

Brownfield Tax Assistance Agreement

THIS AGREEMENT made this day of , 2024.

BY AND BETWEEN:

THE Corporation of the City of Port Colborne (hereinafter referred to as the “City”)

and

2866403 Ontario Inc. (hereinafter referred to as the “Applicant”)

WHEREAS the Applicant is the registered owner of lands described in Schedule “A” attached to this Agreement (“the subject lands”) which are situated within the Brownfield Community Improvement Project Area, and the Applicant has applied to the City for Brownfield Tax Assistance (“tax assistance”) and the City has agreed to provide tax assistance pursuant to Section 28 of the *Planning Act*, Section 365.1 of the *Municipal Act, 2001*, and under By-Law No (insert CIP by-law number) and By-law No (insert Brownfield Tax Assistance by-law number);

AND WHEREAS as a condition of approval of such tax assistance, the Applicant is required by the City to enter into this Agreement;

NOW THEREFORE IN CONSIDERATION of the City providing tax assistance in the estimated maximum amount of \$ TBD to the Applicant, the Applicant and the City hereby agree:

1. INFORMATION ON SUBJECT LANDS

1.1 The tax assistance shall apply to the subject lands as set out in Schedule A attached.

1.2 The subject lands are/are not designated under the *Ontario Heritage Act*.

2. TAX ASSISTANCE ELIGIBILITY

2.1 To be eligible for the tax assistance, the remediation/risk management and rehabilitation/redevelopment/construction works on the subject lands (hereinafter referred to as the “works”), shall conform to and fulfill:

a) The objectives and program requirements of the Brownfield Tax Assistance Program and the Port Colborne Comprehensive Community Improvement Plan (“CIP”); and,

b) Any other requirements as specified by the City.

2.2 The Applicant acknowledges that it has received and read a copy of the: CIP, General Program Requirements, Brownfield Tax Assistance Program Guide (the “Guide”) and the Urban Design Guidelines (the “Guidelines”), and the Applicant covenants with the City that the subject lands shall be remediated/risk assessed/risk managed and developed in accordance with the City’s goals, policies, and program requirements as set out in the CIP, General Program Requirements, Guide, and Guidelines.

Brownfield Tax Assistance Agreement

- 2.3 The City shall review all cost estimates and documentation submitted in support of the Application in evaluating the estimated costs eligible for tax assistance, which costs, when designated by the City shall constitute the maximum costs eligible for tax assistance. 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 for tax assistance.
- 2.4 If the City is not in receipt of sufficient information satisfactory to the City to determine eligible costs and the amount of tax assistance, there shall be no tax assistance. The decision of the City regarding the total amount of eligible costs, the calculation of the total estimated tax assistance, and the calculation of the actual tax assistance is final, absolute and within the City's sole discretion.

3. TAX ASSISTANCE CALCULATION AND PAYMENT

3.1 Definitions:

"Eligible works" – the works specified in Schedule B attached to this Agreement.

"Eligible costs" – the cost of the eligible works specified in Schedule B attached to this Agreement.

- 3.2 The annual tax assistance will be calculated as the difference between property taxes on the subject lands at the time of passing of the Tax Assistance By-law and property taxes that would have been collected on the subject lands during remediation/risk management and after development had property taxes not been frozen.
- 3.3 City and school property tax assistance (subject to approval by the Province of Ontario) will commence on the date specified in the By-law which approves tax assistance for the subject lands and tax assistance will cease on the earlier of:
- The point in time when the total tax assistance provided equals total eligible Tax Assistance Program costs that have been approved by the City;
 - Severance, sale, or conveyance of the subject lands;
 - The date of registration of a final plan of subdivision; or,
 - Five (5) years from the date that tax assistance begins.
- 3.4 The property taxes that have been cancelled will remain on the property tax roll of the property until the proposed brownfield redevelopment project has been completed, at which time the property taxes that have been cancelled will be removed from the property tax roll.
- 3.5 Tax assistance will not be provided if at any time after the execution of this Agreement, property taxes are owing on a property for more than one (1) full year, the City will have the option, at its sole discretion, to terminate this Agreement and all tax assistance.
- 3.6 Where at any time after the original development of the subject lands, new construction is added to the subject lands that is not part of the original application, the tax assistance

Brownfield Tax Assistance Agreement

will be calculated only in respect of the original development contained in the original application.

- 3.7 The annual tax assistance shall be calculated by the City based upon, and provided the City is satisfied in its discretion that development of the subject lands took place in accordance with the proposed works as specified in the application, accompanying documentation, and this Agreement;
- 3.8 Payment of the tax assistance 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 Applicant.
- 3.9 The Applicant shall not be entitled to tax assistance 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.
- 3.10 The total value of the tax assistance that may be provided to the Applicant shall not exceed the total eligible Brownfield Tax Assistance Program costs that have been approved by the City.
- 3.11 The tax assistance that has been provided to the Applicant will become re-payable (including interest) to the City 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 Brownfield Tax Assistance Program have not been met.
- 3.12 Tax Assistance is not payable by the City until the Applicant has satisfied the City that:
 - a) The remediation/risk assessment/risk management of the subject lands has been completed in accordance with the eligible works as described in the application;
 - b) The Applicant has supplied the City with all invoices for the actual amount of the eligible Tax Assistance costs incurred by the Applicant, and verification that all contractors and consultants who performed said eligible work have been paid in full;
 - 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 Applicant conducted on the subject lands;
 - d) The Applicant 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.

Brownfield Tax Assistance Agreement

- 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 Applicant 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. CORPORATE STATUS

4.1 The Applicant represents to the City that:

- a) The Applicant has been duly incorporated as a corporation and is in good standing under the *Business Corporations Act* and is in compliance with all laws that may affect it and will remain so throughout the term of this Agreement;
- b) The Applicant has the corporate capacity to enter into this Agreement and to perform and meet any and all duties, liabilities and obligations as may be required of it under this Agreement;
- c) To the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Applicant or the subject lands in any court or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Applicant and title to the subject lands; and,
- d) The Applicant shall notify the City immediately of any material change in the conditions set out in paragraphs a) through c) above.

5. PROVISIONS RELATING TO THE APPLICANT

5.1 The Applicant shall notify the City if the Applicant has applied for, been approved for, or has received project funding from any other levels of government or government funded agencies, e.g., Federal, Provincial, Municipal, CMHC, Federation of Canadian Municipalities, etc...). The Applicant will notify the City immediately upon receiving any and all project funding from other levels of government even if said funding is received after the execution of this agreement.

5.2 At the time the Applicant signs this Agreement, the Applicant will provide the City with a certified true copy of a resolution of the Board of Directors of the Applicant (certified by an officer of the corporation) that authorizes the Applicant to enter into this Agreement with the City.

5.3 The Applicant agrees that it shall not commence any works that are the subject of a Brownfield Tax Assistance application prior to receiving approval of the Application from the City, execution of this Agreement, and issuance of a building permit (if required).

Brownfield Tax Assistance Agreement

- 5.4 The Applicant shall supply to the satisfaction of the City prior to the issuance of any tax assistance, all requested environmental reports and documentation on the subject lands.

Brownfield Tax Assistance Agreement

- 5.5 Once the environmental remediation/risk management works are complete, and prior to the issuance of any tax assistance, the Applicant shall file a Record of Site Condition (RSC) in the Environmental Site Registry under Section 168.4 of the *Environmental Protection Act* and provide the City with a copy of this RSC, and the Applicant will provide the City with proof of acknowledgement of a signed RSC by the Ministry of Environment, Conservation and Parks (MECP). The RSC shall demonstrate that the approved use of the subject lands is appropriate and consistent with the proposed use of the subject lands as stated in the Application.
- 5.6 The Applicant will complete all eligible works as specified in the approved Tax Assistance application, and in documentation submitted in support of the Tax Assistance application, including but not limited to: all required planning approvals, the architectural/design drawings, specifications, contracts, and cost estimates. As the City is relying upon this information, if the information in this Agreement, the associated application, and/or any supporting documentation submitted to the City is, in the opinion of the City, incomplete, false, inaccurate or misleading, the tax assistance may be reduced and/or delayed, and/or cancelled, and where part or all of the tax assistance has already been paid by the City, such payments shall be repaid by the Applicant (including interest) as required by the City.
- 5.7 The Applicant agrees that the works made to the subject lands and buildings thereupon shall be made in compliance with all required building permits, and constructed in accordance with the Ontario Building Code and all applicable zoning by-law requirements, municipal requirements and other approvals required at law.
- 5.8 The Applicant agrees that it shall commence all remediation/risk assessment/risk management works as described in the application within one (1) year of the execution of this Agreement, failing which, unless extended by the City, the Brownfield Tax Assistance approval shall be at an end, there shall be no tax assistance, and this Tax Assistance Agreement shall be terminated. The deadline imposed by this paragraph shall not include delays that are outside the control of the Applicant. The City's decision as to when such project is commenced and completed is final and absolute.
- 5.9 The Applicant agrees that it shall commence construction of the development as described in the associated Tax Increment Grant (TIG) Program Application (building permit issued) within four (4) years and complete construction of the development within seven (7) years of the execution of this Agreement, failing which, unless extended by the City, this Brownfield Tax Assistance approval shall be at an end, there shall be no Tax Assistance, and this Agreement shall be terminated. The deadline imposed by this paragraph shall not include delays that are outside the control of the Applicant. The City's decision as to when such project is commenced and completed is final and absolute.
- 5.10 Upon completion of the remediation/risk management works, the Applicant shall provide the City with documentation satisfactory to the City as to the amount of the actual eligible Brownfield Tax Assistance Program costs actually incurred by the Applicant, and the City shall, in its sole discretion designate the approved total tax assistance available.
- 5.11 The Applicant will provide to the City, upon request, a remediation/risk management status report signed by a qualified person to confirm the status and completion of the approved eligible works, including but not limited to: the remediation/risk management

Brownfield Tax Assistance Agreement

schedule, the existence and extent of any faults or defects, the value of the work done under any contract, the amount owing to any contractor and the amounts paid or retained by the Applicants on any contract.

- 5.12 The Applicant shall ensure there are no liens or other claims outstanding in respect of the subject lands at any time for non-payment of any actual eligible Tax Assistance Program costs, and that all accounts for work and materials which could give rise to any such claim for a construction lien against the subject lands have been paid.
- 5.13 The Applicant shall ensure that the Applicant 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 subject lands at any time for non-payment of any actual eligible Tax Assistance Program costs.
- 5.14 The Applicant covenants to the City that the Applicant shall use the subject lands in compliance with this Agreement, all municipal by-laws pertaining to use, and all applicable environmental laws.
- 5.15 The Applicant 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.
- 5.16 The Applicant covenants to the City that the subject lands shall be maintained in their remediated/risk managed condition and not re-contaminated during the term of this Agreement.
- 5.17 The Applicant covenants to the City that the Applicant 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.
- 5.18 The Applicant covenants to the City that where the ownership of part or all of the subject lands ceases for any reason to be in the Applicant's name by sale, conveyance, assignment or otherwise, prior to the advance of all of the tax assistance, the Applicant will notify the City in writing of said change of ownership at least 45 days prior to the change of ownership taking place.
- 5.19 The Applicant acknowledges that without limiting the generality of the other provisions of this Agreement:
 - a) the onus and responsibility is upon the Applicant at all times to assume all costs of development of the subject lands and to apply for and obtain, at the Applicant's expense, all approvals required from the City and all other agencies for the development of the subject property, including but not limited to all Official Plan Amendments, Zoning By-law amendments, minor variances, and site plan approval;
 - b) Nothing in this Agreement limits or fetters the City in exercising its statutory jurisdiction under the *Planning Act* or under any other legislative authority or by-law, and that in the event the City decides to deny or oppose or appeal any such

Brownfield Tax Assistance Agreement

decision, that such action by the City is not in any manner limited by reason of the City entering into this Agreement;

- c) The Applicant releases the City from any liability in respect of the City's reviews, decisions, inspections or absence of inspections regarding the works that are subject of this Agreement;
 - d) 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,
 - e) 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: applicable environmental laws, regulations, policies, standards, permits or approvals; or, other by-laws and policies of the City.
- 5.20 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 requires repayment of tax assistance already made to the Applicant, and/or terminates this Agreement, the Applicant agrees that notwithstanding any costs or expenses incurred by the Applicant, the Applicant 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 Applicant for losses, damages, interest, or claims which the Applicant may bear as a result of the City exercising its rights herein to delay or cancel tax assistance and/or require repayment of tax assistance already made to the Applicant, and/or terminate this Agreement.
- 5.21 The Applicant 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 Applicant to fulfil its obligations under this Agreement.
- 5.22 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, or satisfactory completion of the works approved under this Agreement

6. PROVISIONS RELATING TO THE CITY

- 6.1 The City agrees to provide tax assistance to the Applicant, with said tax assistance to commence when the tax assistance by-law is passed, and said tax assistance will cease on the earlier of:
- a) The point in time when the total tax assistance provided equals total eligible Tax Assistance Program costs that have been accepted by the City;

Brownfield Tax Assistance Agreement

- b) Sale, conveyance, or severance of the subject lands;
 - c) The date of registration of a final plan of subdivision; or,
 - d) Five (5) years from the date that tax assistance by-law is passed.
- 6.2 The City reserves the right to require a third party review or independent audit, at the Applicant's expense, of all documentation submitted in support of the Application or during the administration of the Tax Assistance, including but not limited to estimated and actual eligible costs.
- 6.3 If in the opinion of the City, the property is recontaminated and/or not maintained in its remediated/risk managed condition, the City may, at its sole discretion, terminate tax assistance and require repayment of the tax assistance already provided by the City to the Applicant.
- 6.4 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 provisions of this Agreement.
- 6.4 The City retains the right at all times to delay or cancel tax assistance, and/or require repayment of tax assistance already made to the Applicant, 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 is conditional upon periodic reviews satisfactory to the City to there being no adverse change in the remediation/risk management works and to there being compliance on the part of the Applicant with all other requirements contained in this Agreement.
- 6.5 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.

7. DEFAULT AND REMEDIES

- 7.1 The Applicant agrees to maintain the subject lands in their remediated/risk managed state. In the event that the Applicant does not maintain the subject lands in their remediated/risk managed state, the City may:
- a) Serve on the Applicant a written Notice to Remediate detailing the particulars of the failure and the particulars of needed remediation and/or reinstatement of risk management measures; and,
 - b) Provide the Applicant with at least 30 days to make such repairs.
- 7.2 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,

Brownfield Tax Assistance Agreement

- b) Requiring repayment to the City by the Applicant of all tax assistance already made to the Applicant; and/or,
- c) Terminating the Agreement.

7.3 Default shall be deemed to occur upon any default of the Applicant in complying with the terms set out in this Agreement, including, but not limited to, the following:

- a) The Applicant causes, knowingly permits or allows in an acquiescent manner, the subject lands to become contaminated;
- b) The remediation works and/or risk management measures and works do not comply with the description of the works as provided in the Application Form and Supporting Documents;
- c) Deficiencies in the as constructed works;
- d) The works are not undertaken in conformity with the Ontario Building Code and all applicable zoning requirements and planning approvals;
- e) The building is damaged by fire or otherwise, and repair or reconstruction is not commenced within 90 days;
- f) The Applicant is in property tax arrears with respect to the subject lands for more than one 90 days.
- g) Any representation or warranty made by the Applicant is incorrect in any material respect;
- h) Failure to perform or comply with any of the obligations contained in this Agreement or contained in any other Agreement entered into between the Applicant and the City;
- i) The Applicant 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 Applicant, or if the Applicant 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 Applicant under any mortgage or other obligation, or if the subject lands or interest of the Applicant in the subject lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;
- j) Construction ceases for a period of more than 60 days due to the Applicant's default (strikes and Acts of God excepted) and/or the Applicant abandons the property or project;
- k) If this Agreement is forfeited or is terminated by any other provision contained in it.

Brownfield Tax Assistance Agreement

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

8. ADDITIONAL PROVISIONS

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

8.2 Schedule "A" attached to this Agreement forms part of this Agreement.

9. NOTICES

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

Such notice shall be deemed to have been given:

- a) In the case of personal delivery, on the date of delivery;
- b) In the case of e-mail or fax, on the date of transmission provided it is received before 4:30 p.m. on a day that is not a holiday, as defined in the Interpretation Act, failing which it shall be deemed to have been received the next day, provided the next day is not a holiday; and,
- c) In the case of registered post, on the third day, which is not a holiday, following posting.

Notice shall be given:

To the Applicant at:

2866403 Ontario Inc.
14-30 Eglinton Ave W. Suite 282
Mississauga, ON
L5R 0C1
ajaypalkahlon@gmail.com

To the City at:

City of Port Colborne
66 Charlotte Street
Port Colborne Ontario, L3K 3C8
Attention: Bram Cotton, Economic Development Officer
Ph: 905-835-2900 ext 504
Fax: 905-835-2939
Email: cipapplication@portcolborne.ca

Brownfield Tax Assistance Agreement

IN WITNESS WHEREOF the parties hereto have executed this Agreement all as of the day and year first written above, and the parties hereto have hereunto affixed their corporate seals duly witnessed and attested by the hands of the proper signing officers in that behalf, and said signing officers certify that they have authority to bind their corporation.

Signed for and on behalf of Ajay Kahlon by:

Per: _____
Name:
Title: Authorized Signing Officer
Date:

Per: _____
Name:
Title: Authorized Signing Officer

Signed for and on behalf of The Corporation of the City of Port Colborne by:

Per: _____
Name:
Title: Mayor
Date:

Per: _____
Name
Title: Acting City Clerk

Brownfield Tax Assistance Agreement

SCHEDULE "A"

of a Grant Agreement between the City and the Applicant named in this Agreement.

Legal Description of land

PT LT 15 W/S Mitchell St. PL 849 Port Colborne; PT LT 16 W/S
Mitchell St. PL 849 Port Colborne AS IN RO333695; S/T RO 333698; Port Colborne

Brownfield Tax Assistance Agreement

SCHEDULE "B"

of an Agreement between the City and the Applicant named in this Agreement.

Eligible Works for Brownfield Tax Assistance

ESA - \$16,737.16
Environmental Remediation including cost of preparing RSC and CPU - \$74,388
Placing and compacting and grading of clean fill to replace contaminating soils/fill disposing of
off-site -\$23,775
Remedial site plan - \$33,474.32
Environmental Insurance Premiums -\$1,000
h. Building rehab and retrofits and i. Upgrading on-site infrastructure \$1,000,000
Total - \$1,149,374.16

Brownfield Tax Assistance Agreement

Eligible works for the tax assistance provided under the Brownfield Tax Assistance Program (TAP) include only the following:

- i) a Phase II ESA, Designated Substances and Hazardous Materials Survey, Remedial Work Plan, Risk Assessment /Risk Management Plan, not disbursed by the ESA Grant Program;
- ii) environmental remediation, including the costs of preparing a Record of Site Condition (RSC) and Certificate of Property Use;
- iii) placing, compacting and grading of clean fill required to replace contaminated soils/fill disposed of off-site;
- iv) installing, monitoring, maintaining and operating environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or CPU;
- v) testing of on-site excess soils for potential reuse, but shall not include the excavation, management, transportation or disposal of such soil, except where the soil is found to be contaminated; and,
- vi) environmental insurance premiums.

The total value of the tax assistance provided under the Brownfield TAP shall not exceed the total cost of the eligible works specified in i) to vi) above.