

CONTRACT FOR CONDITIONAL TRANSFER OF PROPERTY

This Agreement is made on the ___ day of _____, 2018, by and between the CITY OF HOUGHTON, a Michigan municipal corporation, with its principal offices at 616 Sheldon Avenue, Houghton, Michigan 49931 (hereinafter referred to as the "City"), and THE CHARTER TOWNSHIP OF PORTAGE, a Michigan municipal corporation, with its principal offices at Box 750, Green Acres Road, Houghton, Michigan 49931 (thereinafter referred to as the "Township").

WHEREAS, Act No. 425 of the Public Acts of Michigan of 1984 (1984 PA 425) enables two local units of government to conditionally transfer property for the purpose of an economic development project, which conditional transfer must be controlled by a written contract agreed to by the affected local units, and which written contract must be in compliance with provisions of 1984 PA 425; and

WHEREAS, an economic development project or projects as defined in 1984 PA 425 may be undertaken on the land described in subparagraph 1.1 of the Contract attached hereto, which is presently located in Portage Township, Houghton County, Michigan; and

WHEREAS, each local unit must, according to 1984 PA 425, consider certain factors prior to entering into a contract pursuant to 1984 PA 425; and

WHEREAS, in accordance with the 1984 PA 425, the Houghton City Council held a public hearing on the ___ day of _____, 2018, at 5:30 p.m. and the Charter Township of Portage Board held a public hearing on the ___ day of _____, 2018, at ___ p.m. regarding the conditional transfer of property pursuant hereto; and

WHEREAS, the City and Township have agreed that the land described in subparagraph 1.1 of the Contract attached hereto, shall be used for the development of a Meijer store, by Meijer, Inc., or one of its affiliates, parent or subsidiary; and

WHEREAS, the City Council and the Township Board have each decided, by a majority vote of the members elected and serving on each body, to enter into this Agreement; and

WHEREAS, neither the City Council nor the Township Board adopted a resolution calling for a referendum on the transfer to be made pursuant to this Agreement, and more than thirty (30) days have elapsed since the adoption of this resolution of each body approving this Agreement and neither the City Clerk nor the Township Clerk has received a petition calling for a referendum on said transfer,

NOW, THEREFORE, in exchange for the mutual representations, promises, covenants and other consideration made or referred to in this Agreement, the parties to this Agreement agree as follows:

ARTICLE I

TRANSFER AND EFFECT

1.1 Transfer of Property. The real property, hereinafter referred to as the "Transferred Parcel," described below is hereby transferred from the Township to the City and shall for the term of this Contract, and for all purposes except as specifically otherwise indicated herein, be considered to be within the jurisdiction of the City:

A parcel of land in the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of Section 3, T54N, R34W, Portage Township, Houghton County, Michigan described as follows:

Commencing at the East quarter corner of said Section 3; thence S 87° 44' 09" West along the North line of said Northeast quarter of the Southeast quarter 100 feet to the point of beginning; thence continue South 87° 44' 09" West along the North line of said Northeast quarter of the Southeast quarter 523.70 feet; thence South 01° 13' 24" East 748 feet to the Northerly right of way line of Highway M-26; thence North 66° 53' 23" East along said right of way 575.27 feet; thence North 02° 17' 57" West, parallel to the East line of said Northeast quarter of the Southeast quarter 543.16 feet more or less to the point of beginning, containing 7.85 acres, more or less.

The imposition of tax at the City millage rate pursuant to subparagraph 1.5 of this Agreement, and the sharing of tax revenues, pursuant to subparagraph 3.1 of this Agreement, shall commence with respect to all tax bills mailed to owners of the Transferred Parcels after December 31, 2018 and during the term of this Agreement. Subject to all exceptions, reservations, restrictions and conditions contained in prior conveyances of record.

1.2 Municipal Services. The City shall be responsible for providing fire protection, police protection, water, sewer, storm sewer and other municipal services to the Transferred Parcel on the same basis as though the Transferred Parcel was within the geographic limits of the City. Notwithstanding the foregoing, if a parcel located on the Transferred Parcel or a contiguous parcel is connected to Township sewer services, the Township shall be responsible for all maintenance, repairs, invoicing, and any costs associated with the Township sewer services, except the City shall invoice for any City water used in the Township sewer services located on the Transferred Parcel or a contiguous parcel.

1.3 Municipal Authority. The Transferred Parcel shall be deemed to be under the jurisdiction of the City for the purposes of all City ordinances.

1.4 Liens. Liens for special assessments, taxes, and other purposes made against the Transferred Parcel by the Township shall remain in full force and effect just as if the Transferred Parcel was within the jurisdiction of the Township.

1.5 Taxes. The Transferred Parcel shall be considered to be within the jurisdiction of the City for purposes of all taxation.

ARTICLE II

REPRESENTATIONS

2.1 Representations. Each party to this Agreement represents that prior to entering into this Agreement and when formulating this Agreement, it has considered the following factors:

(a) Composition of the population; population density; land area and land uses; assessed valuation; topography, natural boundaries, and drainage basins; the past and probable future growth, including population increase and business, commercial, and industrial development in the Township.

(b) Need for organized community services; the present cost and adequacy of governmental services in the Township, and particularly in those areas of the Township near the City limits; the probable future need for services in this area; the practicability of supplying such services to this area; the probable effect of the transfer and of alternative courses of action on the cost and adequacy of services in the

area of the Township near the City limits and on the remaining portion of the Township; the probable change in taxes and tax rates in this area in relation to the benefits expected to accrue from potential transfers; and the financial ability of the City to provide and maintain those services to the potential Transferred Parcel.

(c) General effect of the transfer upon the parties to the Agreement; and the relationship of the transfer to any established city, village, township, county or regional land use plan.

ARTICLE III

SHARING OF REVENUES

3.1 Sharing of Taxes. Taxes on the Transferred Parcel shall be shared by the parties hereto as follows:

(a) On or before March 1, 2020, and annually thereafter during the term of this Agreement, the City shall pay to the Township a sum equal to 3 mills (assessed against the Taxable Value of the real and personal property and improvements contained within the Transferred Parcel, determined as of December 31 of the prior year). Any amount not paid by said date shall bear interest at the rate of one percent (1%) per month until paid. In the event that the Township increases its rate of taxation above the level of 3 mills, the annual sum to be paid by the City to the Township shall be correspondingly increased to a sum equal to the increased Township millage multiplied by the State Equalized Value of the real and personal property and improvements contained within the Transferred Parcel, commencing with the payment to the Township next following the effective date of any millage increase.

(b) If a tax abatement or exemption is requested with respect to any property in the Transferred Parcel, such abatement or exemption shall not reduce the annual sum the City is required to pay to the Township under paragraph 3.1(a), unless the Township Board approves such a reduction by written resolution.

(c) The tax sharing provision is in lieu of any and all other payments or fees from the Transferred Parcel to which the Township might otherwise be entitled.

3.2 Gifts, Grants, Assistance Funds, or Bequests. The Transferred Parcel shall be treated as being within the jurisdiction of the City for purposes of gifts, grants, assistance funds, bequests, or other funds from any private or public source given as a result of the Transferred Parcel, an activity performed upon the Transferred Parcel, the occupancy of the Transferred Parcel, or for any other reason arising from the existence or jurisdiction of the Transferred Parcel, such gifts being distributed to the City alone and not shared with the Township.

3.3 Other Funds. For the purpose of state and federal revenue sharing, the sharing of highway funds, or any other type of funds, the Transferred Parcel shall be considered as being within the jurisdiction of the City, and such funds shall not be shared with the Township.

ARTICLE IV

INDEMNIFICATION

4.1 Indemnification. In the event the Township incurs liabilities or costs defending claims or suits against it as a result of entering into the terms of this Agreement, except liabilities or costs incurred as a result of a dispute between the parties to this Agreement, the City agrees to hold harmless and indemnify the Township from and against any costs, judgment, or claims required to defend or settle said actions. In other legal matters, the party not responsible for the liability or for defending against the liability shall be held harmless by, indemnified by and defended by the other party upon its receipt of notice of any claim, lawsuit, judgment, penalty, and administrative proceeding. Provided, however, that this indemnification provision shall

have no effect to the extent that a party, which would otherwise be indemnified hereunder, has insurance coverage to pay liabilities or costs of defending suits or claims.

ARTICLE V

TERM AND TERMINATION

5.1 Term. This Agreement shall terminate at 11:59 p.m. on the 31st day of December, 2058 or upon the events outlined in subparagraph 5.6 herein.

5.2 Effect of Termination. Except as provided in Paragraph 5.6, upon the termination of this Agreement, the Transferred Parcel shall for all purposes be within the jurisdiction of the City.

5.3 Renewal. This Agreement may be renewed for additional periods upon mutual agreement of the parties.

5.4 Other Grounds for Termination; Rescission This Agreement may also be terminated:

(a) By mutual agreement of the parties or

(b) By the Township, in the event that the City shall refuse or fail to make any payment required by Section 3.1 above.

5.5 Prohibition of Annexation. While this Agreement is in effect, no other method of annexation or transfer shall take place with respect to the Transferred Parcel.

5.6 Reversion to Township. The Transferred Property shall be promptly transferred back to the Township upon the following circumstances and shall for all purposes be within the Jurisdiction of the Township;

a. Meijer, Inc., or one of its affiliates, subsidiaries or parents, elects not to move forward with a Meijer store on or immediately adjacent to the Transferred Parcel; or

b. Meijer, Inc., or one of its affiliates, subsidiaries or parents, fails to open a Meijer store on or immediately adjacent to the Transferred Parcel within ten (10) years of the date of this Agreement.

ARTICLE VI

ENFORCEMENT

6.1 Enforcement. Any dispute that arises hereunder between the parties hereto shall be submitted to the American Arbitration Association in accordance with its Rules of Arbitration. An arbitration award under this provision shall be final and binding and a judgment of the Circuit Court may be entered to enforce the award. In case of any such enforcement action, the prevailing party shall be entitled to collect from the losing party all of its costs, including its reasonable attorneys' fees, incurred to investigate, bring and maintain that enforcement action. In addition to any other remedies, in the event an arbitration award finds a substantial breach of this Agreement by the City, the arbitrator may order that the Transferred Parcel shall be returned to the jurisdiction of the Township.

ARTICLE VII

MISCELLANEOUS

7.1 Notices. Any notice, demand or communication required, permitted, or desired to be given under this Agreement shall be deemed effectively given when personally delivered or mailed by prepaid

certified mail, return receipt requested, addressed to the parties at the addresses set forth above in this Agreement.

7.2 Governing Law. This Agreement has been executed and delivered in and shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Michigan. All duties and obligations of the parties created hereunder are performable in Houghton County, Michigan, and Houghton County, Michigan shall be the venue for any arbitration between the parties that may be brought in connection with or arise out of or by reason of this Agreement.

7.3 Assignment. No assignment of this Agreement or the rights and obligations thereunder shall be valid without the specific written consent of both parties hereto.

7.4 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

7.5 Gender and Number. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

7.6 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

7.7 Article and Other Headings. The Article and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7.8 Amendments and Contract Execution. This Agreement may be amended by mutual agreement of the parties. This Agreement and amendments thereto shall be in writing and executed in multiple copies. Each copy shall be deemed an original, but all copies together shall constitute one and the same instrument.

7.9 Entire Agreement. This Agreement supersedes all previous or contemporaneous contracts and constitutes the entire Agreement between the parties regarding the Transferred Parcel. Neither party shall be entitled to benefits other than those specified herein. No oral statements or prior or contemporaneous written material not specifically incorporated herein shall be of any force and effect. Both parties specifically acknowledge, in entering into and executing this Agreement that they rely solely on the representations and agreements contained in this Agreement and no others.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Signed in the presence of:

Signed by: CITY

Robert Backon, Mayor

Ann Vollrath, Clerk

Signed in the presence of:

Signed by: TOWNSHIP

By: _____
Bruce Peterson, Supervisor

By: _____
Tressa Alverado, Clerk