

EMERGENCY ORDINANCE NO. 2013-08

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDED AND RESTATED TAX INCREMENT FINANCING DISTRICT REVENUE SHARING AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND THE MONROE LOCAL SCHOOL DISTRICT AND DECLARING AN EMERGENCY

WHEREAS, Sections 5709.40 et seq. of the Ohio Revised Code authorize municipalities to grant tax increment financing real property tax exemptions for improvements declared to be for a public purpose, which exemptions exempt from taxation the increase in the value of the parcel of property after the date of the ordinance declaring such property to be exempt pursuant to Section 5709.40 of the Ohio Revised Code; and

WHEREAS, Section 5709.42 of the Ohio Revised Code further authorizes a municipality to require owners of improvements subject to a tax increment financing tax exemption to make semi-annual payments to the city in lieu of taxes ("Service Payments in Lieu of Taxes"), which payments are approximately equivalent to the amount of real property tax which would be payable on the increase in the value of the parcel of property but for the exemption from taxation; and

WHEREAS, Section 5709.43 of the Ohio Revised Code further requires a municipality receiving payments in lieu of taxes to create a public improvement tax increment equivalent fund for deposit of the entire amount of such payments, to be used to pay the costs of public infrastructure improvements benefiting the parcels subject to the tax increment financing tax exemption and, if provided, to make payments to school districts impacted by exemption from taxation; and

WHEREAS, The City has created certain residential and commercial/industrial tax increment financing (TIF) districts pursuant to the authority provided in Ohio Revised Code Section 5709.40 as evidenced by the adoption of Emergency Ordinances No. 2004-26 and No. 2004-36. The School District provided the necessary consent legislation to provide for a one hundred percent (100%) real property tax exemption for a period not to exceed thirty (30) years for the TIF districts as set forth Ohio Revised Code Section 5709.40 evidenced by the adoption of a Resolution dated May 24, 2004.

WHEREAS, the City has, pursuant to an ordinance of the City Council of the City adopted on April 23, 2013 (the "City Ordinance"), authorized the execution of this Agreement; and

WHEREAS, the Board of Education of the School District has pursuant to a resolution adopted on April 22, 2013 (the "School District Resolution") authorized the execution of this Agreement; and

WHEREAS, Ohio Revised Code Sections 5709.40 and 5709.82 permit the Council of the City and the Board of Education of the School District to enter into this Agreement in order to compensate the School District for property taxes lost as a result of TIF Exemptions.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into an Amended and Restated Tax Increment Financing District Revenue Sharing Agreement by and between the City of Monroe and the Monroe Local School District pursuant to the terms and conditions set forth on Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to work with the Monroe Local School District to make the School District and City TIF distributions consistent and predictable. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED:

April 23, 2013

ATTEST:



Clerk of Council

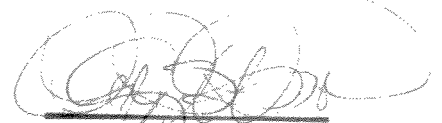
APPROVED:



Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

"I, the undersigned Clerk of Council of the City of Monroe, Ohio, hereby certify that the foregoing (ordinance or resolution) was published as Required by Section 7.16 of the Charter of the City of Monroe.



**Clerk of Council
City of Monroe, Ohio"**

AMENDED AND RESTATED

TAX INCREMENT FINANCING DISTRICT
REVENUE SHARING AGREEMENT

THIS AMENDED AND RESTATED TAX INCREMENT FINANCING REVENUE SHARING AGREEMENT (the "Agreement") is made and entered into as of this _____ day of 2013, by and between **THE MONROE LOCAL SCHOOL DISTRICT** (the "School District") and **THE CITY OF MONROE, OHIO** (the "City"). This Tax Increment Financing Revenue Sharing Agreement replaces and supersedes, in its entirety, the Amended and Restated Tax Increment Financing Revenue Sharing Agreement, dated October 3, 2007 by and between the City and the School District, as amended on April 17, 2012.

WHEREAS, Sections 5709.40 et seq. of the Ohio Revised Code authorize municipalities to grant tax increment financing real property tax exemptions for improvements declared to be for a public purpose, which exemptions exempt from taxation the increase in the value of the parcel of property after the date of the ordinance declaring such property to be exempt pursuant to Section 5709.40 of the Ohio Revised Code; and

WHEREAS, Section 5709.42 of the Ohio Revised Code further authorizes a municipality to require owners of improvements subject to a tax increment financing tax exemption to make semi-annual payments to the city in lieu of taxes ("Service Payments in Lieu of Taxes"), which payments are approximately equivalent to the amount of real property tax which would be payable on the increase in the value of the parcel of property but for the exemption from taxation; and

WHEREAS, Section 5709.43 of the Ohio Revised Code further requires a municipality receiving payments in lieu of taxes to create a public improvement tax increment equivalent fund for deposit of the entire amount of such payments, to be used to pay the costs of public infrastructure improvements benefiting the parcels subject to the tax increment financing tax exemption and, if provided, to make payments to school districts impacted by exemption from taxation; and

WHEREAS, The City has created certain residential and commercial/industrial tax increment financing (TIF) districts pursuant to the authority provided in Ohio Revised Code Section 5709.40 as evidenced by the adoption of Emergency Ordinances No. 2004-26 and No. 2004-36. The School District provided the necessary consent legislation to provide for a one hundred percent (100%) real property tax exemption for a period not to exceed thirty (30) years for the TIF districts as set forth Ohio Revised Code Section 5709.40 evidenced by the adoption of a Resolution dated May 24, 2004.

WHEREAS, the City has, pursuant to an ordinance of the City Council of the City adopted on April 23, 2013 (the "City Ordinance"), authorized the execution of this Agreement; and

WHEREAS, the Board of Education of the School District has pursuant to a resolution adopted on April 22, 2013 (the "School District Resolution") authorized the execution of this Agreement; and

WHEREAS, Ohio Revised Code Sections 5709.40 and 5709.82 permit the Council of the City and the Board of Education of the School District to enter into this Agreement in order to compensate the School District for property taxes lost as a result of TIF Exemptions; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter described, the School District and the City, covenant, agree and bind themselves as follows:

SECTION 1. Scope of Application for this Agreement. This Agreement is applicable to both the TIF incentive districts created or amended under Monroe Emergency Ordinance No. 2004-36 and any future TIF incentive districts properly created by the City pursuant to Ohio Revised Code Section 5709.40(C) after October 3, 2007. The City and the School District have agreed that compensation for exemptions granted pursuant to Ordinance No. 2004-26 will be covered by a separate Tax Incentive Agreement and will not be covered under this Amended and Restated Agreement notwithstanding that it was covered under a previous tax increment financing district revenue sharing agreement.

SECTION 2. Specific Provisions of this Revenue Sharing Agreement.

a. As provided in the School District Resolution, the School District approves all exemptions granted by the City pursuant to Section 5709.40(C) of the Ohio Revised Code, and ratifies its approval of the exemption created by Ordinance No. 2004-36, which was previously approved by the School District, for up to one hundred percent (100%) of the increase in assessed value of the real property and further improvements to any exempted property for a period of up to thirty (30) years, per exemption.

b. Pursuant to Section 5709.43 of the Ohio Revised Code, the City has established the Monroe Municipal Public Improvement Tax Increment Equivalent Incentive District Fund (the "Tax Increment Equivalent Incentive District Fund"), into which the Service Payments shall be deposited and into which any TIF incentive district property owner payments which will be dedicated to finance the Public Infrastructure Improvements will be deposited. The Tax Increment Equivalent Incentive District Fund shall have multiple accounts within said Fund corresponding to the District created by Ordinance No. 2004-36 and future Ordinances creating TIF incentive districts as provided for in Ohio Revised Code Section 5709.43.

c. Commencing with tax year 2011/collection year 2012, during any year or any portion thereof, in which the School District would have received property tax payments derived from any exempted property, but for the City's authorization of the TIF Exemption, the City agrees to pay, solely from the Service Payments in Lieu of Taxes from the Owners of the exempted property, to

the School District an amount equal to one hundred percent (100%) of the amount the School District would have received in property tax revenue from the exempted portion of the exempted property if the TIF Exemption had not been granted (the "TIF Compensation"), as determined by the City and certified to the School District. Such amount shall be calculated by multiplying the assessed value of the exempted property by the School District tax rate for the applicable tax year and adjusting for any Service Payments not actually paid by property owners or received by the City (such adjustments to be paid to the School District at the time delinquencies are paid and distributed to the City).

d. Each calendar year or portion thereof for which this Agreement is in effect, within thirty (30) days after the final payment from the county auditor of annual property taxes for that calendar year, the City shall pay to the School District, by bank or cashier's check or other mutually agreeable manner the amount of the TIF Compensation. The City must pay the TIF Compensation in two installments each to be paid respectively, upon final settlement of each half real property tax collection and distribution by the County Auditor.

e. The City and School District agree to make equitable adjustments as needed for any corrections or changes made to the Service Payments, rollback compensation or any other applicable fees or charges.

f. The TIF disbursements described herein shall commence with the tax year in which an improvement first appears on the tax list and duplicate of real and public utility property and that begins the effective date of the respective City ordinance created the TIF district as provided for in Ohio Revised Code Section 5709.40(E). This Agreement expires after the final money disbursement from the respective County Treasurer to the City based on the thirtieth anniversary of the first collection date for the service payments in lieu of taxes as provided for in Ordinance No. 2004-36. Provided, however, that upon expiration or termination of this Agreement: (i) the School District approvals stated in this Agreement with respect to exemptions approved by the City prior to expiration or termination will remain in full effect, and (ii) any City obligation to make payments pursuant to Section 3 for projects authorized prior to expiration or termination of this Agreement will remain in full effect until the separate periods for those payments have expired.

g. The School District makes these binding approvals pursuant to Ohio Revised Code Section 5709.40(B)(2), and the School District acknowledges that no separate (or subsequent to the Agreement) review, approval or resolution by the School District with respect to the separate exemptions and agreements is required to effectuate the School District's approval. The School District waives any right it may have had to separate (or subsequent to this Agreement) review, approval or resolution for the Section 5709.40(B) exemptions.

h. The School District waives any statutory requirement that the City provide the School District advance notice or notification prior to (i) taking formal action

to adopt, approve or enter into any agreement or instrument granting or approving tax exemption under Ohio Revised Code Section 5709.40(B). However, the City agrees to transmit a copy of proposed legislation for tax exemptions to the School District concurrently with submission of the proposed legislation to City Council.

SECTION 3. Waiver of Income Tax Sharing. In consideration of the TIF Compensation provided for above, the School District hereby waives any and all rights to any income tax sharing pursuant to Section 5709.82 of the Ohio Revised Code. This subsection applies to actions taken by the City pursuant to Ordinance No. 2004-36 and all actions taken by the City pursuant to Section 5709.40(C) of the Ohio Revised Code on or after October 3, 2007, which are subject to the conditional compensation provisions of Ohio Revised Code 5709.40(D) and Section 5709.82(C) and (D). The School District agrees that this Agreement constitutes the agreement for compensation to the school district provided for in Ohio Revised Code Section 5709.40(D) and Section 5709.82(C) and (D) (or under any other statute now existing, or adopted during the Term, requiring any form of sharing or allocation of municipal income taxes in connection with municipal corporation authorization of tax exemptions, and that as authorized by those subsections the City will have no obligation to pay the School District revenues from City income taxes as might otherwise be required by those subsections (or other such statute) with respect to exemptions, agreements or projects authorized by the City. The School District waives any claim to compensation pursuant to Ohio Revised Code Section 5709.82(C) and (D) other than the compensation expressly provided for in this Agreement. Provided, however, that if during the term of this Agreement City Council elects to designate a specific project as not subject to this Agreement then that project would remain subject to the conditional income tax sharing obligations of Ohio Revised Code 5709.82(C) and (D), if applicable under the terms of those sections; and the waiver provided in this subsection would not apply to that project.

The School District acknowledges that no separate (or subsequent to this Agreement) review, approval, negotiation or resolution by the School District with respect to the separate exemptions, agreements or projects that are subject to the terms of this Agreement is required with respect to the agreement under this section. The School District waives any right it may have had to separate (or subsequent to this Agreement) review, approval, negotiation or resolution.

SECTION 4. Resolution of Disputes. In the event the School District disputes the amount of the TIF Compensation as paid by the City the School District shall certify the basis for the dispute and the amount that the School District claims is the correct amount of TIF Compensation to be paid to the School District. Within fifteen (15) days thereafter, the Treasurer of the School District and the City Manager or the Finance Director shall meet to discuss and resolve the dispute. In the event the Treasurer of the School District and the City are unable to mutually agree on the amount of TIF compensation, the parties shall next mutually select an impartial arbitrator to settle the dispute and determine the amount of TIF compensation. The cost of such arbitration shall be borne equally by the School District and the City in the event that they are able to mutually arrive at a settlement of such dispute and in the event that they are unable to arrive at a mutually acceptable settlement and the arbitrator is required to make a decision the cost of such arbitration shall be borne by the losing party to such arbitration. The City shall then pay such agreed amount or determined amount within 30 days thereafter; provided that nothing contained in this Section 4 shall limit either the School District's or the

City's ability, after payment and receipt of such TIF compensation amount to seek recovery of amounts deemed overpaid or underpaid.

SECTION 5. Late Payments. Except for the case where a TIF Compensation payment is delayed pursuant to a dispute as provided in Section 4 hereof (so long as the dispute of the TIF Compensation payment amount is reasonable), any late TIF Compensation payments shall bear interest at the then current rate established under Sections 323.121(B)(a) and 5703.47 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time.

SECTION 6. Statutory Amendments. In the event of amendments to the Ohio statutes that are the subject of this Agreement, or termination of this Agreement due to a court determination of invalidity, the parties agree to cooperate and exercise reasonable efforts to attempt to amend this Agreement as necessary to conform the Agreement to the amended statutes, or to attempt to restate this Agreement to correct any matter causing a determination of invalidity, in a manner preserving the present intent and effect of this Agreement. Any such amendment or restatement of this Agreement is conditioned on new authorization by the Board of Education of the School District and by City Council of the City.

SECTION 7. Notices. All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid addressed to the following addresses:

Monroe Local
School District:

Monroe Local School District
500 Yankee Road
Monroe, Ohio 45050
Attn: Treasurer

City of Monroe, Ohio:

City of Monroe, Ohio
233 South Main Street
Monroe, Ohio 45050
Attn: City Manager

SECTION 8. Amendment. This Agreement may be amended only by mutual agreement of the parties hereto. No amendment to this Agreement shall be effective unless it is contained in a written document approved through legal process and signed on behalf of all parties hereto by duly authorized representatives.

SECTION 9. Waiver. No waiver by the School District or the City of the performance of any terms or provision hereof shall constitute, or be construed as, a continuing waiver of performance of the same or any other term or provision hereof.

SECTION 10. Merger; Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter contained herein and merges and supersedes all prior discussion, agreements, and undertakings of every kind of nature between the parties with respect to the subject matter of this Agreement.

SECTION 11. Binding Nature. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

SECTION 12. Severability. Should any portion of this Agreement be declared by a court of competent jurisdiction to be unconstitutional, invalid or otherwise unlawful, such decision shall not effect the entire agreement but only that part declared to be unconstitutional, invalid or illegal and this Agreement shall be construed in all respects as if any invalid portions were omitted.

SECTION 13. Counterparts; Captions. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

SECTION 14. Situs; Choice of Law. The situs of this Agreement is the City of Monroe, County of Butler, State of Ohio, and it shall be governed by the laws of Ohio without reference to its choice of law provisions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed in their names by their respective duly authorized representatives on the date first written above.

THE CITY OF MONROE, OHIO

By: _____
William J. Brock
City Manager

MONROE LOCAL SCHOOL DISTRICT

By: _____
Name: _____
Title: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the City of Monroe, Ohio (the "City") under the foregoing Amended and Restated Tax Increment Financing District Revenue Sharing Agreement, hereby certifies that the moneys required to meet the obligations of the City during the year 2013 under the aforesaid Agreement have been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2013

Finance Director

FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the Monroe Local School District, Ohio (the "School District") under the foregoing Amended and Restated Tax Increment Financing District Revenue Sharing Agreement, hereby certifies that the moneys required to meet the obligations of the School District during the year 2013 under the aforesaid Agreement have been lawfully appropriated by the Board of Education for such purposes and are in the treasury of the School District or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2013

Treasurer