



## Legislation Text

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**File #:** 07-0268, **Version:** 1

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Resolution to Approve the Broadway Village at Lower Town Turnkey Parking Deck Construction and Donation Agreement, the Parking Deck Operating Agreement, and the Washtenaw County Brownfield Redevelopment Authority Reimbursement Agreement

Attached for your review and approval are the Turnkey Parking Deck Construction and Donation Agreement, the Parking Deck Operating Agreement, and the Washtenaw County Brownfield Redevelopment Authority (WCBRA) Reimbursement Agreement for Broadway Village at Lower Town. The Developer, Lowertown Development Group, LLC, has asked that these agreements be presented at the earliest possible City Council meeting in order to enable it to finalize necessary funding for the project, and to utilize \$1,000,000 in Clean Michigan Initiative loans and grants for environmental clean-up and remediation which will expire if not used by the end of this calendar year.

The two parking deck agreements are contemplated by the Development Agreement and provide for the construction, donation to the City, and subsequent maintenance and operation of the approximately 700 space parking deck by the Developer for 30 years, subject to the Developer meeting certain contingencies. The WCBRA Reimbursement Agreement gives the City approval of the Developer's proposed eligible expenses regarding environmental clean-up and remediation as presented to WCBRA for reimbursement from TIF revenue. Under the Reimbursement Agreement the Developer will be reimbursed only for expenses consistent with the more stringent City-approved criteria for environmental remediation as provided in the City's amended Development Agreement.

### Background

The Broadway Village at Lower Town project was originally approved by City Council, together with its PUD zoning on October 7, 2003. On the same date, City Council also concurred with the Brownfield Plan for the project, which was subsequently approved by Washtenaw County on December 3, 2003.

The site plan was administratively amended on September 12, 2006 and again on January 12, 2007 to incorporate minor modifications to building placement, building square footage, and site layout. The original Broadway Village at Lower Town Development Agreement was approved on August 2, 2004, and City Council approved the First Amendment to the Development Agreement on July 16, 2007. The First Amendment eliminated City bond financing, provided for an affordable housing contribution, and established the minimum scope of environmental remediation for the project.

Private financing will now be used in place of the up to \$40 million in bonds the City had originally agreed to issue for environmental remediation, site improvements, and construction of the parking deck. Approval of the attached agreements will allow the Developer to finalize this private financing. TIF revenues captured from the project will now be used by the Washtenaw County Brownfield Redevelopment Authority (WCBRA) to reimburse the Developer directly for eligible costs that the Developer will incur completing the project as opposed to repayment of City bonds, including \$19.2 million for construction of the parking deck. (The projected cost of the parking deck is currently \$26.2 million, which includes Developer financing of \$7.0 million.)

Approval of these agreements will allow this project to move forward to close on its private investor and bank construction financing. However, there will be several additional legal documents that will require Council approval in the coming months, including a donation agreement for the greenway parcel, utility easements, reciprocal easements for shared elevators and egress routes through the parking deck and the surrounding building, access easements for the parking deck, and a public access easement for the entire site.

### Parking Deck

As contemplated by the original Development Agreement and Supplemental Regulations for this project, the Developer will construct an approximately 700 space, multi-level parking deck for the City. The fully functional and operational parking facility is to be designed and constructed to have a minimum 60 year life, with no major repairs. The Supplemental Regulations for the project require that no fewer than 80% of the minimum 647 and maximum 790 spaces for the entire project be provided in the parking deck, and that the deck have the following restrictions:

- No more than 150 monthly or annual parking permits may be made available to on-site residents and retail tenants, and can be restricted for evening, weekend or holiday hours
- No more than 190 deck parking spaces may be reserved for tenants and visitors of building A
- All other spaces shall be charged on an hourly or other short-term basis

Complete design criteria for the parking deck can be found in Exhibit C of the Turnkey Parking Deck Construction and Donation Agreement.

### Turnkey Parking Deck and Construction Agreement

Following is a summary of the deal points for the Turnkey Parking Deck and Construction Agreement:

- The City is no longer issuing its bonds/utilizing its credit to support environmental remediation activities and infrastructure construction for the Broadway Village project. Such costs can remain eligible for TIF reimbursement under the Brownfield Act and the Brownfield Plan only if the parking deck is municipally owned and open to the public.
- This Agreement requires the Developer to design the parking deck based on outline specifications (attached to the document as Exhibit C) which are similar to specifications of the latest City/DDA parking decks, with the City having the ultimate right to approve or reject the final plans and specifications.
- The Developer has hired, and the City has approved, Clark Construction Company to build the parking deck. This is not a public project, as it will be donated to the City only upon completion and satisfaction of a number of contingencies, and therefore is not subject to bonding or competitive bidding requirements. The Developer and Clark Construction Company will, however, comply with the City's nondiscrimination and living wage ordinances.
- The Developer must comply, at all times, with the Development Agreement and in particular the environmental remediation requirements established under that document, much of which impacts the parcel on which the parking deck is being constructed.

- When the parking deck has been completed and is fully functional and operational, and after the City has the opportunity to do additional due diligence, including environmental studies and a baseline environmental assessment, and assuming the City is satisfied that the Developer has fully complied with the requirements of the Development Agreement, the Developer will donate the parking deck and the parcel of land on which it is constructed to the City, subject to the Parking Deck Operating Agreement pursuant to which the Developer will operate and maintain the parking deck for a 30 year term.
- If the Developer defaults under this Agreement, and fails to cure such default within the applicable cure period in the document, the City may terminate the Agreement, bring an action for specific performance, or seek damages. If the City defaults, the Developer's sole remedy is to seek specific performance (but only after the Developer has fully performed its obligations under the Agreement).
- This Agreement will likely be collaterally assigned to the Developer's lender, and the document grants certain protections to the lender typical for construction loans, including the right to step in and perform/cure defaults by the Developer.

#### Parking Deck Operating Agreement

Following is a summary of the deal points for the Parking Deck Operating Agreement:

- This Agreement provides that the Developer will operate and maintain the parking deck for a term of 30 years, commencing on the date of the donation of the parking deck to the City under the Turnkey Parking Deck Construction and Donation Agreement. During the term, and in accordance with the Development Agreement, the Developer will receive all revenues from the operation of the parking deck, and will be responsible for any and all expenses of operation, maintenance, repair and replacement of the parking deck.
- Maintenance, repair and replacement will be carried out in accordance with the best practices in the industry for municipal parking garages under current manuals produced by nationally-recognized industry organizations. The design engineer for the parking deck is Carl Walker, Inc., with whom the City and DDA are very familiar. Carl Walker, Inc. will prepare a maintenance manual specifically designed for the parking deck, consistent with those industry standards.
- The Developer will be required to establish and fund, on an ongoing basis, maintenance, operating and capital expenditures reserves in accordance with industry standards, to assure the availability of funds for such purposes.
- The Developer will operate the parking deck as a municipal garage, open to the public, in accordance with and subject to the Supplemental Regulations for the project. In return for its undertaking to bear all costs and expenses of the parking deck, the Developer will be given latitude to set parking rates for the public use, although those rates must be consistent with sound practices.
- At the end of the 30 year term, the City may elect to either: (1) take over and operate the parking deck consistent with the terms and conditions of this Agreement for an additional 20 years, or (2) reconvey the parking deck to the Developer provided that such a reconveyance does not cause the TIF reimbursement to be disqualified. (In that event, the option will be extended until such

time as all requirements of the TIF have been satisfied.)

- The Developer is responsible for environmental compliance during the term of the Agreement.
- This Agreement contemplates (in accordance with the Development Agreement) that the Developer will collaterally assign the Agreement and the revenue stream from operation of the parking deck to its lender. The lender is given certain rights under the Agreement to assure that it will be in a position to step in and cure defaults by the Developer, or to take over the Agreement and change operators (subject to standards calculated to provide appropriate protections to the City that the replacement operator is experienced and financially capable of carrying out the Developer's responsibilities, and that existing reserves remain in place and usable by the replacement operator).
- This Agreement provides the Developer with a right of first refusal (in accordance with the Development Agreement) to purchase the deck at the same price and under the same terms as those offered to all other prospective purchasers should the City decide to sell the deck.

#### WCBRA Reimbursement Agreement

The WCBRA Reimbursement Agreement will be entered into by the Developer and WCBRA and it will govern reimbursement for eligible expenses with the approved Brownfield TIF revenue. The City will not sign the agreement, but will be a designated beneficiary of the agreement through its terms. Generally, the Agreement details requirements for the Developer to document eligible expenses and submit them to WCBRA for reimbursement consistent with the approved Brownfield Plan and Brownfield TIF district. The Agreement contains specific language in favor of the City which requires that the City review and approve all proposed eligible environmental remediation expenses before the Developer is reimbursed from Brownfield TIF revenue. The Agreement also requires that all eligible environmental remediation expenses be performed in accordance with the Development Agreement, as amended, which specifically provides for the City's Minimum Clean-Up Scope of Work for environmental clean-up and remediation of the site, and which exceeds State Due Care Requirements.

City staff recommends that City Council approve the Broadway Village at Lower Town Turnkey Parking Deck Construction and Donation Agreement, the Parking Deck Operating Agreement, and the Washtenaw County Brownfield Redevelopment Authority Reimbursement Agreement.

#### Attachments:

Broadway Village-Site Plan and Computer Model

Parking Deck Elevation

Parking Deck Parcel Survey

Turnkey Parking Deck Construction and Donation Agreement

Parking Deck Operating Agreement

WCBRA Reimbursement Agreement

Prepared By: Kevin McDonald, Senior Assistant City Attorney

Reviewed By: Stephen K. Postema, City Attorney

Approved By: Roger W. Fraser, City Administrator

Whereas, City Council approved the Broadway Village PUD zoning district and PUD site plan (the "Development") on October 7, 2003, and the site plan was administratively amended on September 12, 2006 and on January 12, 2007;

Whereas, City Council concurred with the Brownfield Plan for the Development on October 7, 2003, which was subsequently approved by Washtenaw County on December 3, 2003;

Whereas, City Council approved the Broadway Village at Lower Town Development Agreement on August 2, 2004, and the First Amendment to Development Agreement on July 16, 2007; and

Whereas, The Development Agreement, as amended, contemplates that the City will approve agreements for the construction of the parking deck, the operation of the parking deck for 30 years by the Developer, Lowertown Development Group, LLC, ("Developer"), and an agreement providing City approval of the reimbursement of eligible environmental clean-up and remediation activities by the Washtenaw County Brownfield Redevelopment Authority (WCBRA);

RESOLVED, That City Council approve the Broadway Village at Lower Town Turnkey Parking Deck Construction and Donation Agreement, the Parking Deck Operating Agreement and the WCBRA Reimbursement Agreement, substantially in the form of that attached, dated October 15, 2007;

RESOLVED, That City Council approve acceptance of the donation of the parking deck parcel and parking deck, as more particularly described in the Broadway Village at Lower Town Turnkey Parking Deck Construction and Donation Agreement, subject to the Developer satisfying all of the conditions contained in the Agreement;

RESOLVED, That the Mayor and City Clerk be authorized and directed to execute the Broadway Village at Lower Town Turnkey Parking Deck Construction and Donation Agreement, and the Parking Deck Operating Agreement after approval as to substance by the City Administrator and Approval as to form by the City Attorney; and

RESOLVED, That the City Administrator, or his designee, is authorized to take necessary administrative actions and to execute any additional documents necessary to implement this resolution.