


REQUEST FOR COUNCIL ACTION

Date: 2/8/2016
Item No.: 14.b

Department

City Manager Approval

V. Paul Butte

Sam J. Trueman

Item Description: Financing Agreement with Calyxt for Brownfield Cleanup

1 **BACKGROUND**

2 Calyxt, Inc., an agricultural biotech firm, has applied for access to the City's Hazardous
3 Substances Subdistrict (HSS) funds in order to clean up the contamination on the site of its new
4 headquarters on Mount Ridge Road. The company has also received funds from the Minnesota
5 Department of Employment and Economic Development (DEED) for benefits from the Job
6 Creation Fund Program.

7 Calyxt currently has 24 full-time employees and projects creating an additional 69 jobs over the
8 next three years at an average annual salary of \$62,000. They plan to acquire the northern portion
9 of the long-vacant Pik Terminal property and redevelop the site into an approximately 40,000
10 square foot office building and outdoor research plots.

11 The City approved a conditional use permit for Calyxt, Inc.'s outdoor research and development
12 use on December 16, 2015 and a resolution of support for Calyxt's DEED application on January
13 5, 2016.

14 The City's brownfields consultant has reviewed Calyxt's environmental documents and has
15 indicated that the soils in this area appear to be low level contaminated soils. They are working
16 with Calyxt's environmental consultant on finalizing technical details for the cleanup, but
17 overall, the process appears to be proceeding normally and without any significant concerns.

18 The attached development agreement (Attachment A) is not overly complex due to the nature of
19 the negotiated agreement which has structured the funding as a reimbursement process to reduce
20 the City's risk. As the agreement is proposed, the City will not be paying anything to Calyxt
21 until Calyxt can demonstrate the work was done and the contractor has been paid.

22 **POLICY OBJECTIVE**

23 Encouraging businesses with family-sustaining jobs, redeveloping industrial brownfield sites,
24 and supporting high quality businesses that enhance the tax base are all identified goals of
25 Imagine Roseville 2025. The City created the HSS Districts in order to have funds available for
26 cleanup in the Twin Lakes area.

27 **BUDGET IMPLICATIONS**

28 The approval of this agreement will not impact the general fund as the HSS funds are a separate
29 subset of Tax Increment Financing (TIF) funds, not part of the general fund. Since the use of
30 these funds is tightly restricted to cleanup related activities, the primary impact will just be to
31 reduce the amount that will be available in the future for other projects. However, in the past,
32 these funds have been accumulating more rapidly than they have been spent, so the City still has

33 significant flexibility for the future. When the City performed the overall TIF district analysis
34 last summer, there was more than \$2.3 million in HSS funds available for TIF 17A.

35 **STAFF RECOMMENDATION**

36 Staff recommends the City Council approve the attached resolution approving the Development
37 Agreement between Calyxt Inc. and the City of Roseville.

38 **REQUESTED COUNCIL ACTION**

39 Motion to approve the attached resolution as submitted.

Prepared by: Paul Bilotta, Community Development Director
Attachments: A: Draft Development Agreement
B: Draft Resolution

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF ROSEVILLE, MINNESOTA

AND

CALYXT, INC.

This document drafted by:

BRIGGS AND MORGAN (MLI)
Professional Association
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

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DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the 1st day of February, 2016, by and between the City of Roseville, Minnesota (the "City"), a municipal corporation existing under the laws of the State of Minnesota and Calyxt, Inc., a Delaware corporation (the "Developer").

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 to 469.133, the City has heretofore established Municipal Development District No. 1 (the "Development District") and has adopted a development program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (hereinafter, the "Tax Increment Act"), the City has heretofore established, within the Development District, Tax Increment Financing District No. 17 (the "Tax Increment District") and Hazardous Substance Subdistrict No. 17A (the "Subdistrict") and has adopted a tax increment financing plan therefor (the "Tax Increment Plan") which provides for the use of tax increment financing in connection with removal and/or remedial actions within the Subdistrict (hereinafter defined as the "Remedial Actions"); and

WHEREAS, in order to achieve the objectives of the Development Program and Tax Increment Plan and particularly to make the land in the Tax Increment District available for development by private enterprise in conformance with the Development Program and Tax Increment Plan, the City has determined to assist the Developer with the financing of certain costs of the Remedial Actions to be undertaken within the Subdistrict as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the undertakings of the Remedial Actions and the fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Remedial Actions are being undertaken and are being assisted; and

WHEREAS, the development of a Project (as hereinafter defined) and the Minnesota Business Subsidy Law, Minnesota Statutes, Sections 116J.993 and 116J.994, does not apply to this Agreement by reason of Section 116J.993, Subdivision 3, Clause (8); and;

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement, as the same may be from time to time modified, amended or supplemented;

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

City means the City of Roseville, Minnesota, its successors and assigns;

County means Ramsey County, Minnesota;

Developer means Calyxt, Inc., its successors and assigns;

Development Action Response Plan means the Development Action Response Plan approved by the Minnesota Pollution Agency for the Development Property.

Development District means the real property included in the Municipal Development District No. 1 heretofore established;

Development Program means the Development Program approved in connection with the Development District;

Development Property means the real property described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1 hereof;

Legal and Administrative Expenses means the fees and expenses incurred by the City in connection with negotiation and preparation of this Agreement;

Project means the construction of a 40,000 square foot corporate headquarters office building with an adjacent greenhouse on the Development Property in the City;

Remedial Actions means removal actions or remedial actions with respect to hazardous substances or pollutants or contaminants or petroleum releases affecting or which may affect the Development Property; pollution testing, demolition, and soil compaction correction necessitated by the Development Response Action Plan for the Development Property; and purchase of environmental insurance relating only to liability or response costs for the Development Property;

State means the State of Minnesota;

Subdistrict means Hazardous Substance Subdistrict No. 17A whose boundaries are coterminous with the Tax Increment District;

Tax Increment Act means Minnesota Statutes, Sections 469.174 through 469.1794, as amended;

Tax Increment District means Tax Increment Financing District No. 17 located within the Development District which was qualified as a redevelopment district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Subdistrict by the City Council on June 20, 2005, and any future amendments thereto;

Tax Increments means the tax increments derived from the Subdistrict which have been received and retained by the City in accordance with the provisions of Minnesota Statutes, Section 469.177; and

Termination Date means the earlier of (i) the date the City has issued a certificate of occupancy for the Project or (ii) the date this Agreement is terminated or rescinded in accordance with its terms;

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

- (1) The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder.
- (2) The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program and the Tax Increment Financing Plan.
- (3) The City makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

Section 2.2. Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

- (1) The Developer is a Delaware corporation and has the power and authority to enter into this Agreement and to perform its obligations hereunder and doing so will not violate its articles of incorporation or bylaws, or the laws of the State and by proper action has authorized the execution and delivery of this Agreement.
- (2) The Developer shall undertake the Remedial Actions and shall cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).
- (3) The construction of the Project would not be undertaken by the Developer and in the opinion of the Developer would not be economically feasible without the assistance and benefit to the Developer provided for in this Agreement.
- (4) The Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.
- (5) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(6) The Developer shall cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(7) The Developer shall cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the Project.

(8) The Developer shall commence the Remedial Actions by June 30, 2016 and subject to Unavoidable Delays shall complete the Remedial Actions by March 31, 2017;

(9) The Developer shall commence construction of the Project by July 31, 2016 and subject to Unavoidable Delays the Developer shall substantially complete the construction of the Project by May 31, 2017;

ARTICLE III

UNDERTAKINGS BY CITY

Section 3.1. Reimbursement of Costs of Remedial Actions. The costs of the Remedial Actions shall be paid by the Developer. The City shall reimburse the Developer up to \$400,000 of the costs of the Remedial Actions actually incurred and paid by the Developer as further provided in Section 3.2.

Section 3.2. Limitation of Costs; Methods of Payment.

(1) The sole source of funds from which the City is obligated to reimburse the Developer for the Remedial Actions is limited to Tax Increments and nothing herein shall be construed to obligate the City to use any of its general funds or other municipal funds to reimburse the Developer for such costs.

(2) Provided that no Event of Default shall have occurred and be continuing hereunder and the Developer shall have submitted paid invoices for the costs of the Remedial Actions, the City shall reimburse the Developer the amount of the paid invoices for the Remedial Actions within 15 business days of the receipt of paid invoices, not to exceed three (3) requests and not to exceed \$400,000.

Section 3.3. Limitations on Undertaking of the City. Notwithstanding the provisions of Sections 3.1, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the costs of the Remedial Actions, if the City, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured.

Section 3.4. Legal and Administrative Expenses. The Developer shall reimburse the City for its actual out of pocket Legal and Administrative Expenses and has deposited \$15,000 with the City for such expenses.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure of the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(2) The holder of any mortgage on the Development Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(3) If the Developer shall:

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(b) make an assignment for the benefit of its creditors; or

(c) admit in writing its inability to pay its debts generally as they become due;
or

(d) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, liquidator or trustee of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section 4.2. Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the Developer, but only if the Event of Default has not been cured within said thirty (30) days:

(1) The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(2) The City may cancel and rescind this Agreement.

(3) The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 4.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5. Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 4.6. Indemnification of City.

(1) The Developer (a) releases the City and its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees (collectively, the "Indemnified Parties") from, (b) covenants and agrees that the Indemnified Parties shall not be liable for, and (c) agrees to indemnify and hold harmless the Indemnified Parties against, any claim, cause of action, suit or liability for loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or on the Development Property.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement.

(3) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements

and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

ARTICLE V

ADDITIONAL PROVISIONS

Section 5.1. Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 5.2. Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 5.3. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (1) in the case of the Developer is addressed to or delivered personally to:

Calyxt, Inc.
Attention: Luc Mathis
600 West County Road D, Suite 8
New Brighton, MN 55112

- (2) in the case of the City is addressed to or delivered personally to the City

at:

City of Roseville, Minnesota
Attention: City Manager
Roseville City Hall
2660 Civic Center Drive
Roseville, MN 55113
with a copy to:

Briggs and Morgan, P.A.
Attention: Mary Ippel
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 5.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5.5. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 5.6. Expiration. This Agreement shall terminate on the Termination Date.

Section 5.7. Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 5.8. Assignability of Agreement. This Agreement may be assigned only with the consent of the City.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf and the Developer has caused this Agreement to be duly executed in its name and on its behalf, on or as of the date first above written.

CITY OF ROSEVILLE, MINNESOTA

By _____
Its Mayor

By _____
Its Manager

This is a signature page to the Development Agreement by and between the City of Roseville, Minnesota and Calyxt, Inc.

CALYXT, INC.

By _____
Its Chief Executive Officer

This is a signature page to the Development Agreement by and between the City of Roseville, Minnesota and Calyxt, Inc.

EXHIBIT A

Description of Development Property

Property located in the City of Roseville, Ramsey County, Minnesota with the following parcel identification numbers:

042923320015

042923320014

**EXTRACT OF MINUTES OF MEETING
OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE**

* * * * *

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota was duly held on the 11th day of January, 2016, at 6:00 p.m.

The following Members were present: McGehee, Willmus, Laliberte, Roe and Etten was absent.

Council Member McGehee introduced the following resolution and moved its adoption:

RESOLUTION No. 11291

**RESOLUTION REGARDING THE SUPPORT OF A JOB CREATION FUND
APPLICATION IN CONNECTION WITH CALYXT, INC.**

WHEREAS, the City of Roseville, Minnesota (the "City"), desires to assist Calyxt, Inc., an agricultural biotechnical company which is proposing to construct a facility in the City; and

WHEREAS, the City understands that Calyxt, Inc., through and with the support of the City, intends to submit to the Minnesota Department of Employment and Economic Development an application for an award and/or rebate from the Job Creation Fund Program; and

WHEREAS, the City held a City Council meeting on January 11, 2016, to consider this matter.

NOW, THEREFORE, BE IT RESOLVED that, after due consideration, the Mayor and City Manager of the City of Roseville, Minnesota, hereby express their approval of the project proposed by Calyxt, Inc. and its application for an award and/or rebate from the Job Creation Fund Program.

The motion for the adoption of the foregoing resolution was duly seconded by Member Laliberte, and upon a vote being taken thereon, the following voted in favor thereof: McGehee, Willmus, Laliberte Roe, and the following voted against the same: None.

WHEREUPON said resolution was declared duly passed and adopted.

