

**AGREEMENT BETWEEN THE VILLAGE OF LAKE ORION AND
THE LAKE ORION DOWNTOWN DEVELOPMENT AUTHORITY
REGARDING RESPONSIBILITIES AND COST ALLOCATION FOR
CAPITAL IMPROVEMENT PROJECTS**

This Agreement is made and entered this _____ day of _____ 2025 by and between the Village of Lake Orion, a Michigan municipal corporation, with its principal offices at 21 E. Church Street, Lake Orion, MI 48362 ("Village"), and the Lake Orion Downtown Development Authority, organized and existing pursuant to the authority of Part 2, of the Recodified Tax Increment Financing Act, Public Act 57 of 2018, being MCL 125.4201, et seq, with its principal offices at 118 N. Broadway St. Lake Orion MI 48362 ("DDA"), for the purpose of fixing the rights and obligations of the parties relative to the construction of "public facilities" improvements within the defined boundaries of the Downtown Development District (the "Projects").

Whereas, the Village and the DDA have passed and certified Resolutions, attached as Exhibit B, designating that a portion of the Annual Tax Increment Finance ("TIF") Revenue derived from the adopted TIF Development Plan shall be provided as funding support for capital improvement Projects that qualify as Public Facility improvements under MCL 125.4201 et seq; and

Whereas, the Village and the DDA have formed a Joint Committee to review, approve and recommend certain Projects in the District that are compliant with the purpose and intent of the Mutual Resolutions and DDA TIF Development Plan; and

Whereas, the DDA has created a Capital fund account, pursuant to the formula described in Exhibit A, within its budget to hold and appropriate seventy-five percent (75%) of all future captured revenue deriving from the annual increase in ad valorem value within the District; and

Whereas, the Village and the DDA have reached an understanding with each other regarding their respective responsibilities for an annual appropriation of revenue to the fund, the administration of Project management and cost, including invoiced reimbursement to the Village, and desire to enter into this Agreement to memorialize that understanding.

THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, the Village and the DDA agree:

1. **Incorporation of Enabling Resolutions.** Each Resolution for Designation of Tax Increment Revenues from the DDA TIF Capture to be Dedicated for Public Facility

Infrastructure in the DDA District, which were adopted and certified by the Village on _____ and the DDA on December 13, 2022, is hereby incorporated and made a material part of this Agreement.

2. **Identification of Project(s)**. Through the Joint Committee established for this purpose, the Village and the DDA shall undertake and complete the identification and selection of Project(s) to construct, renovate, repair, remodel, rehabilitate, restore, preserve or reconstruct “public facilities” as defined by MCL 125.4201, et seq, within the DDA District, restricting such Project(s) to those necessary and appropriate to the execution of the DDA Development Plan.
 - a. All costs necessary and inherent in the testing, oversight, engineering, review or analysis of any proposed Project, including all internal or external consulting, planning, other fees or regulatory controls, shall be solely borne by the Village, holding the DDA harmless therefrom.
 - b. Any necessary or required entitlement or municipal application, review and process of approval, including all permitting, bonding, or other regulatory demand, shall be the responsibility of the Village, holding the DDA harmless therefrom.
3. **Project Management**. The Village will enter into, and be solely responsible for, any necessary contract(s) with any and all contractor(s), suppliers, professionals, or material provider, for the Project. The Village will administer and manage all contract(s) and related work necessary for the completion of the Project, without contribution from the DDA. In all contract(s), agreements, work order(s), or similar instrument(s) used for the planning, development and completion of identified Project(s), the Village shall require that the Contracted party indemnify the DDA for any claims or lawsuits by third parties arising from the work and must require the Contracted party to cover the DDA as additionally insured on general liability policy(s).
4. **Application of TIF Capital Fund(s)**. The DDA is responsible for funding its identified share of the Project(s) pursuant to the intent of the enabling resolutions incorporated herein, and in accord with the following;
 - a. Upon identification of a Project by the Joint Committee, a Project Plan shall be submitted by the Village to the DDA setting forth the project scope, estimated total cost, proposed timeline, proposed DDA share of cost, and certification of the projects compliance with the limitations of MCL 125.4201, et seq, whereupon the DDA shall timely review and approve the project for inclusion in any immediate or annual budgetary plan or appropriation schedule, such approval not being unreasonably delayed or withheld.
 - b. The Village shall be responsible and shall pay the Project costs, satisfying any contract directly with any Contractor, as described above, and finance the

complete cost of the construction, holding the DDA harmless therefrom.

- c. Pursuant to the approved Project Plan, the Village will invoice the DDA at such times and events as defined in the Project Plan. The DDA shall reimburse the Village for the DDA's share of incurred costs, as authorized in the approved Project Plan, within thirty (30) days of receipt of an invoice from the Village.
- d. Notwithstanding the DDA's funding of a share of the Project, the parties agree that responsibility for management of the Project, including all aspects of the contract with the Contractor(s), rests with the Village.

5. **Fixed Cost to DDA.** The cost allocation between the Village and the DDA for each approved Project Plan are fixed and binding between the parties and cannot be changed except by written Amendment to the Project Plan and re-approval of the amended plan. The DDA's obligation to fund its share of the Project does not include any obligation to fund change orders, contract addendum or amendment, cost associated with delay, site conditions or acts of God. The cost to the DDA for any Project, as set forth in any approved Project Plan, is a fixed cost, to be drawn against the Capital Improvement ledger account contemplated and created from the incorporated mutual enabling resolutions. No Project shall be funded with future anticipated revenues or made otherwise binding upon any other revenue or budgetary appropriation of the DDA without the written consent of the DDA, by Board Resolution.

6. **Miscellaneous.**

- a. This Agreement constitutes the complete expression of the agreement between the parties on the subjects contained herein and there are no other oral or written agreements or understandings between the entities concerning these subjects.
- b. Any prior agreements or understandings on the matters addressed in this Agreement are hereby rescinded, revoked or terminated.
- c. Other than as specifically set forth herein, this Agreement may be modified or amended only by subsequent written agreement approved by the governing body of each of the Parties.
- d. The headings in the Agreement are for convenience only, and shall not be considered as a part of the Agreement but the Recitals are an integral part of the Agreement.
- e. This Agreement shall be governed by the laws of the State of Michigan and shall be interpreted in a manner consistent with applicable law.
- f. If any portion is held to be illegal, invalid, or unenforceable, the remainder of the Agreement shall be deemed severable and shall remain in full force and effect.
- g. Nothing in the Agreement shall be construed as a waiver of governmental immunity or other defenses to liability of either party or any officer or employee of either party.
- h. The Agreement does not create a separate legal entity, a public body corporate, or a joint venture.
- i. Any grants from Federal, State, or other public or private sources to either Party

in conjunction with the services, functions or responsibilities contemplated in the Agreement shall be retained by the party receiving the same.

IN WITNESS WHEREOF, both Parties have caused this Agreement to be executed as of the date first written above, pursuant to a resolution of its governing body.

VILLAGE OF LAKE ORION,
A Michigan municipal corporation

LAKE ORION DOWNTOWN
DEVELOPMENT AUTHORITY

By: Darwin McClary
Its: Manager

By: Matthew Gibb
Its: Executive Director

EXHIBIT A

FORMULA FOR ANNUAL CAPITAL IMPROVEMENT ALLOCATION

Pursuant to PA 57 of 2018, the DDA is required to file with the State of Michigan an annual report which details the prior year actual tax revenue derived from and under the TIF within the District. To accurately account for the allocation of seventy-five (75%) percent of the annual increase in TIF captured revenue, the DDA shall provide the Annual Report to the Village, on or before its due date, along with a statement showing the prior year revenue total reported to the state of Michigan, and the balance increase reflected in the difference between the then current year reported revenue, less the prior year, multiplied by .75 to reflect the next appropriation.

By way of example:

Calculating 75% of the actual captured revenue year over year

2022 ALLOCATION

2022 Reported TIF Revenue	\$828,290
Less 2021 Reported TIF Revenue	<u>\$789,347</u>
Increase in TIF Revenue	\$38,953
For the one Month in 2022	<u>\$3,246</u>
Share Allocated (75%)	\$2,434

2023 ALLOCATION

2023 Reported TIF Revenue	\$896,975
Less 2022 Reported TIF Revenue	<u>\$828,290</u>
Increase in TIF Revenue	\$68,685
Share Allocated (75%)	\$51,514

2024 ALLOCATION

2024 Reported TIF Revenue	\$963,306
Less 2023 Reported TIF Revenue	<u>\$896,975</u>
Increase in TIF Revenue	\$66,331
Share Allocated (75%)	\$49,749

EXHIBIT B

ADOPTED AND CERTIFIED ENABLING RESOLUTIONS