with a signed Inducement Agreement dated August 11, 2022 (“Inducement Agreement”) and provided City with a Five Thousand and No/100 Dollars (\$5,000.00) deposit pursuant to the Inducement Agreement.

WHEREAS, the Developer, HEDA and the City desire to set forth their understandings concerning the basis upon which each will proceed to formalize their participation in the Project, which participation is contingent upon further study and approval.

WHEREAS, the HEDA Commissioners have reviewed the recommendation of the HEDA staff and the Preliminary Development Agreement and believe that it is in the best interests of HEDA that the contract for the Project be awarded to LHB Inc. and the form of Consulting Agreement be approved.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

1. The Preliminary Development Agreement substantially in the form of the one attached hereto as Exhibit A is hereby approved.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner _____ after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this 27th day of October, 2022.

HEDA Administrator

EXHIBIT A

PRELIMINARY DEVELOPMENT AGREEMENT

THIS PRELIMINARY DEVELOPMENT AGREEMENT dated as of ____ day of _____, 2022, by and between the **Hermantown Economic Development Authority**, an economic development authority created under Chapter 469 of the Minnesota Statutes, (“HEDA”) and **P & R Properties Twin Ports, LLC**, a Minnesota limited liability company (“Developer”) in response to the following situation:

A. Developer submitted to HEDA on September 22, 2022 an incomplete Application for Business Subsidy (“Application”) and a seven (7) page document entitled “The Greenhouse Development Proposal” (“Proposal”) for a project on certain real estate located at 4747 Hermantown Road within the City of Hermantown (“City”).

B. Developer has informed HEDA and the City that without financial assistance in the form of tax increment financing, as permitted under Minnesota law, the construction and operation of the Project set forth in the Proposal would not be economically feasible.

C. HEDA and the City desire to work with the Developer in an effort to refine the nature and scope of the Project and to determine the level of tax increment financing assistance, if any, that might be provided to the Developer in connection with the Project.

D. HEDA and the City have determined that in order to provide tax increment financing assistance in connection with the Project, it will be necessary for the City to create a tax increment district under Minnesota Statutes, §§ 469.170-469.178

E. Developer provided City and HEDA with a signed Inducement Agreement dated August 11, 2022 (“Inducement Agreement”) and provided City with a Five Thousand and No/100 Dollars (\$5,000.00) deposit pursuant to the Inducement Agreement.

F. Developer, HEDA and the City desire to set forth their understandings concerning the basis upon which each will proceed to formalize their participation in the Project, which participation is contingent upon further study and approval.

NOW, THEREFORE, Developer and the City do hereby agree as follows:

1. The terms and provisions of the Inducement Agreement continue and are incorporated into the terms of this Agreement.

2. HEDA shall proceed to review and analyze the Proposal to determine if tax increment financing is necessary and appropriate for the Project.

3. After review HEDA staff shall submit its recommendation to and City and request preliminary approval or disapproval of the Project.

4. If preliminary approval is recommended by HEDA and the City, HEDA and City will enter into negotiations with Developer to produce a development agreement. Such development agreement will be submitted to HEDA and the City for final approval and shall contain the respective rights and duties of the parties subsequent to such approval. If a development agreement is not agreed to between the parties by March 31, 2023, neither Developer, HEDA nor the City shall have any further obligations under this Agreement, except as provided in Section 5.

5. The Developer agrees to pay the costs incurred by HEDA and City to review the Project. Simultaneously with execution of this Preliminary Agreement, Developer has submitted an application fee of Thirty-Five Thousand and No/100 Dollars (\$35,000.00). This amount includes the Five Thousand and No/100 Dollars (\$5,000.00) deposited with City pursuant to the Inducement Agreement. The deposit will cover the following costs:

5.1. Five Thousand and No/100 Dollars (\$5,000.00) to compensate HEDA and City for staff time spent and to be spent in reviewing the Project. This amount is non-refundable

5.2. HEDA will contract with LHB Engineers & Architects Inc. (“LHB”) for an analysis of the Project to determine if it meets the requirements for a Redevelopment TIF District. The LHB contract amount is Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00).

5.3. HEDA and City have received estimates of costs for bond counsel services from Fryberger, Buchanan, Smith & Frederick, P.A. in the estimated amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) and fiscal consultant services from Ehlers and Associates, Inc. in the estimated amount of Ten Thousand Five Hundred and No/100 Dollars (\$10,500.00).

5.4. City and HEDA will also incur attorneys’ fees in connection with the consideration of the Project and document drafting by Overom Law, PLLC in an estimated amount of Four Thousand Five Hundred and No/100 Dollars (\$4,500.00).

The items described in section 5.2 through 5.4 are hereby referred to as “Consultant Costs”. The Consultant Costs specified in this Section are estimates only. Developer agrees that the actual amounts of the Consultant Costs incurred by HEDA and City in connection with the consideration of this Project will be paid from the amount deposited by the Developer, or if the amount of the deposit is not sufficient to pay the Consultant Costs in full by the Developer within fifteen (15) days of receiving an invoice for unpaid Consultant Costs from HEDA.

In the event that the Developer or HEDA or the City determines that the Project is not feasible, the City shall refund any unexpended deposit remaining. No refund shall be made until all unpaid Consultant Costs are paid in full from the deposit. Upon notice given to Developer by the City that Developer’s deposit has or will be depleted by payment of Consultant Costs, Developer shall deposit an additional Five Thousand and No/100 Dollars (\$5,000.00) with HEDA and City. HEDA

and City will discontinue further consideration of the Project if any additional required deposit is not made.

If the tax increment financing district is approved, and it is permitted by law, HEDA and City shall consider allowing the Developer to consider amounts paid to HEDA and City to review the application as eligible expenses that could be reimbursed by increment generated in the Project.

6. HEDA, City and Developer agree that the subsequent execution and implementation of a development agreement shall be subject to the following:

6.1. HEDA's and City's determination, in its sole discretion, that its undertakings under the Development Agreement are feasible based upon estimated tax increment revenues from the Project, are consistent with the purposes and objectives of HEDA and City and are in the best interests of HEDA and City. Developer's undertaking under the Development Agreement will provide a trailhead building, trailhead parking, access drive through the property to Anderson Road, payment for costs of the sewer and water main extensions to Anderson Road, contributions needed for road improvements to Hermantown Road and Anderson Road related to the Project and future development by Developer related to the Project and amounts to cover City's and HEDA's ongoing costs to administer any TIF plan created for the Project.

6.2. The Developer's determination, in its sole discretion, that the undertaking of the Project is economically feasible, and is in its best interest.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Hermantown Economic Development Authority has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

Hermantown Economic Development Authority

By _____
Its President

And By _____
Its Secretary

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, Developer has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

P & R Properties Twin Ports, LLC

By _____
Its _____

[END OF SIGNATURES]

Hermantown Economic Development Authority
Resolution No. 2022-11H

HEDA Commissioner introduced the following resolution and moved its adoption:

**RESOLUTION ACCEPTING THE PROPOSAL FROM EHLERS, INC FOR TAX
INCREMENT FINANCING SERVICES**

WHEREAS, the Hermantown Economic Development Authority (“HEDA”) desires review a business subsidy application for tax increment financing (TIF), and

WHEREAS, Ehlers, Inc. has prepared a proposal for this TIF analysis attached hereto as Exhibit A; and

WHEREAS, HEDA and Ehlers, Inc, have a long-standing relationship for financial analysis and

WHEREAS, the HEDA Commissioners have reviewed the proposal hereby believes that it is in the best interests of HEDA that the proposal be accepted.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

1. The proposal by Ehlers, Inc is hereby accepted.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner an after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

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and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this 27th day of October, 2022.

HEDA Administrator

From: [Todd Hagen](#)
To: [CH-Eric Johnson](#)
Cc: [CH-John Mulder](#); [Steve Overom](#); [Gunnar Johnson](#)
Subject: City of Hermantown, MN - Proposal to Provide Tax Increment Financing Services for a Housing Development
Date: Thursday, October 06, 2022 2:16:40 PM
Attachments: [logo_30d99ea9-97ec-400b-8a5b-617864888ec2.png](#)

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ehlers is pleased to submit this proposal to provide tax increment financing (TIF) services for the City's potential housing development. It is our understanding that the City wishes to establish a tax increment financing district to help P&R Companies redevelop the Engwall's floral site for apartments known as "The Greenhouse" development. Given the proposed project, it appears that the City would be looking at the qualifications of a redevelopment tax increment financing district (a maximum 25-year term or 26-years of tax increment).

The first step in the process would be for Ehlers to determine that the development needs assistance, prepare an analysis of the potential tax increment on the project, and evaluate the level of assistance through a review of a development pro forma. We generally advise that the tax increment run for only as long as the assistance is needed, regardless of the term of the TIF district and that the City not issue bonds for the project, but reimburse the developer for the costs of the development and public improvements of the project over time. *Therefore, there is no risk to the taxpayers of the developer defaulting on the project.*

Should the City decide to proceed with the project, Ehlers knows what it takes to convert plans into reality. Our team has helped your City and many other cities with similar developments, and has the experience to ensure that key steps and details are not missed along the way.

We understand the importance of taking care of the details. We coordinate with the TIF attorney and staff to prepare all documents, including: a schedule, notices, resolutions, and the TIF plan. We publish the hearing notices on the City's behalf and complete all filings with the State and County once the TIF District is established.

Ehlers will take care of all aspects of creating a TIF district for the City including but not limited to:

1. Meeting with staff to determine size and type of TIF district to best meet the City's goals
2. TIF runs (financial projections for tax increment given assumptions for build-out)
3. TIF schedule of events required to certify TIF district
4. City Council and Planning Commission resolutions as required
5. Distribution list for TIF documents
6. Public hearing notices and memorandum to local newspaper regarding public hearing notice (if Ehlers submits)
7. County commissioner letter regarding roadway impacts/improvements and notification of creation of a TIF district
8. TIF plan – draft for county road impacts, draft with fiscal implications, draft for Council review at public hearing and final copy
9. Ehlers internal review of TIF plan

10. Fiscal impact determination, including impact analysis on fire, police, utilities, and City bonding, and fiscal implications notification letter to county and school district
11. File TIF plan with the state and request certification of the TIF district with the county
12. Parcel history research
13. TIF district book containing copies of all TIF documentation for establishment and certification of the TIF district
14. TIF administrative manual containing information and documents to assist the City in administrating the new TIF district
15. TIF budget
16. But-For analysis
17. Mailing of documents (courier fees will be billed directly to client)
18. Waiver letters and resolutions to county and school district (only as needed)
19. Attend Council meeting on approval
20. Map per state publication standards
21. Project summary

Project Team; Billing Philosophy; Compensation

Todd Hagen will lead the Ehlers project team to serve Hermantown, and will be assisted by Jason Aarsvold and Emily Wilkie. Numerous other advisors also have extensive experience with housing developments and are available to guarantee timely and high-quality responses to the City's needs.

Our general philosophy on billing is if the client is not happy with the service, we ask them not to pay the bill. We often do not operate with a contract and are retained on an as-needed basis. We do not charge for mileage or regular business expenses.

Our flat fee charged for the complete establishment of your redevelopment tax increment financing district is \$10,500. The first half of our fee is invoiced after fiscal implications have been sent and second half after the public hearing has been held. If by chance the project stops prior to that, you are not responsible for any billings. This flat fee approach is so you can take advantage of our services without worrying about receiving a bill at the end of each month. Our fee covers all the services discussed in this proposal. Also, additional TIF attorney services will be needed to review throughout the process and to prepare resolutions and a development agreement. To verify that the building meets all of the statutory requirements as a redevelopment district, an inspection report must be provided by a city building official, engineer, or architect. If the City chooses to establish a TIF district, the up-front costs would be paid by the developer and later reimbursed from tax increment. Facilitating the negotiation of a development agreement will also take extra time. If desired, we can assist the City with annual tax increment reporting to the state for an additional cost.

We look forward to the opportunity to work with you, your staff, and Council. Please contact me at 651.697.8508 or by email with any questions.

Todd Hagen, CIPMA
Senior Municipal Advisor
O: (651) 697-8508 | M: (612) 961-9131 | ehlers-inc.com



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Hermantown Economic Development Authority
Resolution No. 2022-12H

HEDA Commissioner introduced the following resolution and moved its adoption:

RESOLUTION APPROVING AN AGREEMENT FOR CONSULTING SERVICES TO PROVIDE INVESTIGATIVE SERVICES FOR HERMANTOWN ENWALLS TIF ANALYSIS WITH LHB, INC IN AN AMOUNT NOT TO EXCEED \$12,500.00

WHEREAS, the Hermantown Economic Development Authority (“HEDA”) has received a business subsidy application from P& R Development for the Greenhouse Development Proposal for the 17 acre parcel located at 4747 Hermantown Road (“Project”); and

WHEREAS, it is necessary to evaluate the existing buildings conditions to determine if the project qualifies for the creation of a TIF Redevelopment district; and

WHEREAS, HEDA has contracted with LHB, Inc in the past on a previous TIF District to inspect buildings for a potential TIF Redevelopment District, and

WHEREAS, HEDA’s staff reviewed the proposal and on the basis of such review, HEDA’s staff has recommended that LHB, Inc be awarded the contract for Project; and

WHEREAS, a form of proposed Consulting Agreement to be entered into between LHB Inc. and HEDA for the Project is attached hereto as Exhibit A; and

WHEREAS, the HEDA Commissioners have reviewed the recommendation of the HEDA staff and the Consulting Agreement and believe that it is in the best interests of HEDA that the contract for the Project be awarded to LHB Inc. and the form of Consulting Agreement be approved.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

1. The proposal of LHB, Inc in the amount of \$12,500.00 for the Project shall be and hereby is accepted.
2. The Consulting Agreement substantially in the form of the one attached hereto as Exhibit A is hereby approved.
3. Upon execution of such Consulting Agreement by LHB, Inc. and its submission of a certificate of insurance acceptable to HEDA’s Attorney, the work pursuant to the Consulting Agreement may proceed.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner _____ after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this 27th day of October, 2022.

HEDA Administrator

EXHIBIT A

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES (“Agreement”) is made effective as of the ____ day of _____, 20__ by and between the **City of Hermantown**, hereinafter referred to as “Owner”, and **LHB, Inc.**, hereinafter referred to as “Consultant”, in response to the following situation:

A. Owner desires to obtain consulting services for the purposes of evaluating existing building conditions to determine if the property (Engwalls – 4747 Hermantown Road Hermantown, MN 55811) qualifies for the creation of a TIF District.

B. Consultant is willing to provide consulting services to Owner pursuant to these terms of this Agreement. This Agreement shall supersede any inconsistent provisions within the Consultants proposal.

NOW, THEREFORE, Owner and the Consultant do mutually agree as follows:

1. Services to be Performed.

1.1 Michael Fischer shall be the Project Principal for the services to be performed by Consultant.

1.2 The scope of services to be provided to Owner by Consultant is as set forth on Exhibit A attached hereto.

2. Personnel. Consultant will secure, at her own expense, all personnel required to perform the services under this Agreement, and such personnel shall not be the employee(s) of, nor have a contractual relationship with, Owner.

3. Assignability. Consultant shall not assign any interest in this Agreement, shall not contract with others to perform Consultant’s services and shall not transfer any interest in this Agreement without the prior written approval of Owner.

4. Agreement Period. This Agreement shall be effective as of the date hereof and shall continue until terminated as provided in paragraph 5 hereof.

5. Termination of Agreement. Either Consultant or Owner may, by giving written notice specifying the effective date which shall not be less than thirty (30) days from the date such notice is given, terminate this Agreement in whole or in part. In the event of termination, all property and finished or unfinished documents and other writings prepared by the Consultant under this Agreement shall be delivered to Owner and Consultant shall be entitled to compensation for time expended and expenses incurred to the date of termination.

6. Independent Contractor. The relationship between the Consultant and Owner shall be that of an independent contractor. Nothing herein shall in any way make or create any employer employee relationship between Owner and Consultant.

7. Standard of Performance and Insurance; Indemnity. All services to be performed by Consultant hereunder shall be performed in a skilled, professional and non-negligent manner. Consultant shall obtain and maintain at his/her/its cost and expense:

7.1 Commercial general liability insurance that covers the consultant services performed by Consultant for Owner with a per occurrence limit/general aggregate limit of liability of at least Two Million Dollars (\$2,000,000.00).

7.2 Errors and omissions or equivalent insurance that covers the consultant services performed by Consultant for Owner with a per occurrence limit/general aggregate limit of liability of at least Two Million Dollars (\$2,000,000.00).

7.3 Worker's compensation insurance covering Consultant (if an individual) all of Consultant's employees with coverages and limits of coverage required by law.

Consultant shall indemnify and hold harmless Owner from and against all errors, omissions and/or negligent acts causing claims, damages, liabilities and damages arising out of the performance of his/her/its services hereunder.

Consultant certifies that Consultant is in compliance with all applicable worker's compensation laws, rules and regulations. Neither Consultant (if an individual) nor Consultant's employees and agents will be considered Owner employees. Any claims that may arise under any worker's compensation laws on behalf of any employee of Consultant and any claims made by any third party as a consequence of any act or omission on the part of Consultant or any employee of Consultant are in no way Owner's obligation or responsibility. By signing this Agreement, Consultant certifies that Consultant is in compliance with these laws and regulations.

Consultant shall deliver to Owner, concurrent with the execution of this Agreement, one or more certificate(s) of insurance evidencing that Consultant has the insurance required by this Agreement in full force and effect. Owner shall be named as additional insured under such Consultant's commercial general liability policy. The insurer will provide at least thirty (30) days prior written notice to Owner, without fail, of any cancellation, non-renewal, or modification of any the policy(ies) or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to Owner, without fail, of any cancellation of any of the policy(ies) or coverage evidenced by said certificate(s) for nonpayment of premium. Consultant shall provide Owner with appropriate endorsements to its policy(ies) reflecting the status of Owner as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided Owner by the insurance company providing such insurance policy to Consultant.

The Consultant shall require any subcontractor permitted by Owner under Section 3 hereof to perform work for Consultant on the Project to have in full force and effect the

insurance coverage required of the Consultant under this Agreement before any subcontractor(s) begin(s) work on the Project. Consultant shall require any such subcontractor to provide to Consultant a Certificate of Insurance evidencing that such subcontractor has the insurance required by this Agreement in full force and effect. The Consultant and Owner shall be named as additional insureds under such policies. The insurer will provide thirty (30) day written notice to Owner and Consultant, without fail, of any cancellation, non-renewal, or modification of the policy(ies) or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to Owner, without fail, of any cancellation of any of the policy(ies) or coverage evidenced by said certificate(s) for nonpayment of premium. Owner shall also be provided with appropriate endorsements to its policy(ies) reflecting the status of Owner as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided Owner by the insurance company providing such insurance policy(ies).

8. Compensation. Consultant shall be compensated for the services to be performed hereunder as set forth in Exhibit A. Consultant shall submit to Owner itemized statements of services rendered during each month setting forth the date such services were rendered, a description of the services rendered, the person performing such services and the amount of time expended in performing such services.

9. Recordkeeping. Consultant hereby agrees:

9.1 To maintain all books, documents, papers, accounting records and other evidence pertaining to the fees and expenses for which it seeks payment or reimbursement hereunder and appropriate records with respect to the services performed by it under this Agreement.

9.2 To make such materials available at its office at all reasonable times during the Agreement Term and for three (3) years from the date of final payment under this Agreement for inspection by Owner and copies thereof shall be furnished to Owner upon request by Owner.

10. No Prohibited Interest. Consultant represents and warrants to Owner that no employee, officer or agent of Owner, any member of the family of any such person, any partner of any such person or any organization which employs or is about to employ any of the above has a financial or other interest in the business of Consultant.

11. Confidentiality. Consultant agrees that, at all times, both during the term of this Agreement and after the termination of this Agreement, it will be faithful to Owner by not divulging, disclosing or communicating to any person, firm or corporation, in any manner whatsoever, except in furtherance of the business of Owner or as required by any applicable law, rule, regulation or ordinance of Owner or any other governmental authority, any information of any kind, nature or description concerning any matters affecting or relating to the business, employees, agents, customers of Owner, or parties contracting with Owner.

12 Intellectual Property Rights. For the purposes of this Agreement, Project Materials means copyrights and all works developed in the performance of this Agreement, including, but not limited to, the finished product and any deliverables, including any software or data.

Project Materials do not include any materials that Consultant developed, acquired or otherwise owned or had a license to use prior to the date of this Agreement.

All Project Materials are agreed by Consultant to be “works made for hire” as defined under 17 U.S.C. §101, for which Owner has the sole and exclusive right, title and interest, including all rights to ownership and copyright and/or patent. In addition, Consultant hereby assigns all right, title and interest, including rights of ownership and copyright in the Project Materials to Owner no matter what their status might be under federal law.

Consultant shall provide Owner with copies of all Project Materials

Upon request by Consultant, Owner may authorize Consultant to use specified Project Materials to evidence Consultant’s progress and capability. In all such uses of Project Materials by Consultant, reference shall be made to Owner and the Project and that the Project Materials are owned by Owner.

Consultant also acknowledges and agrees that all names and logos provided to Consultant by Owner for use in connection with the Project are and shall remain the sole and exclusive property of Owner.

13. Notices. Any notice required to be given under this Agreement shall be deemed sufficient if in writing, sent by mail to the last known office address of Consultant, or to Owner at 5105 Maple Grove Road, Hermantown, MN 55811.

14. Miscellaneous. This Agreement constitutes the sole and complete agreement relating to the subject matter of this Agreement between the parties, superseding any and all other agreements between the parties and no verbal or other statements, inducements or representations have been made or relied upon by either party. No modifications hereof shall be binding upon either party unless in writing and properly executed.

15. No Contractual Authority. Consultant shall have no authority to enter into any contracts or agreements binding upon Owner or to create any obligations on the part of Owner.

16. Data Practices Act. Consultant acknowledges that Owner is subject to the provisions of the Minnesota Government Data Practices Act.

Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by Owner in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Consultant in accordance with this Agreement. The civil remedies of Minnesota Statutes § 13.08, apply to Consultant and Owner.

Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If Consultant receives a request to release the data referred to in this Section, Consultant must immediately notify Owner and consult with Owner as to how Consultant should respond to the request. Consultant's response shall comply with applicable law, including that the response is timely and, if Consultant denies access to the data, that Consultant's response references the statutory basis upon which Consultant relied. Consultant does not have a duty to provide public data to the public if the public data is available from Owner.

17. Choice of Law and Venue. All matters relating to the validity, construction, performance, or enforcement of this Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of Duluth, County of St. Louis, State of Minnesota.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Owner and Consultant have executed this Agreement for Consulting Services as of the date first above written.

OWNER:

**Hermantown Economic Development
Authority**

By _____
Its President

And By _____
Its Secretary

**CONSULTANT:
LHB, Inc.**

By _____
Its _____



October 7, 2022

Eric Johnson
Community Development Director
City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811

AGREEMENT FOR INVESTIGATIVE SERVICES HERMANTOWN ENGWALLS TIF ANALYSIS

Thank you for the opportunity to submit our proposal to provide a TIF analysis for the proposed Engwall's TIF District in Hermantown, MN.

LHB is a full-service architecture, planning, and engineering firm with a total of 260 staff located in our Minneapolis, Duluth, and Cambridge, Minnesota, and Superior, Wisconsin offices.

Our Government Studio has extensive experience working with local governments on their planning, design, architectural and engineering needs. Having been personally involved on various city councils and planning commissions, I understand how cities function and the importance of maintaining the support of appointed and elected officials and community throughout the process.

Below outlines our previous experience, team credentials, and scope of services. This proposal, if approved, will service as the Agreement between LHB and Client.

I. PREVIOUS EXPERIENCE

LHB has significant experience with a variety of inspection and facility assessment projects, including the analysis of over 370 TIF Districts. Some examples include:

- City of Columbia Heights TIF Inspection Services
- City of St. Paul TIF Inspection Services
- City of St. Anthony Village, NW Quadrant TIF Inspection Services
- City of St. Louis Park TIF Inspection Services
- City of Mount TIF District "1-2" Inspection Services
- City of Osseo TIF Inspection Services
- City of New Richmond (Wisconsin) TIF Inspection Services
- Minnesota State System Facility Assessments
- State of Minnesota Facility Assessments
- Property Condition Assessments for the St. Paul Department of Planning and Economic Development (Franklin/Emerald Neighborhood)
- Condition Surveys for every DNR Facility in the State of Minnesota, 2014

II. TEAM CREDENTIALS

Michael A. Fischer, AIA, LEED AP – Project Principal/TIF Analyst

With over 34-years of experience serving as a Project Principal, Project Manager, Project Designer and Project Architect on planning urban design, educational, commercial, and governmental projects, he has become an expert on Tax Increment Finance District (TIF) analysis assisting over 100 cities with strategic planning for TIF Districts. Michael is an LHB Principal and Leader of the Integrative Design Team and leads the Minneapolis office.

Michael completed a two-year Bush Fellowship, studying at MIT and Harvard in 1999, earning master's degrees in City Planning and Real Estate Development from MIT. He has served on more than 50 committees, boards, and community task forces, including City Council President in Superior, Wisconsin, Chair of the Duluth/Superior Metropolitan Planning Organization, and Chair of the Edina, Minnesota Planning Commission. Most recently, he served as a member of the Edina city council and Secretary of the Edina HRA. Michael has also managed and designed several award-winning architectural projects and was one of four architects in the Country to receive the AIA Young Architects Citation in 1997.

Phil Fisher - Inspector

For 35-years, Phil worked in the field of Building Operations in Minnesota including White Bear Lake Area Schools. At the University of Minnesota, he earned his Bachelor of Science in Industrial Technology. He is a Certified Playground Safety Inspector, a Certified Plant Engineer, and trained in Minnesota Enterprise Real Properties (MERP) Facility Condition Assessment (FCA). His FCA training was recently applied to the Minnesota Department of Natural Resources Facilities Condition Assessment project involving over 2,000 buildings.

III. SCOPE OF SERVICES

1. Survey the TIF District to Determine if it Meets Applicable Coverage Test

- a. To meet the coverage test, parcels consisting of 70 percent of the area of the district must be “occupied” by buildings, streets, utilities, or paved or gravel parking lots.
- b. A parcel is not considered “occupied” unless at least 15 percent of its total area contains improvements.

2. Conduct Visual Review of Building Interior and Exterior

- a. Obtain property owner’s consent for inspection.
- b. Document property conditions relative to Minnesota Statutes Section 469.174 Subdivision 10.

3. Estimate Building Replacement Cost

- a. Replacement cost is the cost of constructing a new structure of the same square footage and type on the site.
- b. A base cost will be calculated by establishing the building class, type, and construction quality.
- c. Identify amenities, which increase the value of the building over the standard construction quality level.
- d. Review building permits for each parcel.
- e. The base cost and cost of amenities will be totaled to determine the replacement cost for the property.

4. Evaluate Building Existing Condition

- a. Evaluate condition of the building based on Minnesota Statutes Section 469.174 Subdivision 10 definition of structurally substandard:
 - i. “Structurally substandard shall mean containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate

gress, layout and condition of interior partitions, or similar factors, which defects, or deficiencies are of sufficient total significance to justify substantial renovation or clearance.”

5. Determine Building(s) Code Deficiencies

- a. Determine technical conditions, which are not in compliance with current building code applicable to new buildings.
- b. Provide opinion of probable cost to correct identified deficiencies.
- c. Compare cost of deficiency corrections to replacement value of building.

6. Prepare and Deliver Report:

- a. Redevelopment TIF Report
- b. Deliver TIF Report in .pdf format via Email.

IV. ASSUMPTIONS

1. The preliminary boundaries of the district area are as follows:
 - a. Five buildings on two parcels located at 4747 Hermantown Road in Hermantown, MN.
2. Client will provide the following:
 - a. A scalable parcel map and/or aerial photo of the area to be inspected, including GIS information with specific parcel data.
 - b. A list of all parcels affected, including name of owner and current known business or resident name and address.
 - c. Available information regarding the requirements of the engagement, and reports on the condition of the structures.
3. LHB shall be entitled to rely upon the information provided by the Client.
4. A building is not considered structurally substandard if it is in compliance with building code applicable to new buildings or could be modified to satisfy the code at a cost which is less than 15 percent of its replacement cost.

V. STANDARD OF CARE

LHB shall perform its services consistent with the professional skill and care ordinarily provided by other professionals practicing in the same or similar locality under the same or similar circumstances. LHB shall perform its services in a timely manner consistent with the professional skill and care required for the orderly progress of the engagement.

Any report prepared by LHB represents a professional opinion based upon information available and arrived at in accordance with generally accepted professional standards. Other than as contained in the report, LHB makes no express or implied warranty.

Short of complete deconstruction to examine every element at every location, no assessment can reveal all conditions which may exist. Additional testing, assessment, or demolition may uncover conditions which would make it necessary to modify LHB's conclusions or recommendations.

Any report prepared for the purpose described in this Agreement is for the exclusive use by those to whom the report is addressed. LHB will not and cannot be held liable for the unauthorized reliance upon this report by any third party.

VI. COMPENSATION

We propose to provide services on an hourly basis with the following key staff:

- Project Principal, Michael Fischer \$290/hour
- Project Manager \$165/hour
- Project Architect/Inspector \$145/hour
- Project Coordinator \$ 95/hour

Compensation shall be on an hourly basis, not to exceed Twelve Thousand Five Hundred Dollars (\$12,500), including reimbursable expenses, for the inspection of the properties and reports.

VII. PAYMENT TERMS

Payments are due and payable upon receipt of our invoice. Unpaid balances 60-days after invoice date shall bear interest at the rate of 8% per annum or 0.67% per month on the unpaid balance.

Failure to make timely payment to LHB is a material breach of this Agreement and may, at LHB's sole discretion, result in a suspension or termination of services, and may, at LHB's sole discretion, result in the termination of the Client's limited license authorization to use LHB's copyrighted Instruments of Service.

VIII. ADDITIONAL SERVICES

If there is a material change in the circumstances or conditions that affect the scope of work, schedule, allocation of risks or other material terms, LHB shall notify Client. Client and LHB shall promptly and in good faith enter into negotiation to address the changed conditions including equitable adjustment to compensation. The fees and costs for any additional services will be based upon LHB's 2022 Standard Hourly Rate Schedule and 2022 Reimbursable Expenses Schedule.

IX. SCHEDULE

LHB can proceed to start the Work upon receipt of a signed copy of this Agreement.

The final report typically requires 30 to 45 days to complete from the time we inspect the building(s). We can make preliminary conclusions prior to our full report being completed, if necessary, to allow other consultants and the client to begin their work.

X. CONSEQUENTIAL DAMAGES

LHB and Client waive consequential damages for claims, disputes or other matters in question arising out of, or relating to, this Agreement.

XI. LIMITATION OF LIABILITY

To the maximum extent permitted by law, Client agrees to limit LHB's liability for Client's damages to the sum of Ten Thousand Dollars (\$10,000) or LHB's fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

XII. USE OF LHB'S DOCUMENTS

The documents prepared by LHB, including Documents in electronic format, are solely for use with respect to this Project. All Documents prepared or furnished by LHB pursuant to this Agreement are the Instruments of Service to the Project and LHB shall retain all common law, statutory and other reserved rights, including copyright. LHB grants to Client a nonexclusive limited license solely for the purposes of evaluating and executing the Project. Client shall not assign, delegate, sublicense, or otherwise transfer any license granted herein to another party.

To the extent the documents are transferred or are modified, supplemented or otherwise altered by Client, subsequent design professional, or any other party, Client agrees to indemnify, defend and hold LHB harmless for any claims, demands, damages or causes of action arising out of such transfer or modification, supplementation or alteration.

XIII. OTHER CONDITIONS

The laws of the State of Minnesota shall govern this Agreement. Any provision of this agreement later held to violate a law or regulation shall be deemed void. All remaining provisions shall continue in force.

Client recognizes that materials prepared by others may be subject to copyright protection and warrants to LHB that any documents provided by Client do not infringe upon the copyright held by another.

Unless the parties mutually agree otherwise, the parties shall endeavor to settle disputes by mediation. A demand for mediation shall be filed, in writing, within a reasonable period of time after a claim, dispute or other matter in question has arisen.

LHB and the Client, acting through the Client's legal representative, will, to the fullest reasonable extent, cooperate and coordinate efforts in preparing necessary responses to any third-party challenges to the inspections. The Client agrees to pay LHB its regular hourly rates spent as a result of a third-party legal challenge

If the terms and conditions of this Agreement are acceptable, please sign and return a copy to LHB.

LHB, INC.



Signature

Michael Fischer

Printed Name

Its: Vice President

Title

CITY OF HERMANTOWN

Signature

Printed Name

Its:

Title

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