

ORDINANCE NO. ~~20-012~~

CITY OF MONMOUTH, ILLINOIS

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

for the

**ESTABLISHMENT AND ANNUAL ADMINISTRATION OF
MONMOUTH BUSINESS DEVELOPMENT DISTRICT NO. 2**

by and between

THE CITY OF MONMOUTH, WARREN COUNTY, ILLINOIS

and

JACOB & KLEIN, LTD.

and

THE ECONOMIC DEVELOPMENT GROUP, LTD.

**ADOPTED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF MONMOUTH, WARREN COUNTY, ILLINOIS,
ON THE 6TH DAY OF APRIL, 2020.**

ORDINANCE NO. 20-012

CITY OF MONMOUTH, ILLINOIS
AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT
for the
ESTABLISHMENT AND ANNUAL ADMINISTRATION OF
MONMOUTH BUSINESS DEVELOPMENT DISTRICT NO. 2
by and between
THE CITY OF MONMOUTH, WARREN COUNTY, ILLINOIS
and
JACOB & KLEIN, LTD.
and
THE ECONOMIC DEVELOPMENT GROUP, LTD.

PREAMBLE

WHEREAS, the City of Monmouth, Warren County, Illinois, an Illinois Home Rule Municipal Corporation (the "City") wishes to establish a Business Development District pursuant to the Business District Development and Redevelopment Act (65 ILCS 5/11-74.3-1 *et. seq.*, the "Act") in order to attract new retail businesses to the City, provide for the retention and expansion of existing retail businesses located in the City, and make public infrastructure improvements in support of such businesses; 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 establishing and administering the **Monmouth Business Development District No. 2** (the "BDD").

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

1. The Professional Services Agreement by and between the City of Monmouth, 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 Monmouth 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 6th day of April, 2020.
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 Monmouth, Warren County, Illinois, this 6th day of April, 2020.

CORPORATE AUTHORITIES	AYES	NAYS	ABSTAIN	ABSENT
Tony Cook				
Justin Thomas				
Brian Daw				
Susan Twomey				
Juan Pinedo				
Bob Wells				
Mary Kelly				
Dan Heatherly				
Rod Davies, Mayor				
TOTALS:				

APPROVE:

Rod Davies, Mayor

ATTEST:

Susan Trevor, City Clerk

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

EXHIBIT A

**Professional Services Agreement
by and between
The City of Monmouth, Warren County, Illinois
and
Jacob & Klein, Ltd.
and
The Economic Development Group, Ltd.**

PROFESSIONAL SERVICES AGREEMENT

for the

**ESTABLISHMENT AND ANNUAL ADMINISTRATION OF
MONMOUTH BUSINESS DEVELOPMENT DISTRICT NO. 2**

by and between

THE CITY OF MONMOUTH, WARREN COUNTY, ILLINOIS

and

JACOB & KLEIN, LTD.

and

THE ECONOMIC DEVELOPMENT GROUP, LTD.

APRIL 6, 2020

PROFESSIONAL SERVICES AGREEMENT
for the
**ESTABLISHMENT AND ANNUAL ADMINISTRATION OF
MONMOUTH BUSINESS DEVELOPMENT DISTRICT NO. 2**
by and between
THE CITY OF MONMOUTH, WARREN COUNTY, ILLINOIS
and
JACOB & KLEIN, LTD.
and
THE ECONOMIC DEVELOPMENT GROUP, LTD.

THIS AGREEMENT is entered into this 6th day of April, 2020, by and between the **CITY OF MONMOUTH, ILLINOIS**, an Illinois Home Rule 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, the City of Monmouth, Warren County, Illinois (the "City") wishes to establish a Business Development District pursuant to the Business District Development and Redevelopment Act (65 ILCS 5/11-74.3-1 *et. seq.*, the "Act") in order to attract new retail businesses to the City, provide for the retention and expansion of existing retail businesses located in the City, and make public infrastructure improvements in support of such businesses; 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 establishing and administering the **Monmouth Business Development District No. 2** (the "BDD" or "Monmouth BDD No. 2"); and

WHEREAS, the Parties acknowledge that for scheduling and cost-containment purposes, this Agreement shall be null and void unless approved and executed on or before April 6, 2020 and in concurrence with the approval and execution by the Parties of a Professional Services Agreement for the Establishment and Annual Administration of the Monmouth Main Street 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, the BDD Redevelopment Plan, Notices and Documentation (including those reports prepared by other professionals) necessary to complete the Establishment and the Annual Administration of the BDD Plan, Area and Projects as required pursuant to State Statutes and as outlined in ***Exhibit 1. Professional Services Relating to the Establishment of the BDD*** and ***Exhibit 2. Professional Services Relating to the Annual Administration of the BDD.***
 - 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 corporate entity established by Thomas N. Jacob (of

counsel) 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 BDD, 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 BDD 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 BDD Redevelopment Plan, Area or Projects or the Annual Administration of the BDD.
- 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 the Act, all Professional Fees and related Costs incurred by the City for Establishing and Annually Administering the BDD are BDD eligible project costs and are fully reimbursable to the City from the BDD sales tax revenues generated by the BDD.
- 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 BDD Redevelopment Project Area or the Area as may be amended in the future.

2. Establishment of the BDD.

- a. **Services.** J&K and EDG will provide services as outlined in ***Exhibit 1*** to Establish the BDD.
- b. **Term.** This Professional Services Agreement for the Establishment the BDD shall commence immediately and shall continue until the presentation of the BDD

Redevelopment Plan and appropriate ordinances to the City Council for the Establishment of the BDD. It is anticipated that the BDD will be established on or before October 1, 2020, barring unexpected complications.

- c. **Payment of Fees and Reimbursable Costs.** The total Base Professional Fee to be paid to J&K and EDG for the Establishment of the BDD shall be **Twelve-Thousand Five-Hundred and 00/100 Dollars (\$12,500.00)**, plus Reimbursable Costs, and are to be paid by the City as follows:
- i. J&K and EDG shall be paid a total sum of **Six-Thousand Two Hundred Fifty and 00/100 Dollars (\$6,250.00)** within fourteen (14) days upon execution of this Agreement.
 - ii. The balance of the Fee, **Six-Thousand Two Hundred Fifty and 00/100 Dollars (\$6,250.00)**, and remaining Costs for the establishment of the BDD shall be paid when the final Ordinances are presented to the City Board for passage.
 - iii. All Reimbursable Costs incurred by J&K and EDG as part of the Establishment of the BDD 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. For purposes of this Agreement, staff costs do not include the time of Attorneys Thomas N. Jacob, Nic Nelson or Herb Klein (J&K), or the time of Steven Kline (EDG) while performing said Professional Services described in **Exhibit 1** 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 establishment of the BDD, 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.
 - iv. The City understands and acknowledges that J&K and EDG will rely on the work of other professionals, including the City's Engineers and Attorney, to prepare reports and documentation needed for the BDD Redevelopment Plan, Projects and Reports and other necessary documents; and that J&K and EDG shall rely on their professional expertise to prepare the BDD Redevelopment Plan and present material and information necessary to the Establishment of the District. The City further understands that it may directly incur additional fees and costs for the Establishment of the BDD which result from the involvement of other (i.e., non-J&K/EDG) professionals.

3. Annual Administration of the BDD.

- a. **Services.** J&K and EDG will provide services as outlined in *Exhibit 2* to annually administer the BDD.
- 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 BDD 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.
- b. **Term.** The term of the Annual Administrative Services for the City of Monmouth BDD No. 2 shall be for one (1) year and shall commence upon the Establishment of the BDD. Thereafter, this Agreement shall automatically renew at the end of each year during the life of the BDD as a roll-over, for a new period of one (1) year, 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 ninety (90) days prior to the end of each contract period. Upon receiving written notice of non-renewal, J&K and EDG are to provide 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 BDD shall be an annual fee of **One Thousand Eight Hundred and 00/100 Dollars (\$1,800.00)**. This Annual Fee shall be adjusted annually for the *Consumer Price Index - All Urban Consumers IL-IN-WI*, using **2020** as the base year.
 - ii. There shall be an additional Annual Administrative Fee of **Nine Hundred and 00/100 Dollars (\$900.00)** plus the annual increase in the Consumer Price Index using 2020 as the base year for each BDD Redevelopment Agreement the City enters into for any projects located within the BDD and for which the total cumulative BDD eligible project costs estimated to be reimbursed per the terms of said BDD Redevelopment Agreement amount to \$10,000 or more.
 1. If said additional Annual Administrative Fee for each BDD Redevelopment Agreement includes incentives relating to a Monmouth TIF District, if any, such additional Annual Administrative

Fee shall not be duplicated in J&K and EDG billings for annual administrative services relating to such TIF District.

iii. In addition to the Annual Administrative Fee, all Reimbursable Costs incurred by J&K and EDG as part of the Annual Administration of the BDD 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 Thomas N. Jacob, Herb Klein or Nic Nelson (J&K) or Steven Kline (EDG) while performing said Professional Services described in *Exhibit 2* 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 BDD, 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.

iv. 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

v. Annual Administrative Fees shall be adjusted annually for the *Consumer Price Index - All Urban Consumers IL-IN-WI*, using **2020** 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's Administrator, City Engineer, Clerk, Auditors and Attorney; the Warren 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 BDD. The City further understands that it may directly incur additional fees and costs for the Annual Administration of the BDD which result from the involvement of other (non-J&K/EDG) professionals.

e. 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 and Annual Costs to those Private Developments on a *pro-rata* basis determined by the increment generated by those Developments which have Redevelopment Agreements within the BDD.

4. **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.
5. **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.
6. **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.
7. **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.
8. **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.

(The remainder of this page is intentionally blank.)

9. **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 Monmouth
 % City Clerk
 100 East Broadway
 Monmouth, IL 61462
 Ph: (309) 734-2141

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

10. **Severability.** If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby.
11. **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.
12. **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.
13. **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 MONMOUTH, an Illinois Home Rule 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 ESTABLISHMENT OF THE BDD

Services to be provided to the City by J&K and EDG relating to the Establishment of the BDD are set forth as follows:

1. J&K shall provide City with legal advice regarding the establishment of the BDD on an on-call, as needed basis.
2. EDG shall provide City with technical consulting regarding the establishment of the BDD on an on-call, as needed basis.
3. Create an estimated schedule and timeline for completing the required procedure to establish the BDD.
4. Work with local elected officials, City staff and engineers to define the Redevelopment Project Area (BDD Boundary).
5. Consult on any necessary Annexation Agreement(s) with City Attorney and Private Developer(s), if any.
6. Prepare all required studies and reports to establish the BDD, the scope of which will include field surveys and studies in sufficient detail for the City to:
 - a. Make a formal finding that the business district is a 'blighted area' as that term is defined by the Act; and
 - b. Make a formal finding that the business district is a 'blighted area' as that term is defined by the Act; and
7. Assist the City with the preparation of a Business District Development and Redevelopment Plan (the "Plan") which sets forth the following:
 - a. A specific description of the proposed boundaries of the district, including a map illustrating the boundaries, and each address in the business district in such a way that the Department of Revenue can determine by its address whether a business is located in the business district.
 - b. A general description of each project proposed to be undertaken over the life of the business district that is to be located within the business district, including a description of the approximate location of each project.

- c. The name of the proposed business district.
 - d. The estimated business district project costs.
 - e. The anticipated source of funds to pay business district project costs.
 - f. The anticipated type(s) and terms of any obligations that could be issued.
 - g. The rate of any tax to be imposed pursuant to the Act and the period of time for which the tax shall be imposed.
8. Prepare and present to the City the required Ordinances or Resolutions for designating the BDD and approving the BDD Redevelopment Plan.
9. Assist the City with preparing requisite publications and notices as well as conduct and moderate a Public Hearing, for which Notice is published in a newspaper of general circulation within the City.
10. Assist the City with negotiating Private Redevelopment Agreements with potential Developers.

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EXHIBIT 2

PROFESSIONAL SERVICES RELATING TO THE ANNUAL ADMINISTRATION OF THE BDD

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

1. Provide the City with on-call legal and consulting services on matters relating to the BDD as needed.
2. Consult with and coordinate administrative activities with City's Administrator, City Clerk, City Engineer, CPA, Mayor and other officials as required.
3. Provide to the Illinois Department of Revenue the boundary of the Business District and a list of each address located within the Business District in such a way that the Department of Revenue can determine by its address whether a business is located in the Business District.
4. Assist the City in establishing the Special Business District Tax Allocation Fund.
5. On behalf of the City, negotiate terms of BDD Reimbursements and prepare Redevelopment Agreements with Developers.
6. Consult with Developers regarding BDD Redevelopment Agreements and Reimbursements.
7. Advise City on matters relating to Developer Reimbursements (e.g., verify eligible project costs, and advise the municipality to make payments).
8. Consult with City officials regarding the use of BDD Funds for public projects contained in the Plan and establish a Requisition Program to approve BDD Project Costs.
9. Analyze the potential use of Business Development District Revenue Bonds, Developer Notes and other financing alternatives. Arrange for Bond Counsel when required by the City. All professional services related to the issuance of specific Bonds or obligations will be additional, subject to separate agreements and billed at the then applicable rates. EDG may be designated as the City's Municipal Advisor pursuant to a separate agreement.
10. Assist the City in administering the Business Development District Plan and remaining in compliance with the Act.

(The remainder of this page is intentionally blank.)