

The Corporation of the City of Port Colborne

By-law No. _____

Being a By-law to Authorize Entering into an Agreement with 2635450 Ontario Inc. regarding Olde Humberstone Community Improvement Plan Financial Incentive Programs Property Tax Increment Grant

Whereas at its meeting of December 12th, 2023, the Council of The Corporation of the City of Port Colborne (Council) approved the recommendations of Chief Administrative Officer Report 2023-234, Subject: Olde Humberstone CIP TIG Application "The Spot"; and

Whereas Council is desirous of entering into an agreement with 2635450 Ontario Inc., for the purposes of an Olde Humberstone Community Improvement Plan Financial Incentives Program Property Tax Incentive Grant; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That the Corporation of the City of Port Colborne enters into an agreement with 2635450 Ontario Inc., for the purposes of an Olde Humberstone Community Improvement Plan Financial Incentives Program Property Tax Increment Grant, attached hereto as Schedule "A";
2. That the Mayor, the Acting City Clerk be and are hereby authorized to execute any documents that may be required for the purpose of carrying out the intent of this by-law and the Acting City Clerk is dully authorized to affix the Corporate Seal thereto.

Enacted and passed this 12th day of December, 2023.

William C. Steele
Mayor

Saima Tufail
Acting City Clerk

**Olde Humberstone Community Improvement Plan Financial Incentive Programs
Tax Assistance Increment Grant Agreement**

BETWEEN:

THE CITY OF PORT COLBORNE
(hereinafter referred to as the "City")

and

2635450 ONTARIO INC. [REDACTED]
(hereinafter referred to as the "Owner")

WHEREAS the City has adopted the Olde Humberstone Community Improvement Plan Financial Incentives Program (Olde Humberstone CIP) pursuant to Section 28 of the *Planning Act*;

AND WHEREAS the Owner is the registered Owner of the lands described in Section 1 and Schedule "A" to this agreement (the "subject lands") which are located within the City of Port Colborne;

AND WHEREAS the Owner has made applications (the "application") to the City for the Tax Increment Grant under the Olde Humberstone CIP;

AND WHEREAS the City has approved this application and has agreed to provide tax assistance;

AND WHEREAS a condition of approval of this application for tax assistance and the Owner is required by the City to enter into this Agreement (the "Agreement");

1. INFORMATION ON SUBJECT LANDS

- 1.1 The tax assistance and/or grant shall apply to the subject lands as set out in Schedule "A" attached.

2. TAX ASSISTANCE/GRANT ELIGIBILITY

- 2.1 To be eligible for the tax assistance grant, the development and remediation works on the subject lands (hereinafter referred to as "work"), shall conform to and fulfill:
- (a) the objectives and requirements of the Tax Increment and Rehabilitation program of the Olde Humberstone CIP,
 - (b) any other requirements as specified by the City,

- 2.2 The Owner acknowledges that it has received and read a copy of the City's Olde Humberstone CIP Tax Assistance Program Guide (the "Olde Humberstone CIP Guide") and the Owner covenants with the City that the subject lands shall be rehabilitated and developed in accordance with the City's objectives, policies and requirements set out in the DCIP.

3. TAX ASSISTANCE/GRANT CALCULATION AND PAYMENT

- 3.1 The annual tax assistance will be calculated as the difference between property taxes on the subject lands at the time of approval of this Agreement and property taxes that would have been collected on the subject lands after the project's completion.
- 3.2 Municipal tax assistance will commence at the time of passing of the by-law and three year freeze of taxes for the subject lands and will cease on the earlier of:
- a) sale or conveyance of the subject lands;
 - b) Three (3) years from the date the tax assistance begins.
- 3.3 The annual grant will be calculated as a percentage of the increase in municipal property taxes on the subject lands that result from the development with this percentage as identified in the table below.

Year*	Grant Factor
1	100%
2	100%
3	100%

- 3.4 The tax assistance/grant payments shall be calculated according to the formulas and schedules set out in Schedule B to this agreement.
- 3.5 The actual tax assistance/grant payment amounts will be based on the actual post-project assessed value (AV) as determined by the Municipal Property Assessment Corporation (MPAC) and actual applicable City tax rates.
- 3.6 Where at any time after the original rehabilitation of the subject lands, new construction is added to the subject lands that is not part of the original program application, the tax assistance and/or grant will be calculated only in respect of the original rehabilitation contained in the original application, based on the assessed value and property taxes in the last year before revaluation by the MPAC as a result of the new construction added to the subject lands.
- 3.7 The annual tax assistance shall be calculated by the City based upon, and provided the City is satisfied in its discretion that rehabilitation of the subject lands took place in accordance with the proposed rehabilitation works as specified in the application, accompanying documentation, and this Agreement;
- 3.8 The City shall review all cost estimates and documentation submitted in support of the application in evaluating the estimated costs eligible for tax assistance and/or a grant, which costs, when designated by the City shall constitute the maximum costs eligible for tax assistance and/or a grant. In the event the City is not satisfied with said cost

estimates, the City may substitute their opinion of such amounts for purposes of calculating the eligible costs and maximum total tax assistance and/or maximum total grant.

- 3.9 If the City is not in receipt of sufficient information satisfactory to the City to determine eligible costs and the amount of tax assistance and/or grant, there shall be no tax assistance/grant. The decision of the City regarding the total amount of eligible costs, the calculation of the total estimated tax assistance and grant, and the calculation of the actual tax assistance and grant is final and within the City's sole discretion.
- 3.10 Payment of the tax assistance and/or grant is subject to the City's review and satisfaction with all reports and documentation submitted in support of the application, including but not limited to: documentation of the estimated and actual costs of eligible works. Any and all of these costs may be, where required by the City, subject to verification, third party review or independent audit, at the expense of the Owner.
- 3.11 The Owner shall not be entitled to tax assistance and/or a grant payment unless and until they have met all the conditions of this Agreement to the satisfaction of the City. Except where expressly stated in this Agreement, all conditions in this Agreement are for the benefit of the City and may only be waived by the City. No waiver is effective unless in writing.
- 3.12 The total value of the tax assistance that may be provided to the Owner shall not exceed the total eligible Tax Assistance Program costs that have been approved by the City.
- 3.13 The tax assistance that has been provided to the Owner will become payable (including interest) upon notice in writing from the City that one or more of the terms and conditions set out in the application, this Agreement or the Tax Increment Grant Program have not been met.
- 3.14 The total sum value of the annual grant payments that may be provided to the Owner shall not exceed the total eligible Tax Increment Grant Program costs that have been accepted by the City.
- 3.15 Any and all grant payments that have been provided to the Owner will become payable upon notice in writing from the City that one or more of the conditions set out in the application, this Agreement, or the Tax Increment Grant Program have not been met.
- 3.16 Grants are not payable by the City until such time as additional assessment eligible for a grant has been added to the assessment roll by the MPAC, property taxes have been billed by the City, and property taxes have been paid in full for one year on the property.
- 3.17 Annual grant payments to the Owner will not be issued if there is an outstanding tax payment. If at any time after the term of this Agreement, property taxes are owing on a property for more than one full year, the City will have the option, at its sole discretion, to terminate this Agreement and all future grant payments.
- 3.18 The grant is not payable by the City until such time as all assessment appeals relating to the value of the subject lands before the additional assessment or as to the additional assessment as a result of the development of the subject lands have been filed and decided.

- 3.19 The first grant payment as finally determined by the City shall be paid to the Owner by the City, subject to the provisions of this Agreement, following completion and occupancy of the said redevelopment of the subject lands, and during or after the property taxation year in which the property taxes increase as a result of the completed rehabilitation.
- 3.20 Annual grant payments under Olde Humberstone CIP will not be provided by the City until the Owner has satisfied the City that:
- a) The development work on the subject lands has been completed in accordance with the work as described in the application;
 - b) The Owner has supplied the City with the actual amount of the eligible Tax Increment Grant Program costs incurred by the Owner;
 - c) There are no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority in respect of the subject lands, and the business of the Owner conducted on the subject lands;
 - d) The Owner and the subject lands are in full compliance with:
 - i) Any Agreement(s) relating to the property in favour of the City, including any Agreement relating to: subdivision, modified subdivision, service, site plan approval, encroachment, joint sewer & water use, easement or other Agreement; and,
 - ii) Bylaws of the City and provincial or federal legislation and regulations.
 - e) There are no unpaid charges where applicable against the subject lands in favour of the City, including but not limited to: development charges, parkland dedication fees, special assessments and local improvement charges; and,
 - f) The Owner has not appealed the post-project assessed value and there exists no other pending appeal which has not been settled completely in respect of the post-project assessed value.

4. PERSONAL STATUS

4.1 The Owner warrants and represents to the City that:

- a) the Owner is a resident of Canada as of the date of this Agreement and that in the event the Owner ceases to be a resident of Canada, the Owner shall immediately notify the City, and it is agreed, the City may deduct from any or all annual grant payments, such sum(s) as may be required by Canada Customs and Revenue Agency in order to meet the City's obligations as a payer and the Owner's obligations under the *Income Tax Act (Canada)* and other applicable laws.
- b) to the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Owner in any court or before or by any federal, provincial, city or other governmental department,

commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Owner or title to their property or assets; and,

- c) The Owner shall notify the City immediately of any material change in the conditions set out in paragraphs (a)-(d) above.

5. PROVISIONS RELATING TO THE OWNER

- 5.1 The Owner covenants to the City that building(s) and improvements that are the subject of this Agreement will not be demolished, in whole or in part prior to the advance of all of the grant payments.
- 5.2 The Owner shall ensure there are no liens or other claims outstanding in respect of the subject lands, including its rehabilitation, all accounts for work and materials which could give rise to any claim for a construction lien against the subject lands have been paid; and there is no default by the Owner with respect to any of the terms of this Agreement.
- 5.3 The Owner shall ensure that the Owner is in compliance with the *Construction Lien Act*, including its holdback provisions and is not aware of any potential or unresolved Lien claim in respect of the redevelopment.
- 5.4 The Owner covenants to the City that the Owner shall use the subject lands in compliance with this Agreement, all city by-laws pertaining to use, and all applicable environmental laws.
- 5.5 The Owner covenants to the City that the Owner will require, as a term of every lease that tenants of the subject lands comply with all city by-laws pertaining to use, and all applicable environmental laws.
- 5.6 The Owner agrees to comply with all outstanding work orders and/or orders or requests to comply from any and all City departments during the term of this Agreement.
- 5.7 The Owner covenants to the City that the Owner shall not commit or permit any waste to be dumped or any nuisance upon the subject lands or permit any part of the subject lands to be used for any dangerous occupation or business or for any noxious or offensive trade.
- 5.8 The Owner covenants to the City that where the Ownership of part or all of the subject lands ceases for any reason to be in the Owner's name by sale, conveyance, assignment or otherwise, prior to the advance of all of the tax assistance and/or the grant, the Owner will notify the City in writing of said change of ownership at least 30 days prior to said change of ownership.
- 5.9 The Owner acknowledges that nothing in this Agreement is intended to impose or shall impose upon the City any duty or obligation to inspect or examine the land for compliance or non-compliance or to provide an opinion or view respecting any condition of development; and,
 - a) Nothing in this Agreement is intended to be or shall be construed to be a representation by the City regarding compliance of the land with:
 - i) Applicable environmental laws, regulations, policies, standards, permits or

approvals; or,

ii) Other by-laws and policies of the City.

- 5.10 If the City determines in its sole discretion that any of the conditions of this Agreement are not fulfilled, and the City at its sole discretion delays or cancels tax assistance and/or grant payments, and/or requires repayment of tax assistance and/or grant payments already made to the Owner, and/or terminates this Agreement, the Owner agrees that notwithstanding any costs or expenses incurred by the Owner, the Owner shall not have any claim for compensation or reimbursement of these costs and expenses against the City and that the City is not liable to the Owner for losses, damages, interest, or claims which the Owner may bear as a result of the City exercising its rights herein to delay or cancel tax assistance and/or grant payments, require repayment of tax assistance and/or grant payments already made to the Owner, and/or terminate this Agreement.
- 5.11 The Owner shall indemnify and save harmless from time to time and at all times, the City and its officials, officers, employees, and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly from:
- a) The City entering into this Agreement; and
 - b) Any failure by the Owner to fulfil its obligations under this Agreement. This indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

6. PROVISIONS RELATING TO THE CITY

- 6.1 The City agrees to provide a grant to the Owner with said grant to commence at the end of the tax assistance period and ceasing on the earlier of:
- a) the point in time when the total of all annual grant payments provided equals total eligible Tax Increment Grant Program costs that have been accepted by the City;
 - b) Three (3) years.
- 6.2 On an annual basis, the City, upon being satisfied that the Owner is not in default of any of the terms and conditions set out in the application, this Agreement, the Tax Increment Grant Program, shall pay the annual grant payment.
- 6.3 If the Owner cannot be reached over a protracted period (more than 2 years), the City will have the option, without notice and at its own discretion, of terminating this Agreement and all future grant payments to the Owner.
- 6.4 If in the opinion of the City the property is not maintained in its rehabilitated condition, the City may, at its sole discretion, terminate tax assistance and/or all future grant payments and require repayment of the tax assistance and/or grant payments already provided by the City to the Owner.

- 6.5 The City, its employees and agents are entitled to inspect the subject lands at any time during business hours for the purpose of ascertaining their condition or state of repair or for the purpose of verifying compliance with the Olde Humberstone CIP.
- 6.6 The City retains the right at all times to delay or cancel tax assistance and/or grant payments, and/or require repayment of tax assistance and/or grant payments already made to the Owner, and/or terminate this Agreement where the City deems that there is non-compliance with this Agreement. In particular, without limiting the generality of the foregoing, the tax assistance and the grant is conditional upon periodic reviews satisfactory to the City to there being no adverse change in the rehabilitation works and to there being compliance on the part of the Owner with all other requirements contained in this Agreement.
- 6.7 Communications from the City to the Owner may be addressed to the Owner at the address of the Owner listed in Section 9 of this Agreement.

7. DEFAULT AND REMEDIES

- 7.1 On the occurrence of default under this Agreement the City shall be entitled to its remedies to enforce this Agreement, including, but not limited to:
- a) Delaying or cancelling tax assistance and/or grant payments; and/or,
 - b) Requiring repayment to the City by the Owner of all tax assistance and/or grant payments already made to the Owner; and/or,
 - c) Terminating the Agreement.
- 7.2 Default shall be deemed to occur upon any default of the Owner in complying with the terms set out in this Agreement, including, but not limited to, the following:
- a) Non-compliance with any City by-laws, provincial, and/or federal laws and regulations;
 - b) Failure to pay and keep in good standing all real property taxes;
 - c) Any representation or warranty made by the Owner is incorrect in any material respect;
 - d) Failure to perform or comply with any of the obligations contained in this Agreement or contained in any other Agreement entered into between the Owner and the City;
 - e) The Owner makes an assignment for the benefit of creditors, or assigns in bankruptcy or takes the advantage in respect of their own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against the Owner, or if the Owner is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged insolvency, or any default of the Owner under any mortgage or other obligation, or if the subject lands or interest of the Owner in the subject lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;

f) This Agreement is forfeited or is terminated by any other provision contained in it.

7.3 The City may at its sole discretion provide the Owner with an opportunity to remedy any default.

8. ADDITIONAL PROVISIONS

8.1 This Agreement shall remain in effect from the date of its execution by the City to the earlier of:

- a) The time when the City informs the Owner in writing that due to the non-fulfilment or non-compliance with a required condition or due to default, this Agreement is terminated;
- b) The time when total amount of the tax assistance and grants paid out to the Owner equals the total accepted eligible costs under the Tax Assistance Program;
- c) Three (3) years.

8.2 Time shall be of the essence with respect to all covenants, Agreements and matters contained in this Agreement.

8.3 Schedule "A" attached to this Agreement forms part of the Agreement.

9 NOTICES

9.1 Where this Agreement requires notices to be delivered by one party or the other, such notice shall be given in writing and delivered either personally, by e-mail, by fax or by prepaid first call mail by the party wishing to give such notice to the other party at the address noted below:

To the Owner at:

2635450 Ontario Inc.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

To the City at:

City of Port Colborne
c/o Saima Tufail
66 Charlotte Street
Port Colborne Ontario, L3K 3C8
Ph: 905-835-2900 ext 106
Fax: 905-835-2939

THIS AGREEMENT shall be binding upon the parties and their heirs, executors, successors and assigns.

IN WITNESS WHEREOF the parties duly execute this Agreement:

SIGNED, SEALED AND DELIVERED
In the presence of

THE CITY OF PORT COLBORNE

Mayor William C. Steele

Saima Tufail; Acting City Clerk

WITNESS

2635450 Ontario Inc. [REDACTED] :
Owner

Schedule "A"

Of an Agreement between the City of Port Colborne and the Owner named in this Agreement.

Name of Registered Property Owner: 2635450 Ontario Inc. [REDACTED]

Address of Subject Lands: 225 Main Street West

Roll NO.: 030030059000000

Mailing Address of Property Owner (where different from address of subject lands):

[REDACTED]
[REDACTED]
[REDACTED]

E-mail: [REDACTED]

Legal Description of Subject Lands

PLAN 762 BLK A PT LOT 4 PT; LOT 2 S MAIN

Schedule "B"

Olde Humberstone CIP Tax Assistance Estimates

(1) Cost of approved eligible tax assistance works	\$999,000
(2) Pre-project assessed value (AV):	\$119,000
(3) Pre-project City property taxes	\$1,721
(4) Post-project assessed value (AV):	CT \$999,000
(5) Post-project City property taxes	\$13,834.41

Municipal Tax Assistance = Post-project City property Taxes – Pre-project City property taxes

Grant = Post-project City property taxes – Pre-project City property taxes

**TAX ASSISTANCE CALCULATION SCHEDULE ESTIMATE
2022**

	Pre- Development	Project Completion	Tax Increment	% of Tax Increment	Annual Grant
Assessment Value	\$119,000	\$999,000	\$881,000	100%	100%
Municipal Taxes	\$1,721	\$13,834.41	\$13,834.41	100%	\$13,834.41
		Duration of Grant			3 years
		Total Payment of Grant \$41,503.22 however subject to any assessment or tax increase during the 3-year period			