

ORDINANCE NO. _____

CITY OF SALEM, ILLINOIS

**AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT**

for the

**ANNUAL ADMINISTRATION OF THE
SALEM DOWNTOWN
TAX INCREMENT FINANCING (TIF) DISTRICT 3
by and between**

THE CITY OF SALEM, MARION COUNTY, ILLINOIS

and

JACOB & KLEIN, LTD.

and

THE ECONOMIC DEVELOPMENT GROUP, LTD.

**ADOPTED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF SALEM, MARION COUNTY, ILLINOIS,
ON THE 5TH DAY OF JUNE, 2023.**

ORDINANCE NO. _____

CITY OF SALEM, ILLINOIS
AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT
for the
ANNUAL ADMINISTRATION OF THE
SALEM DOWNTOWN TAX INCREMENT FINANCING (TIF) DISTRICT 3
by and between
THE CITY OF SALEM, MARION COUNTY, ILLINOIS
and
JACOB & KLEIN, LTD.
and
THE ECONOMIC DEVELOPMENT GROUP, LTD.

PREAMBLE

WHEREAS, on October 6, 2003 the City of Salem, Marion County, Illinois (the “City”) established the Salem Downtown Tax Increment Financing (TIF) District 3 pursuant to the Tax Increment Allocation Redevelopment Act (the “Act”), 65 ILCS 5/11-74.4-1 *et. seq.*; and

WHEREAS, the City desires to engage the professional services of Jacob & Klein, Ltd. to render administrative services and legal advice and The Economic Development Group, Ltd. to render technical advice to assist the City in administering the **Salem Downtown TIF District 3**.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SALEM, MARION COUNTY, ILLINOIS THAT:

1. The Professional Services Agreement by and between the City of Salem, Jacob & Klein, Ltd. and The Economic Development Group, Ltd. (*Exhibit A* attached) is hereby approved.
2. The Mayor is hereby authorized and directed to enter into and execute on behalf of the City said Professional Services Agreement and the City Clerk of the City of Salem is hereby authorized and directed to attest such execution.
3. The Professional Services Agreement shall be effective on the date of its approval, on the 5th day of June, 2023.
4. This Ordinance shall be in full force and effect from and after its passage and approval as required by law.

PASSED, APPROVED AND ADOPTED by the Mayor and City Council of the City of Salem, Marion County, Illinois, this 5th day of June, 2023.

CORPORATE AUTHORITIES	AYES	NAYS	ABSTAIN	ABSENT
Craig Morton				
Jim Koehler				
Tracy Crouch				
Royce Bringwald				
Nicolas Farley, Mayor				
TOTALS:				

APPROVE:

Mayor

ATTEST:

City Clerk

EXHIBIT A is attached: Professional Services Agreement by and between the City of Salem, Marion County, Illinois and Jacob & Klein, Ltd. and The Economic Development Group, Ltd.

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

for the

**ANNUAL ADMINISTRATION OF THE
SALEM DOWNTOWN
TAX INCREMENT FINANCING (TIF) DISTRICT 3**

by and between

THE CITY OF SALEM, MARION COUNTY, ILLINOIS

and

JACOB & KLEIN, LTD.

and

THE ECONOMIC DEVELOPMENT GROUP, LTD.

JUNE 5, 2023

PROFESSIONAL SERVICES AGREEMENT
for the
ANNUAL ADMINISTRATION OF THE
SALEM DOWNTOWN TAX INCREMENT FINANCING (TIF) DISTRICT 3
by and between
THE CITY OF SALEM, MARION COUNTY, ILLINOIS
and
JACOB & KLEIN, LTD.
and
THE ECONOMIC DEVELOPMENT GROUP, LTD.

THIS AGREEMENT is entered into this 5th day of June, 2023, by and between the **CITY OF SALEM, ILLINOIS**, an Illinois Municipal Corporation (the “City”); and **JACOB & KLEIN, LTD.**, Bloomington, Illinois, an Illinois Professional Service Corporation (“J&K”); and **THE ECONOMIC DEVELOPMENT GROUP, LTD.**, Bloomington, Illinois, and Illinois Corporation (“EDG”). The City, J&K and EDG may hereinafter be referred to as the “Parties” to this Agreement.

WHEREAS, on October 6, 2003, the City established a Tax Increment Financing (TIF) District within the City pursuant to the Tax Increment Allocation Redevelopment Act (the “Act”), 65 ILCS 5/11-74.4-1 *et. seq.* known as **SALEM DOWNTOWN TIF DISTRICT 3** (the “TIF District”); and

WHEREAS, pursuant to the terms herein set forth in this Agreement, the City desires to engage the professional services of J&K to render legal advice and EDG to render technical advice to assist the City in Annually Administering the Tax Increment Financing Redevelopment Plan, Area and Projects for the TIF District.

NOW, THEREFORE, the Parties agree as follows:

1. **City to Engage J&K and EDG.** The City agrees hereby to engage the services of J&K and EDG for the purposes set forth herein and J&K agrees to provide all legal advice to EDG and the City to prepare or coordinate the preparation of Reports, Notices and Documentation (including those reports prepared by other professionals) necessary pursuant to State Statutes and as outlined in *Exhibit 1. Professional Services Relating to the Annual Administration of the TIF District.*
 - a. The Parties agree that J&K, as Attorneys, will undertake those responsibilities that require legal advice or preparation under this Agreement on behalf of the City or EDG. EDG is a separate company and is owned in-whole by Herbert J. Klein. Mr. Klein is also the principal owner of Jacob & Klein, Ltd. (J&K). The City is entering into this Agreement voluntarily and with informed consent after the opportunity to consult with independent counsel as to the ownership of both entities by Herbert J. Klein.
 - b. J&K may, in addition, be retained by the City as its special attorney to perform other professional services outside the Scope of Services set forth herein, including representation of the City before State agencies or the Illinois Legislature. Such representation shall be at the Attorney’s then current hourly rate for similar services

or as otherwise agreed. Any such representation shall be pursuant to a written agreement between the Parties.

- i. Legal services provided by J&K and/or consulting services provided by EDG relating to financing, including the issuance of Bonds involving the TIF District, will be billed separately from this Agreement and subject to the terms of any agreements related to such financing or Bonds.
 - ii. If retained as a Registered Municipal Advisor through a separate Letter of Engagement, EDG will analyze the potential use of TIF Revenue Bonds, Developer Notes, and other financing alternatives, as well as arrange for Bond Counsel when required by the City.
 - iii. This Agreement does not include representation in any Court case resulting from the establishment of the TIF District Redevelopment Plan, Area or Projects or the Annual Administration of the TIF District. Additional legal representation and fees will be determined on a case-by-case basis.
- c. The total Fees and Reimbursable Costs to be paid hereunder by the City to J&K and EDG, when billed by each of the separate entities, will not be duplicated and will not exceed the total Fees and Reimbursable Costs provided for herein.
 - d. The Parties agree that pursuant to *Section 5/11-74.4-3(q)(1)* of the Act, all Professional Fees and related Costs incurred by the City for Annually Administering the TIF District are TIF eligible project costs and are fully reimbursable to the City from the real estate tax increment generated by the TIF District.
 - e. The City hereby acknowledges that J&K and EDG are not responsible for monitoring and documenting matters relating to compliance with the Illinois Prevailing Wage Act, the Illinois Procurement Code, and any other wage and/or employment laws, to the extent such are applicable to any public or private project undertaken within the TIF District Redevelopment Project Area or the Area as may be amended in the future.

2. Annual Administration of the TIF District.

- a. **Services.** J&K and EDG will provide the services as outlined in *Exhibit 1* to annually administer the TIF District for Fiscal Year 2024 and thereafter.
 - i. On an annual basis, all of the legal review of documents and matters relating to the statutory compliance of public and private development activities occurring within the TIF District are provided by J&K in the Annual Administrative Fee. Other administrative functions will be provided by EDG. EDG will also provide financial feasibility analyses for new proposed private developments. J&K will provide legal services required in the preparation of new Redevelopment Agreements and other legal documents and legal opinions.

- ii. To the extent possible, J&K and EDG will attempt to include in Private Redevelopment Agreements provisions allocating a portion of the Annual Administrative Fees, Annual Costs, and other fees to those Private Developments on a pro-rata basis determined by the increment generated by those Developments which have Redevelopment Agreements.
 - iii. For J&K and EDG to effectively perform its obligations as set forth hereunder, the City understands and acknowledges that it is hereby obligated to provide J&K and EDG, at their request, any and all necessary documents, records and information relating to the establishment and administration of the TIF District. The City shall not hold J&K or EDG liable for the non-performance of any obligation hereunder that results from any failure of the City, for whatever reason, to provide such necessary documents, records, or information. Notwithstanding anything contained herein to the contrary, J&K and/or EDG may, in its sole discretion, unilaterally terminate this Agreement at any time upon the failure of the City to provide such necessary documents, records and information as requested to the satisfaction of J&K and EDG.
 - iv. J&K and EDG shall not be responsible for the work done by others in the establishment and administration of the TIF District, including any documents filed with the State of Illinois, County Clerk or County Assessor from the inception of the work to establish the TIF District and thereafter.
- b. **Term.** The term of the Annual Administrative Services provided in this Agreement shall be for three (3) years and shall commence upon the execution of this Agreement. Thereafter, this Agreement shall automatically renew at the end of each three-year period during the life of the TIF District as a roll-over, for an additional three (3) year period, absent notice of non-renewal as provided herein. This Agreement as it relates to annual administrative services may be terminated by written notice of non-renewal from the City to J&K and EDG no later than one (1) year prior to the end of each contract period. If the City provides J&K and EDG written notice of non-renewal, then J&K and EDG shall not be responsible for preparing and filing the TIF District Annual Report relating to the current fiscal year in which notice of non-renewal is received. Upon receiving written notice of non-renewal, J&K and EDG is to provide to the City a final invoice for professional fees and costs incurred as of the date of the termination.
- c. **Payment of Annual Administrative Fee and Reimbursable Costs.**
- i. The Annual Administrative Fee to be paid by the City to J&K and EDG for the Annual Administration of the TIF District shall be paid as set forth below.
 - 1. **Initial Annual Administrative Fee for the TIF District:** The first year of this Agreement, the Base Professional J&K and EDG Fees for all services described in the Scope of Professional Services relating to the TIF District, including the preparation and review of past annual reports and Joint Review Board Meetings not held previously, shall be **Six Thousand and 00/100 Dollars (\$6,000.00).**

2. **Base Annual Administrative Fee for the TIF District:**
Commencing with the second year of this Agreement and continuing on an annual basis thereafter, the Base Professional J&K and EDG Fees for all services described in the Scope of Professional Services relating to the TIF District shall be **Four Thousand Five Hundred and 00/100 Dollars (\$4,500.00)** plus the increase in the *Consumer Price Index - All Urban Consumers IL-IN-WI*, using **2023** as the base year.
- ii. In addition to the Annual Administrative Fee, all Reimbursable Costs incurred by J&K and EDG as part of the annual administration of the TIF District shall be reimbursed to J&K and EDG by the City, including all reasonable travel and subsistence expenses while away from Bloomington or Peru, Illinois, all photocopying, report binding, mailings, postage, and staff costs. Such are to be reimbursed at customary rates charged by J&K or EDG. For purposes of this Agreement, staff costs do not include the time of Attorneys Herb Klein or Nic Nelson (J&K) or Steven Kline (EDG) while performing said Professional Services described in *Exhibit 1* and subject to the following conditions:
 1. All travel will be reimbursed for mileage at the maximum rate permitted by Internal Revenue Service Rules and Regulations at the time of service. All other costs which are incidental to the administration of the TIF District, including staff costs, photocopying and report binding, mailings, postage, and telecommunication charges, shall be reimbursed at the current rates then charged by J&K and EDG.
 2. The total Reimbursable Costs incurred by J&K and EDG as part of the Annual Administration of the TIF District shall not exceed **Two Thousand Five Hundred Dollars (\$2,500.00)** without written consent of the City in advance of such additional services being performed.
 - iii. For Annual Administrative Fees, and Annual Administrative Costs, J&K and EDG shall bill the City on a quarterly basis. For the purpose of this Agreement, Quarterly Billings shall occur as follows:

Service Period	Billing Month
January, February, March	April
April, May, June	July
July, August, September	October
October, November, December	December

- iv. Annual Administrative Fees shall be adjusted annually for the *Consumer Price Index - All Urban Consumers IL-IN-WI*, using **2023** as the base year and prorated in equal installments for purposes of determining quarterly billings.

- d. The City understands that J&K and EDG shall rely on the work of others, including the City Administrator, Engineer, Clerk, Auditor and Attorney; the County Assessor and County Clerk; the Illinois Department of Revenue (IDOR); the Illinois Department of Commerce and Economic Opportunity (DCEO); the Illinois Comptroller's Office and the Illinois State Board of Education for information and documentation necessary for the Annual Administration of the TIF District. The City further understands that it may directly incur additional fees and costs for the Annual Administration of the TIF District which result from the involvement of other (non-J&K/EDG) professionals.
3. **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether, or not, to seek advice of counsel with respect to the Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of this Agreement. Titles of the several parts, paragraphs, sections, or articles of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any provisions hereof.
4. **Titles of Paragraphs.** Titles of the several parts, paragraphs, sections, or articles of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any provisions hereof.
5. **Amendments to this Agreement.** J&K/EDG and the City agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such supplements hereto and such further instruments as may be reasonably required by the Parties hereto for carrying out the intention of or facilitating the performance of this Agreement. The Parties hereto may therefore amend this Agreement at any time by their mutual consent which amendment must be in writing and executed by the Parties.
6. **Entire Agreement.** The Terms and Conditions set forth in this Agreement supersede all prior oral and written understanding and constitute the entire Agreement between the Parties with respect to the subject matter hereof.
7. **Binding Upon Successors in Interest.** This Agreement shall be binding upon all the Parties hereto and their respective heirs, successors, administrators, assigns, or other successors in interest.
8. **Notices.** Notices or demands hereunder shall be in writing and shall be served by (a) personal delivery, or (b) certified mail, return receipt requested to the following addresses, or to the last known address of either party or to the address provided by any assignee if such address has been given in writing. In the event said notice is mailed, the date of service of such notice shall be deemed to be three (3) business days after the date of delivery of said notice to the United States Post Office.

City of Salem
% City Administrator
101 S Broadway Street
Salem, IL 62881
Ph: (618) 548-2222

Jacob & Klein, Ltd. and
The Economic Development Group, Ltd.
1701 Clearwater Avenue
Bloomington, IL 61704
Ph: (309) 664-7777

9. **Severability.** If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby.
10. **Choice of Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois with venue lying in the Circuit Court of McLean County, Illinois.
11. **Warranty of Signatories.** The signatories of this Agreement warrant that they have full authority to execute this Agreement and to bind the entity for which they are signing and agree to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.
12. **Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, the City, J&K, and EDG have executed this Professional Services Agreement on the day and year above written.

THE CITY OF SALEM, an Illinois Municipal Corporation:

By: _____
Mayor

Attest: _____
City Clerk

JACOB & KLEIN, LTD., an Illinois Professional Service Corporation:

By: _____
President

THE ECONOMIC DEVELOPMENT GROUP, LTD., an Illinois Corporation:

By: _____
President

EXHIBIT 1

PROFESSIONAL SERVICES RELATING TO THE ANNUAL ADMINISTRATION OF THE SALEM DOWNTOWN TIF DISTRICT 3

Services to be provided to the City by J&K and EDG relating to the Annual Administration of the TIF District are set forth as follows:

1. Provide the City with on-call legal and consulting services on matters relating to the TIF District as needed.
2. Consult with and coordinate administrative activities with City Administrator, Clerk, Engineer, Auditor, Mayor, Office Manager, Budget Administrator and other officials as required.
3. Track and monitor the growth of annual Real Estate and Sales Tax (if appropriate) Increment within the TIF District.
4. Negotiate terms of TIF Reimbursements and prepare Redevelopment Agreements with Developers.
5. Consult with Developers regarding TIF Redevelopment Agreements and Reimbursements.
6. Communicate with Developers and the County Supervisor of Assessments to review improvements, paid tax bills and changes in Equalized Assessed Valuations.
7. Advise City on matters relating to Developer Reimbursements (e.g., verify paid property tax bills and eligible project costs and advise the municipality to make payments).
8. Provide City with a Public Requisition/Payment Approval process.
9. Advise City on matters relating to payments to other taxing bodies under Intergovernmental Agreements.
10. Prepare, certify, and submit Annual TIF District Reports to the Office of the Illinois Comptroller.
11. Provide legal opinion (J&K) on matters relating to Annual Reports to State Comptroller as required by the TIF Act.
12. Prepare TIF District Annual Reports for submission to City and other taxing districts.
13. Conduct City's Annual Joint Review Board Meetings with Taxing Bodies as required by the TIF Act.

14. Upon request, work with the School District to determine and analyze potential financial impacts, evaluate alternative approaches for assisting the school district and prepare necessary Intergovernmental Agreements.
15. Prepare TIF Increment Projections for City and Reimbursement Estimates for Developers.
16. Prepare necessary minor amendments and procedures for City to remove property from the TIF District as may relate to such properties being included in a separate, contiguous Redevelopment Project Area.
17. If retained as a Registered Municipal Advisor per a separate Letter of Engagement, EDG will analyze the potential use of TIF Revenue Bonds, Developer Notes, and other financing alternatives, as well as arrange for Bond Counsel when required by the City or a Developer. All professional services related to the issuance of Bonds will be additional, subject to separate agreements and billed at the then applicable rates.

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