

DELHI CHARTER TOWNSHIP BROWNFIELD REDEVELOPMENT AUTHORITY MEETING

Meeting location – Community Services Center

2074 Aurelius Road, Holt, MI

Tuesday, April 24, 2018

Immediately following DDA Board Meeting

AGENDA

Call to Order

Roll Call

Comments from the Public

ANYONE WISHING TO COMMENT ON ANY MATTER NOT ON THE AGENDA MAY DO SO AT THIS TIME. PERSONS ADDRESSING THE BOARD MUST STATE THEIR NAME AND ADDRESS FOR THE RECORD AND WILL BE GIVEN FOUR (4) MINUTES.

Set/Adjust Agenda

Business

1. Reimburse Costs of Improvement for Esker Square
2. Brownfield Reimbursement Agreement – Esker Square

Limited Comments

MEMBERS OF THE PUBLIC MAY TAKE THE OPPORTUNITY TO ADDRESS THE BOARD REGARDING ANY ITEM ON THE AGENDA AT THE TIME SUCH ITEM IS OPEN FOR DISCUSSION BY THE BOARD. ANYONE WISHING TO COMMENT ON ANY MATTER NOT ON THE AGENDA MAY DO SO AT THIS TIME.

Adjournment



**DELHI CHARTER TOWNSHIP
DOWNTOWN DEVELOPMENT AUTHORITY**
2045 NORTH CEDAR STREET, SUITE 2
TELEPHONE (517) 699-3866
FACSIMILE (517) 699-3878
www.delhidda.com

Date: April 18, 2018

To: BRA Board Members

From: C. Howard Haas, Executive Director

Re: Reimburse Costs of Improvement – Esker Square

At our January 2018 Brownfield meeting, Amended Brownfield Plan #4 was approved for the 2000 Cedar Block (Esker Square). For past Brownfield Plans, the Downtown Development Authority and the Brownfield Redevelopment Authority have entered into agreements to reimburse the costs of the improvements. To that end, I have asked Township Attorney Chuck Barbieri to prepare the following Agreement. As this agreement is between the DDA and BRA, we will also be acting on this at the Brownfield meeting later this evening.

Recommended Motion: I move to approve the Delhi Charter Township Downtown Development Authority and Delhi Charter Township Brownfield Redevelopment Authority Agreement to Improve Land and Reimburse Costs of Improvement for the 2000 Cedar Block (Esker Square).

**DELHI CHARTER TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY AND
DELHI CHARTER TOWNSHIP BROWNFIELD REDEVELOPMENT AUTHORITY
AGREEMENT TO IMPROVE LAND AND REIMBURSE COSTS OF IMPROVEMENT
OF THE 2000 CEDAR BLOCK**

This Agreement to Improve Land and Reimburse Costs of Improvement of the 2000 Cedar Block in Delhi Township is entered into this ____ day of _____, 2018, between the Delhi Charter Township Downtown Development Authority ("DDA") and the Delhi Charter Township Brownfield Redevelopment Authority ("Brownfield Authority").

RECITALS

WHEREAS, certain land on the 2000 Cedar Block of Delhi Township ("Subject Property") has been in need of improvement, and in particular additional investigation and/or response to environmental contamination at the Subject Property, including additional environmental response and due care activities, as provided for by 1996 PA 381, as amended;

WHEREAS, Delhi Township's Board of Trustees on February 20, 2018, approved Amended Brownfield Plan No. 4 for the redevelopment of the 2000 Cedar Block by 2000 Cedar, LLC; and

WHEREAS, the DDA and Brownfield Authority have previously entered into other agreements to improve other property in the Township and to reimburse the Brownfield Authority for its costs in respect thereto; and

AGREEMENTS

NOW, THEREFORE, the parties agree as follows:

1. Pursuant to MCL 125.1657, the DDA hereby contracts with the Brownfield Authority to improve the Subject Property by undertaking, contracting for or authorizing the necessary work to respond to the environmental contamination thereon, as provided for by the Michigan Brownfield Redevelopment Financing Act, ("Brownfield Act") 1996 PA 381, as amended.

2. In consideration for the Brownfield Authority undertaking, contracting for or authorizing such improvement of the Subject Property, the DDA agrees to annually pay the Brownfield Authority all tax incremental revenues that the DDA receives (except for those amounts if any that are provided to certain local taxing jurisdictions pursuant to separate agreements with the DDA) from the Subject Property, as long as those tax incremental revenues are authorized for recapture by the Brownfield Act 1996 PA 381, as amended, and as long as they are consistent with Amended Brownfield Plan No. 4 and any future amendment, applicable to the Subject Property. The DDA shall make such annual payments to the Brownfield Authority within thirty (30) days after receiving such tax incremental revenues attributable to the Subject Property.

3. For five years after tax incremental revenues are needed and paid to reimburse the designated Petitioner for expenses of eligible activities as called for in Amended Brownfield Plan No. 4 and any future amendment to that Plan, the annual payments that the DDA shall make to the Brownfield Authority may be deposited by the Brownfield Authority in its Local Brownfield Revolving Fund for uses and activities permitted by the Brownfield Act 1996 PA 381, as amended, except the Brownfield Authority retains the discretion to forego or waive some, all or any portion of the payments, in which case the DDA shall retain such tax incremental revenues.

4. After the five year period provided in paragraph 3, except as otherwise waived, the DDA shall be entitled to retain any and all tax incremental revenues that it receives with respect to the Subject Property, and shall have no further obligation to provide any part of those tax incremental revenues to the Brownfield Authority.

5. This Agreement does not affect those tax incremental revenues that the Brownfield Authority can receive which are not subject to capture by the DDA.

WHEREFORE, the respective parties have approved and executed this Agreement with the consent or approval of the respective boards as of the date first listed above.

DELHI CHARTER TOWNSHIP DOWNTOWN
DEVELOPMENT AUTHORITY

By: _____
Its: Chair

By: _____
Its: Secretary

DELHI CHARTER TOWNSHIP BROWNFIELD
REDEVELOPMENT AUTHORITY

By: _____
Its: Chair

By: _____
Its: Secretary



**DELHI CHARTER TOWNSHIP
DOWNTOWN DEVELOPMENT AUTHORITY**
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www.delhidda.com

Date: April 18, 2018

To: BRA Board Members

From: C. Howard Haas, Executive Director

Re: Brownfield Reimbursement Agreement for Esker Square

At our January 30, 2018 Brownfield meeting, Amended Brownfield Plan #4 was approved for the 2000 Cedar Block (Esker Square). The Delhi Township Board of Trustees adopted the Plan at their February 20, 2018 meeting. Earlier this evening, the Brownfield Redevelopment Authority approved an agreement with the DDA to reimburse cost of the improvements for Esker Square. One final instrument is needed to effectuate the reimbursement to the developer for approved eligible site improvement activities. Township Attorney Chuck Barbieri has prepared a Reimbursement Agreement between 2000 Cedar, LLC and the Brownfield Redevelopment Authority. This agreement provides the mechanism for the transfer of tax increment funds collected pursuant to the Brownfield Redevelopment Plan to the developer as the reimbursement for eligible site remediation expenses incurred in connection with the Esker Square project.

Recommended Motion: I move to approve the Brownfield Reimbursement Agreement for Amended Brownfield Plan No. 4 (Esker Square) between 2000 Cedar, LLC and the Delhi Township Brownfield Redevelopment Authority.

**BROWNFIELD REIMBURSEMENT AGREEMENT
FOR AMENDED BROWNFIELD PLAN NO. 4 (2000 CEDAR, LLC)**

THIS BROWNFIELD REIMBURSEMENT AGREEMENT FOR AMENDED BROWNFIELD PLAN NO. 4 (2000 CEDAR, LLC) ("Agreement") is made _____, 2018, between 2000 Cedar, LLC, which is a Michigan Limited Liability Company, with its office having an address of 329 S. Washington Square, Lansing, MI 48933 (the "Petitioner"), and the Delhi Township Brownfield Redevelopment Authority ("DTBRA"), established by the Charter Township of Delhi pursuant to Michigan Public Act 381 of 1996, as amended ("Brownfield Redevelopment Financing Act"), with its office having an address of 2045 N. Cedar, Holt, Michigan 48842.

INTRODUCTORY STATEMENT

The primary purpose of the DTBRA is to encourage the redevelopment of contaminated property within Delhi Township by providing financial and tax incentives.

Petitioner is developing certain property on the 2000 Cedar Block in Holt, Michigan, as described more fully in Exhibit 1 ("Site").

Environmental information indicates that the Site is a "Facility" as that term is defined in Section 20101(1)(s) of Part 201 of the Natural Resources & Environmental Protection Act ("NREPA"), Act No. 451 of the Public Acts of 1994, as amended, or Property as that term is defined in Section 21303(d) of Part 213 of NREPA, as amended; and the Site is an Eligible Property under Section 2(p) of the Brownfield Redevelopment Financing Act, as amended.

Petitioner currently plans to invest over \$13 million to perform certain eligible activities.

Amended Brownfield Plan No. 4 ("Plan"), as proposed by Petitioners for the Eligible Property, was approved by the Delhi Township Board of Trustees on February 20, 2018 (Copy is attached as Exhibit 2).

The parties desire to enter into this Agreement to specify the terms and conditions associated with the reimbursement of costs associated with the Eligible Activities.

AGREEMENTS

NOW, THEREFORE, the parties agree with each other as follows:

1. Definitions

"Brownfield Redevelopment Financing Act" means Act No. 381 of the Public Acts of 1996, as amended, MCLA 125.2651 et seq.

"Brownfield Plans or Plans" is defined by Section 2(e) of the Brownfield Redevelopment Authority Act;

"Department Specific Activities" is defined by Section 2(l) of the Brownfield Redevelopment Authority Act;

"Due Care Activities" is defined by Section 2(m) of the Brownfield Redevelopment Financing Act;

"Eligible Activities" is defined by Section 2(o) of the Brownfield Redevelopment Financing Act;

"Eligible Property or Properties" is described by Section 2(ss) of the Brownfield Redevelopment Financing Act;

"Tax Increment Revenues" is defined by Section 2(mm) of the Brownfield Redevelopment Financing Act;

2. The Plan

The Plan was recommended by the DTBRA on January 31, 2018, and approved by the Board of Trustees of the Charter Township of Delhi on February 20, 2018 ("Plan"). To the extent provisions of the Plan and any subsequent amendment conflict with this Agreement or any amendment thereto, the terms and conditions of this Agreement control. To the extent provisions of the Plan, and any amendment to the Plan, or this Agreement or any amendment thereto conflicts with the Brownfield Redevelopment Financing Act ("Act"), the Act controls.

3. Tax Capture

Pursuant to the Plan, the DTBRA shall capture Tax Increment Revenues it receives from the Eligible Properties as paid by the Petitioner for the time that capture is required for the purpose of (a) paying costs of Eligible Activities to Petitioner and DTBRA, which previously has incurred costs for Eligible Activities, and, for a period of five years after such capture is complete or to the maximum extent allowed under the Brownfield Redevelopment Financing Act, (b) depositing amounts in the DTBRA Local Brownfield Revolving Fund.

4. Eligible Activities

Petitioner commits to diligently pursue to complete Eligible Activities set forth in the DTBRA Plan. No activities completed five (5) years beyond the date of this Agreement shall be considered Eligible Activities. This deadline may be extended at the reasonable discretion of the DTBRA. Such extension to be effective shall be in writing.

5. Reimbursement Source

Except as set forth in Paragraphs 7 through 9 below:

Petitioner shall be reimbursed its costs for Eligible Activities together with interest if any from the remainder of Tax Increment Revenues collected from taxes on the portion of the Eligible Property representing property improvements after payment of DTBRA's reasonable and necessary administrative expenses and operating costs have been

deducted or other required expenses in accordance with the Plan. Notwithstanding anything to the contrary in the Plan or this Paragraph, Petitioner recognizes that the DTBRA may only pay such Tax Increment Revenues to the Petitioner (after the aforementioned reduction) for expenses of Eligible Activities as the DTBRA receives as a result of payment of taxes by Petitioners. Interest if any in this paragraph shall not exceed five (5) percent annually. Once reimbursement begins as provided in the Agreement, Petitioner shall provide a statement by March 1 each year of any amounts allocated to principal and interest, if any, which reporting shall continue until any owed amounts for principal and interest, if any, are fully satisfied.

6. Excess Captured Taxes

Tax Increment Revenues captured from the Eligible Properties in excess of the amount authorized for reimbursement under Paragraphs 2, 3 and 5 above shall be deposited in the DTBRA Local Brownfield Revolving Fund to be used by the DTBRA for purposes authorized under Section 8 and other applicable sections of the Brownfield Redevelopment Financing Act.

7. Transfer of Real Property

In the event that Petitioner transfers ownership of all or part of the Eligible Property prior to being reimbursed in full for approved costs of Eligible Activities, the Plan may be amended as it relates to reimbursement of incomplete activities or other Eligible Activities that have not been approved for reimbursement as provided in Paragraph 8, on the parcel or parcels of real property that have been transferred. Such amendments will not be unreasonably withheld by the DTBRA. Amendments to the Plan shall be subject to the limitations and procedures governing amendments to Plans set forth in the Brownfield Redevelopment Financing Act, as amended. This Agreement shall be modified to reflect any such amendments to the Plan.

8. Reimbursement Process

(a) Quarterly or on such other schedule agreed to by the parties, Petitioner may submit to the DTBRA a request for Cost Reimbursement for Eligible Activities paid by that Petitioner during prior or previous periods. The request for reimbursement shall be in the form attached hereto as Exhibit 3 ("Petition"). The Petition shall identify whether the Eligible Activities are: (1) Department Specific Activities; (2) Due Care Activities; (3) Preparation of Brownfield Plan; (4) Demolition; (5) asbestos, lead or mold abatement; or (6) other Approved Eligible Activities. The Petition shall describe each individual activity claimed as an Eligible Activity and the associated costs of each individual activity. Documentation of the costs incurred shall be included with the Petition, including proof of payment and detailed invoices for the costs incurred sufficient to determine whether the cost incurred were for Eligible Activities. The Petition shall be signed by a duly authorized representative of Petitioner and the representations, facts and documentation included therein shall be sworn to as accurate in the presence of a notary.

(b) Petitions shall be reviewed by the DTBRA. Petitioner shall cooperate in the review by the DTBRA by providing information and documentation to supplement the Petition as deemed reasonable and necessary by the DTBRA. The DTBRA shall identify

in writing to Petitioner any costs deemed ineligible for reimbursement and the basis for the determination. Petitioner shall be given 45 days in which to provide supplemental information or documents in support of a request for cost reimbursement deemed ineligible by the DTBRA. Thereafter, except as otherwise agreed to in writing by Petitioner and DTBRA, the DTBRA shall make a final decision on the eligibility of the disputed cost and inform the Petitioner in writing of its determination, which decision shall be binding upon Petitioner.

(c) After the taxes are captured and collected, the DTBRA shall pay approved costs for Eligible Activities to the Petitioner from the taxes earmarked in accordance with the Plan and Paragraph 5 herein to the extent that taxes have been captured and are available in that fiscal year (less reasonable and necessary DTBRA operating expenses and fees) to reimburse approved costs of Eligible Activities.

(d) In the event there are no funds available from taxes captured from the sources identified in Paragraph 5 herein for Petitioner, then there is no repayment obligation on behalf of DTBRA and no repayment shall be made.

(e) Reimbursement of Costs of Eligible Activities shall be effectuated:

For Petitioner as follows:

Attention: Scott Gillespie

2000 Cedar, LLC

329 S. Washington Square

Lansing, MI 48933

9. Legislative Authorization

This Agreement is governed by and subject to the restrictions set forth in the Brownfield Redevelopment Financing Act, as amended. In the event that there is legislation enacted in the future which restricts or adversely affects the amount of Tax Increment Revenues capturable, Eligible Properties, or Eligible Activities, then the Petitioner's rights and the DTBRA's obligations under this Agreement shall be eliminated or modified accordingly.

10. Freedom of Information Act

Petitioner stipulates that all Petitions and other documentation submitted by it shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being Sections 15.231 et seq. of the Michigan Compiled Laws and no claim of trade secrets or other privilege or exception to the Freedom of Information Act will be claimed by the Petitioners as it relates to this Agreement, Petitions for Reimbursement and supporting documentation.

11. Plan Modification

The Plan may be modified to the extent allowed under the Brownfield Redevelopment Financing Act by mutual agreement of the Parties affected by the modification.

12. Notices

All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown below their respective signatures to this agreement. Either party may change the address by written notice sent by registered or certified mail to the other party.

13. Assignment

Except as provided in this Section, the interest of Petitioner under this Agreement shall not be assignable without the DTBRA's prior written consent. Any other requested consent by any other party or entity will not be unreasonably withheld by DTBRA. Any assignee recognized pursuant to this provision will assume only these rights and obligations under this Agreement.

14. Indemnification

If any payment, assignment, or other action allowed by this Agreement is alleged or deemed illegal or impermissible by a competent agency of the State of Michigan or court of law, then Petitioner and any assignees will defend, indemnify and hold harmless DTBRA from any claim, demand or suit for damages, costs, penalties, losses or other relief arising from that circumstance. If any Petitioner is insolvent or is otherwise unable to fully defend, indemnify or hold harmless DTBRA as provided in this Agreement, then that Petitioner agrees to reimburse the DTBRA any sums that were found to be illegally or improperly received if the circumstance is deemed illegal or impermissible.

15. Adjustments

The parties acknowledge that adjustments regarding the amount of tax increment revenues paid to the Petitioner may occur under any of the following circumstances:

a. Audit or Court Ruling: In the event that a state agency of competent jurisdiction conducting an audit of payments made to the Petitioner under this Agreement or a court of competent jurisdiction determines that any portion of the payments made to the Petitioner under this Agreement is unlawful, the Petitioner shall pay back to the Authority that portion of the payments made to the Petitioner within 30 days of the determination made by a state agency or the court as the case may be. However, the Petitioner shall have the right, before any such repayment is made, to appeal on its or the Authority's behalf, any such determination made by a state agency or court as the case may be. If the Petitioner is unsuccessful in such an appeal, the Petitioner shall repay the portion of payments found to be unlawful to the Authority within thirty (30) days of the date when the final determination is made on the appeal. The Petitioner shall be responsible for payment of all the DTBRA's legal fees associated with any determination of whether a cost for which reimbursement is requested constitutes an "Eligible Cost" and all of the

County's and DTBRA's legal fees associated with the review of determination of such issues by any state agency or court.

b. Property Tax Appeal: In the event the Petitioner, or any other owner of real estate on the Site, files an appeal with the Michigan Tax Tribunal, related to the taxable value of parcels or property included in the Brownfield Plan, the DTBRA shall do the following:

- i. The DTBRA will remit Tax Increment Financing Reimbursement payments based upon the lowest taxable value being sought pursuant to the appeal;
- ii. Any Tax Increment Revenue that is collected but not remitted as a result of a tax appeal shall be held in a separate account of the Authority until the pending appeal is adjudicated;
- iii. Once any tax appeals are adjudicated, the DTBRA will either return the escrowed funds to the local unit in compliance with any tax appeal ruling, or will make payments pursuant to Section 7 of this agreement.

c. Reduction of Property Assessments: If the Authority

- i. incurs Costs on behalf of the Petitioner with respect to the Project, Site or Application and
- ii. the Petitioner initiates, participates in or supports any proceeding or process which results in a reduction of the tax increment capture for the Project from that projected and along the same term as contained within the Plan, the Petitioner indemnifies and will fully reimburse the DTBRA within 30 days of notification from the DTBRA as to the amount and the due date for all Costs as defined within the Plan, expenses or reduction in revenue from what was projected as the tax increment capture.

16. Events of Default

Each of the following shall constitute an event of default:

a. Any representation or warranty made by the Petitioner in this Agreement proves to have been incorrect or incomplete in any material respect when made or deemed to be made.

b. The Petitioner fails to observe or perform any covenant or agreement contained in this Agreement for 30 days after written notice thereof shall have been given to the Petitioner by the DTBRA.

c. The Petitioner abandons or withdraws from the reuse and redevelopment of the Site or indicates its intention to do so.

d. The Petitioner fails to pay any funds within 30 days of the date due which are required to be paid to the DTBRA pursuant to this Agreement, including but not limited to its real and personal property taxes as set forth in Paragraph 7 hereof.

e. The Petitioner terminates its existence.

f. The Petitioner files an appeal with the Michigan State Tax Tribunal contesting any taxes assessed against the Site or the taxable value, assessed value or state equalized value of the Site.

g. Any material provision of this Agreement shall cease to be valid and binding on the Petitioner or shall be declared null and void; the validity or enforceability of such provision shall be contested or denied by the Petitioner; or the Petitioner denies that it is bound by this Agreement.

17. Default Remedies

If any event or default as defined above shall occur and be continuing for 30 days after written notice of default from the DTBRA, the DTBRA shall have the right, but not the obligation, to terminate this Agreement effective immediately and the Developer shall be responsible for all costs which the DTBRA has incurred in connection with the Site and this Agreement, and shall be responsible for all Eligible Costs, without contribution from Tax Increment Revenues collected by the DTBRA from taxes levied on the Site.

18. Entire Agreement

This Agreement supersedes all agreements previously made among the parties relating to the subject matter. There are no other understandings or agreements between them.

19. Non-Waiver

No delay or failure by either party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

20. Headings

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

21. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

22. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

23. Binding Effect

Subject to Paragraph 13 above, the provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties have executed this Agreement in triplicate original in Lansing, Michigan on the day and date first herein above written.

Delhi Township Brownfield Redevelopment Authority

Name: _____

By: C. Howard Haas

Title: Executive Director

Witness

Witness

2045 N. Cedar
Holt, MI 48842

2000 Cedar, LLC

Name: _____

By: Scott Gillespie

Title: Managing Member for limited liability company

Witness

Witness

329 S. Washington Square
Lansing, MI 48933