RESOLUTION 14D-33

RESOLUTION AUTHORIZING A BUSINESS SUBSIDY AGREEMENT WITH PIER B HOLDING, LLC FOR THE PIER B PROJECT

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Business Subsidy Agreement, substantially in the form of that attached hereto (DEDA Contract No. 14 860 _____) with Pier B Holding, LLC for the Pier B Project.

Approved by the Duluth Economic Development Authority this 4th day of June, 2014.

ATTEST:

APPROVED AS TO FORM

REA

DEDA Attorney

APPROVED FOR PRESENTATION

CTE

Executive Director

_____

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the Business Subsidy Agreement with the developer of the Pier B project.

Pursuant to the Agreement the Developer is committing to provide 50 full-time equivalent jobs paying not less than $10.24 per hour.

BUSINESS SUBSIDY AGREEMENT

THIS AGREEMENT, effective as of this ____ day of June, 2014, between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "Grantor", and PIER B HOLDING, LLC, a Minnesota limited liability company, hereinafter referred to as "Recipient".

WHEREAS, Recipient is the owner of certain property between Slip Nos. 2 and 3 in the Plat of BAYFRONT DIVISION of Duluth and wishes to develop thereon a waterfront hotel, restaurant, meeting center and recreation facility (the "Development"); and

WHEREAS, Grantor is the owner of the property on the northeast side of the property referenced above between said Slip Nos. 2 and 3, which property Grantor has agreed to convey to Recipient for inclusion in the Development under the terms and conditions of a Development Agreement between the parties hereto of even date herewith (the "Development Agreement"); and

WHEREAS, Developer's Development will result in a substantial long-term increase in the tax base of the City and will result in the creation of a substantial number of jobs in the community as described below; and

WHEREAS, Grantor has determined that Recipient's Development is consistent with the overall plan for the development of the City's waterfront and the needs of the City in general and that its successful development is important to the economic development of the waterfront area and therefore needs to occur; and

WHEREAS, because of environmental conditions existing on the property hereinbefore described (the "Property") and because of other financial limitations inherent in the development of the Development, Grantor has determined that "but for" the provision of a Business Subsidy to the Development, it could not reasonably be expected to occur in the manner planned in the reasonably foreseeable future; and

WHEREAS, Grantor has determined that it is appropriate to provide a Business Subsidy to the Development as hereinafter set forth.

NOW THEREFORE, in consideration of those factors set forth in the recitals above and of the assistance being provided to the Development, the parties hereto hereby agree as follows:

1. Definitions: The following terms shall have the meanings hereinafter ascribed to them;

   A. Benefit Date: shall be the date upon which a Certificate of Completion is issued by Grantor as provided for in the Development Agreement.

B. Commitment Date: shall mean a date three (3) years after the Benefit Date.

C. Development: shall mean the Development as described in the Development Agreement.

D. Development Agreement: shall mean that certain Development Agreement between Grantor and Recipient of even date herewith.

2. Subsidy

The parties agree that the net present value of the Business Subsidy provided by Grantor is $3,460,605 from a newly-created redevelopment tax increment district.

3. Public Purposes

The public purposes which will be served by the Development and which are made possible by the granting of the subsidy:

A. The restoration of the slip walls of historic Slip No. 2 in BAYFRONT DIVISON on Duluth's Downtown Waterfront and the capping of contaminated materials in the slip.

B. The development of a 140 room first class resort hotel with restaurant, banquet and conference facilities and a marina having a cost in excess of $29 Million dollars;

C. The addition to the employment base of Duluth of at least 50 jobs as described in Subparagraph B of Paragraph 4 below.

D. The clean-up of an environmentally contaminated site on the St. Louis River Estuary as part of the City's waterfront.

E. Repair of seawalls on and adjacent to property owned by DEDA and the City, protecting the integrity of Bayfront Festival Park.

F. Increased public access to the Downtown Waterfront and improved public connectivity along it.

G. The provision of spin-off benefits in the form of new businesses and new jobs made possible by the addition of the Development to the City.

4. Development Goals

A. Tax Base: the addition of approximately $10.5 Million in taxable market value to the tax base of Downtown Duluth.

B. Employment Goals: On or before the first anniversary of the Benefit Date, Recipient commit that it will have created not less than 42 full-time equivalent jobs in

Downtown Duluth at an average hourly wage of at least $10.24 per hour or equivalent, excluding benefits. On or before the second anniversary of the Benefit date, Recipient shall have created not less than 46 such jobs and by the Commitment Date, Recipient shall have created not less than 50 such jobs.

5. Remedies

A. Tax Base: in the event that the Recipient shall fail to meet its Tax Base Goals as described in Subparagraph A of Paragraph 4 above by the Commitment Date, Grantor's remedies shall be those set forth in the Development Agreement.

B. Employment Goals: in the event that Recipient shall fail to meet its Employment Goals as set forth in Subparagraph B of Paragraph 4 above by the Commitment Date, Grantor may require Recipient to repay a portion of the Subsidy provided to Recipient as described in Paragraph 2 above plus interest as set forth below. The portion of the Subsidy to be repaid shall be prorated by multiplying the amount of the Subsidy as set forth in Paragraph 2 above by a fraction, the numerator of which is number of full-time equivalent jobs actually created in Downtown Duluth as of the date set forth in Subparagraph E of Paragraph 1 above and the denominator of which shall be the Employment Goal set forth in Subparagraph B of Paragraph 4. The interest rate to be applicable shall be the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31 of the previous year.

C. Continuing Operation Goal

In the event that Recipient or any successor or assign of Recipient shall fail to meet the Five Year Commitment as set forth in Paragraph 7 below, Recipient agrees to repay a pro rata share of the Subsidy amount set forth in Paragraph 2 above. The pro rata share shall be determined by multiplying said Subsidy amount by a fraction, the numerator of which is the number of years after the Benefit Date during which Recipient met the Five Year Commitment and the denominator of which is five (5).

D. Extension Under Statute: Grantor may, after public hearing, grant an extension to Recipient to meet the Employment Goals set forth in Subparagraph B of Paragraph 4 above as provided for in Minnesota Statutes Section 116J.994 Subd. 6(a).

6. Need for Subsidy

After consideration of the benefits to be conferred on the City of Duluth by the Development as set forth in Paragraph 3 above and the information and supporting documentation contained in and for the Tax Increment Financing Plan for TIF District 26 as referenced in Subparagraph A of

Paragraph 2 above, Grantor has determined and the parties agree that without the provision of the Subsidy by Grantor to Recipient, the Development could not have been reasonably expected to occur in Duluth and that the aforesaid benefits would not have happened in the foreseeable future.

7. Five Year Commitment

Recipient hereby commits to continue to keep and operate its corporate headquarters in Downtown Duluth, Minnesota for a period of at least five (5) years from and after the Benefit Date.

8. Corporate Parent

The Recipient has no corporate parent.

9. Other Assistance

Recipient is receiving no other financial assistance in the development of the Development except that hereinbefore described.

10. Reporting Requirement

Recipient hereby agrees to comply with the reporting requirements contained in Minnesota Statutes Section 116J.994 Subd. 7. The first such report containing the information therein required shall be due as of the date of March 1st most immediately following the Benefit Date; subsequent information shall be provided annually thereafter as long as is provided for in said statute. If Recipient fails to meet the above reporting requirements, Recipient agree that the provisions of Minnesota Statutes Section 116J.994 Subd. 7(d) shall be applicable to such failure. Provided, that upon Recipient meeting the Development Goals set forth in Paragraph 4 above, the Remedies described in Subparagraph B of Paragraph 4 above and the Reporting Requirements set forth herein shall void and of no further force and effect as authorized by the aforesaid statute.

11. No Third Party Rights

Nothing herein shall be taken to create any rights in any third party or to authorize any third party to enforce or require enforcement of any of the provisions of this Agreement.

12. Runs with the Land

There parties hereto agree that obligations of the Recipient hereunder shall be deemed to run with the land as described as the "Development Parcel" in the above-referenced Development Agreement and that the obligations of the parties hereunder shall inure to the benefit of the party's respective successors and assigns if any.

13. Notice Requirements

Notices, including the information required under Paragraph 10 above, shall be deemed to have been given if deposited in the United States Mail, postage paid, addressed to the other party at the address below or at such other address as a party may designate in writing to the other party:

In the case of Recipient:	Pier B Holding LLC 210 West Michigan Street Suite 300 Duluth, MN 55802
Copy to:	Mark Pilon Hanft Fride, P.A. 1000 US Bank Place 130 West Superior Street Duluth, MN 55802
In the case of Grantor:	City of Duluth Room 402 West Superior Street 411 West Superior Street Duluth, MN 55802

14. Applicable Law

This Agreement, together with all of its paragraph, terms covenants and conditions, is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have set their hands as of the effective date hereof.

DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under MinnStat. (1989) Chapter 469.

_____
It's President

_____
It's Secretary

PIER B HOLDING, LLC, a Minnesota Limited Liability Company

_____
Its

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____ the _____ of PIER B HOLDING, LLC, a Minnesota limited liability company, on behalf of the company.

_____

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Nancy Aronson-Norr and Emily Larson, the President and Secretary, respectively, of DEDA, an economic development authority created and existing under the Laws of the State of Minnesota, on behalf of DEDA.

_____

Notary Public

This instrument was drafted by:
Robert E. Asleson
Attorney for the Duluth Economic
Development Authority
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