

SPECIAL MEETING
BAY COUNTY BOARD OF COMMISSIONERS
A G E N D A
TUESDAY, NOVEMBER 29, 2016
4:00 P.M.

COMMISSION CHAMBERS, FOURTH FLOOR, BAY COUNTY BUILDING

PAGE NO.

- I CALL TO ORDER (CHAIRMAN KRYGIER)**
- II ROLL CALL**
- III INVOCATION**
- IV PLEDGE OF ALLEGIANCE**
- V CITIZEN INPUT**
- VI ITEMS FOR CONSIDERATION**
 - A. Monitor DDA Issue (Information will be sent separately)
 - B. Res. No. 2016-291 - Rohm Phone System Maintenance Agreement - 1/1/17
 thru 3/31/17 (Buildings and Grounds)
- VII UNFINISHED BUSINESS**
- VII NEW BUSINESS**
- IX MISCELLANEOUS**
- X ANNOUNCEMENTS**
- XI CLOSED SESSION**
- XII RECESS/ADJOURNMENT**

I-3

BAY COUNTY BOARD OF COMMISSIONERS

NOVEMBER 29, 2016

RESOLUTION

BY: BAY COUNTY BOARD OF COMMISSIONERS (11/29/16)

WHEREAS, The current phone system maintenance agreement is due to expire on 12/31/16 and it is necessary to approve a three (3) month extension of the maintenance agreement with Pro-Tech for extended coverage on our current Rohm phone system until the new phone system is in place; and

WHEREAS, Funds (\$3,900) are budgeted for the maintenance agreement in the Buildings & Grounds budget; Therefore, Be It

RESOLVED That the Bay County Board of Commissioners approves the three (3) month Telephone system Maintenance Agreement with Pro-Tech for the County's current Rohm phone system and authorizes the Chairman to execute said Agreement on behalf of Bay County following legal review/approval; Be It Further

RESOLVED That related budget adjustments, if required, are approved.

ERNIE KRYGIER, CHAIR AND BOARD

Bldgs & Grnds - Rohm Phone System Maintenance Agt - 1-1-17 to 3-31-17

MOVED BY COMM. Tilley

SUPPORTED BY COMM. Lutz

Table with 12 columns: COMMISSIONER, Y, N, E, COMMISSIONER, Y, N, E, COMMISSIONER, Y, N, E. Rows include Michael J. Duranczyk, Ernie Krygier, Vaughn J. Begick, Kim J. Coonan, Thomas M. Herek, and Donald J. Tilley.

VOTE TOTALS: ROLL CALL: YEAS NAYS EXCUSED VOICE: X YEAS 7 NAYS 0 EXCUSED 0

DISPOSITION: ADOPTED X DEFEATED WITHDRAWN AMENDED CORRECTED REFERRED

BAY COUNTY BOARD OF COMMISSIONERS

NOVEMBER 29, 2016

RESOLUTION

BY: BAY COUNTY BOARD OF COMMISSIONERS (11/29/16)

RESOLVED That the Bay County Board of Commissioners approves and authorizes the Chairman of the Board to execute the Monitor Township Restatement of the Monitor Township Downtown Development Authority Development Agreement 2016 and the Monitor Township Downtown Development Authority Revenue Sharing Agreement 2016 (both Agreements attached) on behalf of Bay County.

**ERNIE KRYGIER, CHAIR
AND BOARD**

MONITOR TWP DDA AGREEMENTS

MOVED BY COMM. Tilley

SUPPORTED BY COMM. Lutz

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
MICHAEL J. DURANCZYK	X			KIM J. COONAN	X			MICHAEL E. LUTZ	X		
ERNIE KRYGIER	X			THOMAS M. HEREK	X						
VAUGHN J. BEGICK	X			DONALD J. TILLEY	X						

VOTE TOTALS:

ROLL CALL: YEAS 7 NAYS 0 EXCUSED 0

VOICE: YEAS _____ NAYS _____ EXCUSED _____

DISPOSITION: ADOPTED DEFEATED _____ WITHDRAWN _____
AMENDED _____ CORRECTED _____ REFERRED _____

MONITOR TOWNSHIP DOWNTOWN DEVELOPMENT
AUTHORITY
REVENUE SHARING AGREEMENT
2016

This Revenue Sharing Agreement (the "Revenue Share Agreement") is made as of _____, 2016 (the Agreement and Execution Date), by and among the **CHARTER TOWNSHIP OF MONITOR DOWNTOWN DEVELOPMENT AUTHORITY**, a Michigan municipal entity (hereinafter the "DDA") of 2483 E. Midland Road, Bay City, Michigan 48706, the **CHARTER TOWNSHIP OF MONITOR**, a Michigan municipal corporation; (hereinafter the "Township") of 2483 E. Midland Road, Bay City, Michigan 48706, and the **COUNTY OF BAY**, a Michigan county corporation, (hereinafter the "County") of 515 Center Avenue, Bay City, Michigan, with all of the above named entities being referred to as the "Parties" and is based upon the following facts and circumstances:

WHEREAS, the Township pursuant to 1975 PA 197, as amended, ("Act"), adopted Ordinance Number 34, which established the DDA and the DDA district boundaries;

WHEREAS, the Township has amended Township Ordinance Number 34 throughout the years and Township Ordinance 34 and all associate amendments thereto are hereinafter referred to as "Ordinance 34";

WHEREAS, the Township pursuant to the Act adopted Ordinance Number 36, which established a Development and Tax Increment Financing ("TIF") Plan for the DDA Development District;

WHEREAS, the Township has amended Township Ordinance 36 throughout the years and Township Ordinance 36 and all associated amendments thereto are hereinafter referred to as "Ordinance 36";

WHEREAS, the Township Board has not dissolved the DDA and the DDA has not fulfilled all of the projects stated in its Development/TIF plan;

WHEREAS, the Township, the DDA, the County, and Northern Michigan Land Investment, LLC, executed an agreement on June 13, 2006 entitled the **MONITOR TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY DEVELOPMENT AGREEMENT**, which was amended thereafter on June 13, 2006, March 13, 2007, September 4, 2007, and on _____, 2016 (the Development Agreement and all amendments or addenda thereto is hereafter referred to as the "Development Agreement");

WHEREAS, the County did consent to the use of all of the County's TIF revenues for the projects set forth in the Development Agreement;

WHEREAS, pursuant to the terms of the Development Agreement, the Township was required to suspend the DDA and/or take the steps necessary to remove the area described in the current DDA from any future DDA;

WHEREAS, the DDA, the Township, and the County have determined that the DDA has assisted in the growth of Bay County by creating jobs and promoting economic growth within Bay County;

WHEREAS, the DDA, the Township, and the County have agreed that suspension of the DDA is not necessary at this time;

WHEREAS, at this time and subject to the terms and conditions contained within this Revenue Sharing Agreement, the County has agreed that the Township and DDA are not required to take steps necessary to remove the area described in the current DDA from any future DDA as required by the Development Agreement;

NOW THEREFORE, in order to carry out the intent of the Parties and all of the Parties providing valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

SECTION I CAPTURE

A. The Township pursuant to the Act adopted Ordinance 34, which established a DDA in the Township and defined the boundaries of the DDA.

B. The Township pursuant to the Act adopted Ordinance 36, which established a Development/TIF Plan for the DDA district.

C. Pursuant to Section 14(4) of the Act, the Parties may enter into this Revenue Sharing Agreement to share a portion of the captured assessed value for the DDA Development District (the ordinances of the Township may have created more than one (1) DDA Development District and all of the DDA Development Districts that have been created are collectively hereinafter referred to as the "DDA Development District").

SECTION II SHARING OF THE CAPTURED ASSESSED VALUE

A. The DDA pursuant to Section 14(4) of the Act hereby agrees to share in a portion of the captured assessed value of the DDA Development District. The amount of captured assessed value that the DDA is agreeing to share with the County is an amount equal to, and not less than, the amount that the DDA captures from the County pursuant to 1975 PA 197 and the ordinances of the Township. Payment shall be made to the County by the end of business the day the TIF revenue is collected, unless the County has failed to reconcile and disburse to the DDA all TIF revenue due and owing to the DDA, including all delinquent real property taxes (personal property taxes are exempt from this requirement). Once the reconciliation is complete, the DDA shall forward payment to the County within thirty (30) calendar days.

B. The County agrees to review and consider funding any projects that are proposed by the DDA that are located in the DDA Development District that are mutually beneficial to the Parties. If the County and Township affirmatively vote that the project is beneficial, then the County shall determine by resolution of the County Board the amount of TIF revenue and the duration in which the TIF revenue shall be retained by the DDA to assist the DDA in funding the project.

SECTION III TERM OF AGREEMENT

The term of this Agreement shall continue in full force and effect until all of the ordinances adopted by the Township are repealed in their entirety, the DDA Development/TIF Plan, including all amendments thereto, expire on their terms or are dissolved by the Township Board, or until this Revenue Sharing Agreement is terminated in writing signed by the Parties hereto.

SECTION IV INTEGRATION

The Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof, and supersedes all prior and/or contemporaneous discussions, representations, amendments, or understandings of every kind and nature between them. No verbal statements made by any employee, representative, or agent of the DDA, the County, or the Township shall constitute an agreement of the DDA, the County, or the Township unless such verbal statement is set forth in this Agreement.

SECTION V WAIVER

No waiver of any of the obligations contained herein shall be effective for any purpose unless the same shall be in writing signed by a representative of the Township upon the Township Board's approve, signed by a representative of the County upon the County Board's approval, and signed by the DDA Chairperson or Director upon the DDA Board's approval.

SECTION VI APPLICABLE LAW

This Agreement has been executed, delivered and accepted at and shall be deemed to have been made at Bay City, Bay County, State of Michigan and shall be interpreted in accordance with the laws of the State of Michigan.

**SECTION VII
SEVERABILITY**

If any provision of this Agreement is found to be invalid or unenforceable, it shall not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms.

**SECTION VIII
CONSTRUCTION**

This Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the Parties. This Agreement therefore shall not be construed against any party to this Agreement.

**SECTION IX
NO THIRD PARTY BENEFICIARIES**

This Agreement is not intended to confer upon any person or entity, other than the Parties hereto, any rights or remedies of any kind or nature whatsoever.

**SECTION X
AMENDMENT**

This Agreement may not be amended or modified except for by written agreement signed by both Parties.

**SECTION XI
REPEAL**

Any agreements, addendums, or other documents that conflict with the provisions of this Agreement are hereby rescinded.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly exercised as of the date first written above.

**THE CHARTER TOWNSHIP OF MONTIOR
DOWNTOWN DEVELOPMENT AUTHORITY:**

THE CHARTER TOWNSHIP OF MONITOR:

By *Ken Mell*
Its: Supervisor

Date: 11-28-2016

STATE OF MICHIGAN)
) ss:
COUNTY OF BAY)

The foregoing Agreement was acknowledged before me this 28th day of Nov., 2016 by Kenneth M. Mell, Supervisor of the Charter Township of Monitor, Bay County, Michigan.

Richard C Sheppard
Richard C Sheppard Notary Public,
Saginaw County, Michigan
Acting in Bay County
My Commission Expires: 11-06-2021

COUNTY OF BAY:

By *Ernie Krygiel*
Its: Chairperson

Date: 11/29/16

STATE OF MICHIGAN)
) ss:
COUNTY OF BAY)

The foregoing Agreement was acknowledged before me this 29th day of November, 2016 by Ernie Krygiel, Chairperson of the County of Bay, Bay County, Michigan.

Deanne C Berger
Deanne C. Berger Notary Public,
BAY County, Michigan
Acting in BAY County
My Commission Expires: 4/23/2019

RESTATEMENT OF THE
MONITOR TOWNSHIP DOWNTOWN DEVELOPMENT
AUTHORITY
DEVELOPMENT AGREEMENT
2016

This Restatement of the Monitor Township Downtown Development Authority Development Agreement (the "Restatement Agreement") is made as of _____, 2016 ("Agreement Date"), by and among the **CHARTER TOWNSHIP OF MONITOR DOWNTOWN DEVELOPMENT AUTHORITY**, a Michigan municipal entity (hereinafter the "DDA") of 2483 E. Midland Road, Bay City, Michigan 48706, the **CHARTER TOWNSHIP OF MONITOR**, a Michigan municipal corporation, (hereinafter the "Township") of 2483 E. Midland Road, Bay City, Michigan 48706, and the **COUNTY OF BAY**, a Michigan county corporation, (hereinafter the "County") of 515 Center Avenue, Bay City, Michigan 48708 and **NORTHERN MICHIGAN LAND INVESTMENT, LLC**, a Michigan limited liability company, (hereinafter the "Developer") of 1219 Mission Road, Mt. Pleasant, Michigan 48804, with all of the above named entities being referred to as the "Parties" and is based upon the following facts and circumstances:

A. The Parties entered into the Monitor Township Downtown Development Authority Development Agreement on June 13, 2006 which was amended thereafter, by Addendum dated June 13, 2006, Addendum II dated March 13, 2007, and Addendum III dated September 4, 2007. The Development Agreement dated June 13, 2006 and all addenda thereto shall hereinafter be referred to as the "Agreement."

B. Pursuant to the terms of the Agreement, the Developer states it has received all of its funding and believes it has satisfied all of its obligations, and believes that the DDA has satisfied all of its obligations and has paid all of its indebtedness.

C. Pursuant to the terms of the Agreement, the Developer did acquire the site and did construct a distribution center with defined infrastructure including, but not limited to sanitary sewer, storm sewer, retention basin, potable water lines and roadways. Additionally, the Developer created 200 plus full time and part time positions, pursuant to the terms of the Agreement.

D. Pursuant to the terms of the Agreement, the DDA and Township did amend the Tax Increment Financing ("TIF") Plan and the Development Plans, did cause the relocation of Straits Drive, has developed some, but not all, of the Site Utilities as defined within the Agreement through the capture of TIF revenues from the various established DDA Development Districts (the various DDA Development Districts and the Township Ordinances creating those DDA Development Districts is hereinafter collectively referred to as the "DDA Development District") and was able to pay in full the Acquisition Indebtedness.

E. Pursuant to the terms of the Agreement, Township enacted various ordinances which created the DDA, established or modified the DDA Development District created or modified the Development Plan and created or modified the TIF Plan (The Development Plan and TIF Plan

and the Township Ordinances creating, amending, or modifying those plans is hereinafter collectively referred to as the "Development/TIF Plan").

F. Pursuant to the terms of the Agreement, the County did consent to the use of all of the County's TIF revenues for the projects set forth in the Development Plan and the Agreement.

G. Pursuant to the terms of the Agreement, upon full payment of the Acquisition Indebtedness, the Parties agreed that the Township was required to suspend the DDA and/or take the steps necessary to remove the area described in the current DDA from any future DDA.

H. The Parties now are in agreement that the elimination of the DDA may cause irreparable harm to the residents of Bay County and of Monitor Township by impairing the ability of the DDA to assist in continued development of the DDA Development District. The DDA is an agency with the cooperation of the Township and all other taxing jurisdictions whose purpose is to assist in the growth of taxable properties within its jurisdictional limits, create jobs, and contribute economic prosperity throughout the Township and County at large.

I. The Parties now also agree that within the DDA Development District there is additional development that can be completed, there are the remaining two lots for sale, there is the need for infrastructure improvements to service the undeveloped area within the DDA Development District. Many of the initial objectives of the DDA set forth in the Development/TIF Plan have been accomplished, but not all of them. The Parties agree that the successful accomplishment of economic growth and development depends upon the successful implementation of not only the Development/TIF Plan but also depends upon a consistent and coordinated approach to sharing the success of economic development with those taxing entities who have not primarily received full pass through value for such success. By continuing the Development/TIF Plan for a period of ten (10) years and the Parties working together to fund mutually beneficial projects will result in economic growth and development throughout the Township and County at large.

J. The Parties hereto are restating the terms and conditions set forth in the Agreement in this Restatement Agreement and hereby rescind and repeal the Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. The Developer, the Township, the County, and the DDA all agree that the Development/TIF Plan is to be amended to continue beyond December 31, 2016 for a period of ten (10) years so that the DDA will have the necessary financing available to it in order to implement the Development Plan and to be a partner in encouraging and assisting with economic growth and development within the DDA Development District, to have the required time to market the remaining two lots, and to assist in the development of new infrastructure within the DDA Development District. Accordingly, by December 31, 2016, the Township needs to implement an ordinance, which extends the Development/TIF Plan until December 31, 2026.

2. The County, the Township, and the DDA will actively seek and encourage economic development for the DDA Development District and will use their best efforts to encourage and assist the development of a project or projects deemed to be desirable for development in that area.
3. The DDA shall request the Township, pursuant to Section 12 of 1975 PA 197 (the "Act"), to levy an ad valorem tax up to the maximum millage defined in the Act on the real and tangible personal property not exempt by law and as finally equalized in the DDA Development District in order to fund the administrative expenses of the DDA and other lawful expenditures. The Township shall when requested by the DDA through resolution of the DDA Board passed annually on or before September 15 of each year, assess the requested millage against the properties within the DDA Development District, not exempt by law, for the year following the request.
4. As the DDA and Township were not able to timely provide for a levy as authorized by Section 12 of 1975 A 197, for the administrative costs of the DDA for calendar year 2017, the Township and County has agreed to the DDA retaining a total of \$80,000.00 of its estimated \$480,000.00 in surplus funds. The DDA shall revert \$400,000.00 of its surplus funds pursuant to Section 15(2) of the Act proportionately to the respective taxing jurisdictions. The DDA shall revert the \$400,000.00 of its surplus funds proportionately to the respective taxing jurisdictions no later than January 31, 2017.
5. The County, Township and DDA agree that the DDA shall retain the existing two lots within the DDA Development District which are owned by the DDA and the DDA shall have the ability to market the lots in its discretion and the proceeds, if any, from the sale of said parcels shall be deposited into the operations fund of the DDA to use in its sole discretion.
6. The DDA shall prepare and forward to the Township to approve an annual budget for the DDA that is in conformity with Section 28 of 1975 PA 197.
7. This Agreement shall be binding upon the Parties hereto and upon their respective successors and assigns.
8. If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect the validity of any of the remaining clauses, provisions or sections of this Agreement.
9. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
10. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

11. Each party to this Agreement shall:
- A. Take all actions required of it by the terms of this Agreement as expeditiously as possible.;
 - B. Cooperate, to the fullest extent possible, with the other Parties to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of any project approved for funding pursuant to this Agreement in the granting and obtaining of all easements, rights of way, permits, licenses, approvals or any other permissions necessary for the construction or operation thereof;
 - C. Execute and deliver all documents necessary to accomplish the purposes and intent of this Agreement;
 - D. Use its best efforts to assist the other Parties to this Agreement in the discharge of their respective obligations hereunder.

12. The Township, DDA, and County shall meet no later than December 31, 2025, to discuss the status of the DDA, all of the ordinances adopted by the Township that relate to the DDA or the Development/TIF Plan, and this Agreement, unless the Township has dissolved the DDA or the Development/TIF Plan prior to December 31, 2025.

13. This Restatement Agreement shall be effective until all of the ordinances that relate to the DDA adopted by the Township are repealed in their entirety, the DDA Development/TIF Plan, including all amendments thereto, expire on their terms or are dissolved by the Township Board, or until this Restatement Agreement is terminated in writing by the Parties hereto.

14. The DDA shall not enter into any other debt agreements guaranteeing the repayment of the debt with the use of TIF revenues captured from the County without a written agreement signed by the County.

15. Upon the breach by the DDA, Township, Developer, or County, the non-breaching party shall have the right to proceed to enforce this agreement in law or in equity, including the recovery of any damages, costs and expenses, including fees and expenses of counsel resulting from the breach.


IN WITNESS WHEREOF, the Parties hereto have cause this Agreement to be duly exercised as of the date first written above.

Northern Michigan Land Development
Company, LLC
a Michigan limited liability company

By: 
James C. Fabiano, II, Member

Dated: 11-21-2016, 2016

The Charter Township of Monitor
Downtown Development Authority

By: 
William F. Bartlett, Chairman

Dated: 11-23, 2016

The Charter Township of Monitor

By: Ka Malk

Kenneth M. Malkin, Supervisor

Dated: 11-28, 2016

By: Cindy L. Kowalski

Cindy Kowalski, Clerk

Dated: 11-28-2016, 2016

The County of Bay

By: Ernie Krieger

Ernie Krieger, Chairman

Dated: 11/29/16, 2016

By: Cynthia Luczak

Cynthia Luczak, Clerk

Dated: 11/1/2016, 2016

BAY COUNTY BOARD OF COMMISSIONERS

MEETING DATE: NOVEMBER 29, 2016

MOTION SPONSORED BY: COMM. TILLEY

MOTION SUPPORTED BY: COMM. DURANCZYK

MOTION NO.: 122

TO AMEND RESOLUTION 2016-292 TO APPROVE AND AUTHORIZE THE CHAIRMAN'S SIGNATURE ON ANY OF THE DOCUMENTS PERTAINING TO THE MONITOR TOWNSHIP RESTATEMENT OF THE MONITOR TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY AGREEMENT 2016 AND THE DOWNTOWN DEVELOPMENT AUTHORITY REVENUE SHARING AGREEMENT 2016 ON BEHALF OF BAY COUNTY.

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
Michael Duranczyk	X			Kim Coonan	X			Michael Lutz	X		
Ernie Krygier	X			Thomas Herek	X						
Vaughn J. Begick	X			Donald J. Tilley	X						

VOTE TOTALS:

ROLL CALL: XX YEAS 7 NAYS 0 EXCUSED 0

VOICE: YEAS _____ NAYS _____ EXCUSED _____

DISPOSITION: ADOPTED XX DEFEATED _____ WITHDRAWN _____

AMENDED _____ CORRECTED _____ REFERRED _____

BAY COUNTY BOARD OF COMMISSIONERS

MEETING DATE: NOVEMBER 29, 2016

MOTION SPONSORED BY: COMM. DURANCZYK

MOTION SUPPORTED BY: COMM. COONAN

MOTION NO.: 123

TO ADJOURN THE SPECIAL BOARD SESSION OF NOVEMBER
29, 2016. THE MEETING CONCLUDED AT 4:25 PM.

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
Michael Duranczyk	X			Kim Coonan	X			Michael Lutz	X		
Ernie Krygier	X			Thomas Herek	X						
Vaughn J. Begick	X			Donald J. Tilley	X						

VOTE TOTALS:

ROLL CALL: YEAS _____ NAYS _____ EXCUSED _____

VOICE: XX YEAS 7 NAYS 0 EXCUSED 0

DISPOSITION: ADOPTED XX DEFEATED _____ WITHDRAWN _____

AMENDED _____ CORRECTED _____ REFERRED _____