

RESOLUTION 2019-

**APPROVING AN ELECTRICAL UTILITY TAX INCENTIVE AGREEMENT
FOR THE PROJECT HAMMER DEVELOPMENT**

WHEREAS, the City of DeKalb (the “City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the Project Hammer Development, in its initial phases, involves the development of a food distribution center of approximately 1,000,000 square feet and a packing center for a food manufacturing operation of approximately 400,000 square feet on approximately 106 acres of the Chicago West Business Center property located between Route 23, Gurler Road, Crego Road and I-88 within the City’s corporate limits (the “Subject Property”); and

WHEREAS, the City’s Corporate Authorities find that the Project Hammer Development will further the growth of the Subject Property and its surrounding area, increase the assessed valuation of real estate situated within the Subject Property, increase the economic activity within the City’s boundaries, provide jobs and employment opportunities, and otherwise be in its best interests by positively impacting the health and welfare of its citizens and taxpayers; and

WHEREAS, the City has by ordinance enacted a utility tax on the privilege of using or consuming electricity purchased at retail and used or consumed within the corporate limits of the municipality on a monthly basis (the “Electricity Tax”); and

WHEREAS, the City and the developer of the Project Hammer Development have negotiated an electrical utility tax incentive agreement (the “Agreement”), a copy of which is attached hereto and incorporated herein as Exhibit A, to incentivize the Project Hammer Development by agreeing to abate 50% of the Electricity Tax that the City actually receives from the Subject Property for a period of 15 years as more fully set forth in the Agreement; and

WHEREAS, the City’s Corporate Authorities find that approving the Agreement is in the public interest and promotes the City’s public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The City’s Corporate Authorities find that the recitals to this resolution are true, accurate, and material to this resolution, and are adopted and incorporated herein.

SECTION 2: The City’s Corporate Authorities approve the Agreement in the same or substantially similar form as attached hereto and incorporated herein as Exhibit A, and the Mayor is authorized and directed to execute the Agreement, subject to such revisions as shall be acceptable to him with the recommendation of City staff, and the City Clerk

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or Executive Assistant shall be authorized and directed to attest the Mayor's Signature.
PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the ____ day of December 2019 and approved by me as Mayor on the same day.

ATTEST:

JERRY SMITH, Mayor

EXHIBIT A
(ELECTRICAL UTILITY TAX SHARING AGREEMENT FOR THE PROJECT
HAMMER DEVELOPMENT)

ELECTRICAL UTILITY TAX SHARING AGREEMENT

This Intergovernmental Agreement is between the City of DeKalb (“City”) and Project Hammer (“Developer”) and is effective as of the date it is last executed by one of the parties.

RECITALS

- A. The City of DeKalb (the “City”) is a home rule municipality under the Constitution and statutes of the State of Illinois. Except to the extent limited by the General Assembly, a home rule municipality may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.
- B. Project Hammer (the “Developer”) is the _____ of the property legally described in Exhibit A (the “Subject Property”). The Developer desires to purchase the Subject Property and redevelop it as described in this Agreement.
- C. The Subject Property is located within the City. The City has by ordinance enacted a utility tax on the privilege of using or consuming electricity purchased at retail and used or consumed within the corporate limits of the municipality on a monthly basis (the “Electricity Tax”).
- D. As required by Illinois statute (65 ILCS 5/8-11-2(c)), this Electricity Tax is collected by the Utility that produces or delivers the electricity to the purchaser of the electricity upon which the tax is imposed. The Utility collecting the Electricity Tax is by statute further allowed to reimburse itself for the expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the municipality upon request in an amount which is currently equal to 3% of the Electricity Tax.
- E. The City, after due and careful consideration, has concluded that completion of the Developer’s Redevelopment Project for the Subject Property will further the growth of the Subject Property and its surrounding area, increase the assessed valuation of real estate situated within the Subject Property; increase the economic activity within the City’s boundaries; provide jobs and employment opportunities; and otherwise be in its best interests by positively impacting the health and welfare of its citizens and taxpayers.
- F. The City, after due and careful consideration, finds that it is in its best interest to incentivize the redevelopment and improvement of the Subject Property with the Redevelopment Project by agreeing to abate 50% of the Electricity Tax it actually receives from the Subject Property for a period of 15 years (180 months) as detailed in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE I
RECITALS PART OF AGREEMENT

1.1 **Incorporation of Recitals.** The recitations set forth in the foregoing recitals are true, correct and material to this Agreement. The foregoing recitals are and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

ARTICLE II
MUTUAL ASSISTANCE

2.1 **Cooperation.** The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the City, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE III
THE REDEVELOPMENT PROJECT

3.1 **Redevelopment Project.** The “Redevelopment Project” shall be defined as the Developer’s completion of the redevelopment of the Subject Property that is described below in substantial conformance with the concept plans attached in Exhibit B.

The Developer shall subdivide the Subject Property into 3 parcels. The Developer shall construct one of the following buildings along with any other necessary or desired additional structures or improvements on each of the 3 new parcels as follows:

Building Parcel A – A parcel that is to be improved with a minimum of 1,000,000 square feet of enclosed building under roof that is to be used as a distribution center by Project Hammer.

Building Parcel B – A parcel that is to be improved with a minimum of 400,000 square feet of enclosed building under roof that is to be used for manufacturing by Project Hammer.

Building Parcel C – A parcel that is to be improved with a minimum of 1,000,000 square feet of enclosed building under roof that is to be used for manufacturing by Project Hammer.

The Developer’s total estimated costs for the construction of all buildings and improvements and accessory structures and improvements necessary to achieve final completion of the entire Redevelopment Project is estimated to exceed \$100 million.

ARTICLE IV
DEVELOPER’S REQUIRED APPROVALS

4.1 Plan Approval. The Developer shall (or cause its contractors to) submit complete permit applications to the City and to any other agencies having any jurisdiction over the construction of any portion of the Redevelopment Project work with all required documentation including engineering, development and other required plans. The application for the permits and the construction of the Redevelopment Project may be done in phases. However, no work requiring a permit shall be commenced until the Developer or its contractors have obtained all requisite governmental permits and approvals for such work in accordance with City ordinances and codes as well as the requirements of any other governmental body or agency having any jurisdiction over any aspect of the Redevelopment Project work.

ARTICLE V
CONSTRUCTION OF THE REDEVELOPMENT PROJECT

5.1 Construction of Redevelopment Project. The Developer shall commence construction of the Redevelopment Project promptly after approval of the permits necessary for the work to be performed. The Developer agrees to cause construction of the Redevelopment Project to proceed in a timely manner and substantially in accordance with the objectives of the Redevelopment Project as it may be modified or revised from time to time. The Developer shall undertake or cause to be undertaken the Redevelopment Project in accordance with the Plans to be filed with, and approved by, the City, and any other appropriate governmental or regulatory agency. The Developer shall expeditiously construct or cause to be constructed the Redevelopment Project in a good and workmanlike manner in accordance with all applicable federal, state and local laws, ordinances and regulations, including, but not limited to any applicable Illinois Prevailing Wage requirements. The Developer shall not cause or permit any deviation from the approved engineering and construction plans and specifications without the prior consent of the City or any other governmental agency having jurisdiction of the relevant portion of the work. The Developer agrees to pay any and all costs and expenses necessary for the timely and lien free completion of the Redevelopment Project, even if said costs and expenses exceed the project budget or any amendments thereto. Nothing in this Agreement shall be construed or intended to be a waiver of any rights that any governmental agency having any jurisdiction over the any portion of the Redevelopment Project work may have to require code compliance and/or issue stop work orders or violation notices.

5.2 Scheduling. The beginning and substantial completion of the construction of the Redevelopment Project for the improvements for Building Parcel A, Building Parcel B and Building Parcel C shall comply with the following deadlines:

PARCEL	DATE BY WHICH CONSTRUCTION ON THE PARCEL MUST BEGIN	DATE BY WHICH SUBSTANTIAL COMPLETION OF ALL IMPROVMENTS MUST BE ACHIEVED

Building Parcel A	June 30, 2020	March 1, 2021
Building Parcel B	June 30, 2020	May 1, 2021
Building Parcel C	TBD	TBD

5.3 Indemnification. The Developer covenants and agrees to pay, at its expense, any and all claims, damages, demands, expenses, liabilities and losses resulting from the construction and development activities of the Developer, its agents, contractors and subcontractors with respect to the Redevelopment Project and to indemnify and save the Taxing Agencies and their officers, agents, employees, engineers and attorneys (the “Indemnitees”) harmless from and against such claims, damages, demands, expenses, liabilities and losses. The Developer shall provide satisfactory proof of insurance covering such indemnity or, if Developer is self-insured, proof of adequate security for such indemnity.

5.4 No Liens. No mechanics’ or other liens shall be established against the Redevelopment Project, the Subject Property in connection with the Redevelopment Project for labor or materials furnished in connection with any acquisition, demolition, site preparation, construction, additions, modifications, improvements, repairs, renewals or replacements so made; provided, however, that the Developer shall not be in default hereunder if mechanics’ or other liens are filed or established and the Developer contests in good faith said mechanics’ liens. In such event the mechanics’ or other liens may remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, Developer shall not be in violation of this Section if the Developer posts a bond or a letter of credit in an amount sufficient to cover any liens, and the Developer sends written notice to the City advising of the type and amount of the security posted for such liens. In no event, however, shall the Developer allow the foreclosure of any mechanics’ or other liens. The Developer shall pay in full any and all liens for which it is found liable.

ARTICLE VI
ELECTRICITY TAX SHARING

6.1 Definitions. For the purpose of this Agreement, the terms set forth below shall have the following Definitions:

- a. “Person” means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, or a receiver, trustee, guardian or other representative appointed by order of any court.
- b. “Proof of Payment” means a copy of: (1) a monthly electric bill received from a Utility which itemizes the kilowatt hours of electricity used/consumed within the Subject Property and the Electricity Tax due; and (2) a copy of a subsequent electric bill received from a Utility showing full payment of both the previously received bill and Electricity Tax for which a rebate is sought from the City.

- c. "Purchaser" means any Person who uses or consumes electricity acquired in a purchase at retail within the Subject Property.
- d. "Utility" means and includes every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the production, storage, transmission, sale, delivery or furnishing of electricity for use within the Subject Property.
- e. "Electricity Tax" means the amount of the tax due from the Purchaser(s) for the privilege of using or consuming electricity within the Subject Property pursuant to City Ordinance **but does not include** any amount the Utility charges, pursuant to Illinois Statute, to reimburse the Utility for the expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the municipalities upon request. (At present, pursuant to 65 ILCS 5/8-11-2(c), a Utility would be authorized to charge an amount equal to 3% of the Electricity Tax to reimburse the Utility for the expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the municipalities upon request.)

6.2 Rebate of Electricity Tax. Provided the Developer is in compliance with the terms of this Agreement, the City agrees to rebate/pay to the Developer an amount equal to 50% of the Electricity Tax paid by the Purchaser to the City pursuant the terms and conditions of this Agreement. The City's rebate of Electricity Tax for electricity used and consumed within the Subject Property shall begin with the first electric bill received by any Purchaser after the first day of the month following the month in which the first occupancy permit is issued by the City for any portion of the Subject Property and shall thereafter continue for each of the following 179 consecutive months. Prior to, and as a condition to, receiving a Electricity Tax rebate from the City, the Developer shall, on a monthly basis, provide the City with a copy of each and every electric bill it has received for the Subject Property and proof of the payment of same. Within 30 days after the City's receipt of the required documentation from the Developer, the City shall forward payment to the Developer in an amount equal to 50% of the Electricity Tax paid to the City by the Purchaser for the month.

6.3 Audit. The Developer shall cooperate with any audit that may from time to time be requested/conducted by the City in order to verify that that the Electricity Tax paid to the City for the use and consumption of electricity within the Subject Property is properly allocated to and/or paid to the City by the Utility.

6.4 Electric Meters. Upon the request of the City, the Developer shall provide the City with a list of all electric meters serving the Subject Property. No electric meter shall serve any area, property or building which is not located within the Subject Property.

6.5 Developer Obligations. Notwithstanding any other provision of this Agreement, the City's rebate/payment of Electricity Tax to the Developer shall be contingent upon the Developer's compliance, at all times with each and every one of the following requirements:

- A. Payment of Taxes.** The payment of all real estate tax bills for all portions of the Subject Property promptly on or before the due date of such tax bills.
- B. Payment of Electric Bills.** The full payment of all electric bills and Electricity Taxes due for the electricity used/consumed within the Subject Property.
- C. Completion of all improvements.** The timely substantial completion of all improvements required to be constructed on all portions of the Subject Property in accordance with the terms of this Agreement, the concept plans attached as Exhibit A and the approved plans and specifications by each governmental agency having any jurisdiction over any portion of the work. The Developer may apply for an extension in the deadline to complete any portion of the work, which shall not be unreasonably denied to the extent it is caused by one or more of the following: (1) a delay in the issuance of any required permit from any governmental agency have jurisdiction over any portion of the work government, but only to the extent such delay exceeds 30 calendar days; (2) adverse weather conditions that preclude or prevent the performance of work; (3) strikes; (4) the unavailability of key building components that is not the fault of the Developer; (5) Acts of God; (6) damage or causality to work that has already been completed; (7) war or national emergency; and (8) any other occurrence that precludes the completion of the work that is unrelated to any action or inaction of the Developer and over which the Developer has no control.
- D. Agreement.** The Developer's compliance with all the terms of this Agreement.

ARTICLE VII
GENERAL PROVISIONS

7.1 Time of Essence. Time is of the essence for this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

7.2 Default.

A. A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. In addition, a Party shall also be in default and in breach of this Agreement upon: (1) the filing or execution or occurrence of a petition filed by either party seeking any nature of debtor relief, the making of an assignment for the benefit of creditors by either party, either party's execution of any instrument for the purpose of effecting composition of the party's creditors, the filing for bankruptcy or if either party is adjudicated bankrupt; and (2) the cessation

of either party conducting business in the normal course or any admission of its inability to meet its debts as they become due.

B. Before any failure of any Party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice. Upon a breach of this Agreement, the non-defaulting Party may: (1) terminate the Agreement; (2) pursue an action in any court of competent jurisdiction at law or in equity to secure the specific performance of the covenants and agreements herein contained; and/or (3) pursue any of its remedies at law and be awarded damages for failure of performance. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity.

7.3 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual agreement of the Parties evidenced by a written amendment, by the adoption of an ordinance, resolution or motion of the governmental entities approving such written amendment, as provided by law, and by the execution of such written amendment by the Parties or their successors in interest.

7.4 Entire Agreement. This Agreement sets forth all agreements, understandings and covenants between and among the Parties relative to the matters herein contained. This Agreement supersedes all prior written agreements, negotiations and understandings, written and oral, and shall be deemed a full integration of the entire agreement of the Parties.

7.5 Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

7.6 Illinois Law. This Agreement shall be construed its accordance with the laws of the State of Illinois.

7.7 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) sent by telecopy facsimile; or (iii) sent by a nationally recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and shall be effective (a) upon receipt or refusal if delivered personally or by telecopy facsimile; (b) one (1) business day after depositing with such an overnight courier service or (c) four (4) business days after deposit in the United States mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change

in accordance with this Section. All notices by telecopy facsimile shall be subsequently confirmed by U.S. certified or registered man, return receipt requested.

If to the Developer	If to the City of DeKalb
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7.8 Assignment. The Developer agrees that it shall not sell, assign or otherwise transfer its rights and obligations under this Agreement other than to an entity having common ownership with the Developer.

7.9 Successors and Assigns. The agreements, undertakings, rights, benefits and privileges set forth in this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives (including successor Corporate Authorities) as limited by section 7.8.

7.10 Commencement/Termination. This Agreement shall commence on the date that it is last signed by one of the parties. This Agreement shall terminate, upon the earlier of the following: (1) the completion of all the performance that is due by the Parties; (2) the City's payment to the Developer of all Electricity Tax rebates due under this Agreement or (3) upon the termination of this Agreement as result of a default or the operation of any other provision herein.

7.11 Interpretations. This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

7.12 Counterparts. The parties do not need to sign the same copy of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the dates set forth below.

DEVELOPER By: _____	CITY OF DEKALB By: _____ Mayor Jerry Smith
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ATTEST: By: _____ Date:	ATTEST: By: _____ Date:
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EXHIBIT A

(Legal description and PINs for the Subject Property)

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EXHIBIT B

(Developer's Concept Plans)

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