



CITY COUNCIL ACTION REPORT

July 29, 2009

TO: John Szerlag, City Manager

FROM: John M. Lamerato, Assistant City Manager - Finance/Administration
Mark Miller, Acting Assistant City Manager - Economic Dev. Services
Nino Licari, City Assessor

SUBJECT: Resolution to Revoke an Industrial Facilities Exemption Certificate (IFEC) and Vacate an Industrial Development District (IDD) previously Granted and Established; Grid4 Communications, 2107 Crooks, Troy MI 48084-5534

Background:

On October 23, 2006, the City Council established an Industrial Development District (IDD) at 2107 Crooks, Troy, MI. 48084-5534, parcel #88-20-29-426-046, and granted an Industrial Exemptions Certificate (IFEC) to Grid4 Communications, at that same location, for tax abatement.

Per Grid4 Communications' application, and the terms of the Letter of Agreement between the City and Grid4 Communications, the total investment in new personal property for the abatement was to be \$750,000.

The tax abatement was also to be considered a local match for Grid4 Communications in order for them to be eligible for MEGA incentives.

Per State law (PA 198 of 1974), Grid4 Communications has until December 31, 2008 to complete the purchase and installation of the total investment, and notify the Assessor of compliance.

As Grid4 Communications never filed a Personal Property Statement, an audit was conducted by an Appraiser from the Assessing Department. This audit disclosed that Grid4 Communications had not purchased any of the equipment listed on the application, as of December 31, 2008.

This is in violation of State Law and the terms of the Letter of Agreement between the City of Troy and Grid4 Communications.

Financial Considerations:

The City would have abated approximately \$10,762.00 of City taxes over the twelve (12) year life of the abatement. Subsequently, the City would have gained approximately \$10,762.00 in new taxes over the life of the abatement (as the building was vacant at the time of the application, the City was not receiving any taxes from personal property at the time).

Legal Considerations:

Per PA 198 of 1974 (pertinent section attached), the City may revoke the Industrial Facilities Exemption Certificate (IFEC), which granted the abatement, for failure to proceed, and for failure to follow the terms of the Letter of Agreement.

Policy Considerations:

The failure of Grid4 Communications to honor the terms of the Letter of Agreement is contrary to the City Policy Resolution concerning tax abatement.

Options:

Council has the option to vacate the Industrial Development District (IDD) and revoke the Industrial Facilities Exemption Certificate (IFEC) at this location, and for Grid4 Communications. This is staff's strong recommendation.

The State Tax Commission (STC) will allow a hearing for Grid4 to explain their violation of the Act.

Grid4 may apply for another exemption, but the process must start anew.

**CITY OF TROY
INDUSTRIAL FACILITIES EXEMPTION
CERTIFICATE LETTER OF AGREEMENT**

This agreement between **Grid4 Communications**, (“Company”) and the **City of Troy**, is for the purpose of fulfilling the requirements of Public Act 198, as amended in Public Act 334, Section 22.

In consideration of approval of an Industrial Facilities Exemption Certificate (IFEC), **Grid4 Communications**, understands that through its investment of \$ 750,000 and its qualification for Michigan Economic Growth Authority incentives, and the **City of Troy**, by its investment of the Industrial Facilities Exemption Certificate, are mutually investing in and benefiting from this economic development project, and furthermore, agree to the following:

- 1.) The length of time for which the abatement is approved is ___ years after either completion of construction of the facilities, or December 31, 2008, whichever is sooner.
- 2.) At the end of two (2) years or no later than December 31, 2008, **Grid4 Communications** will report to the Assessing Department of the City of Troy the actual cost of this project and indicate any differences and the reason for any differences in the cost or scope of the project as compared to the IFEC application submitted by the Company.
- 3.) **Grid4 Communications**, agrees to remain within the City of Troy for the period of the Industrial Facilities Tax (IFT) abatement in order to retain the benefits of the IFT, unless permission for relocation is granted by the **City Council of the City of Troy**.

Grid4 Communications, further understands that if it chooses to leave the City of Troy without permission for relocation prior to the end of the term of the IFT, the **City Council of the City of Troy** has the right to recapture from the Company the total amount of taxes abated by the IFT.

- 4.) **Grid4 Communications**, understands that the City of Troy may reduce the term of the IFEC, revoke the IFEC and/or recover from the Company, the amount of taxes which were abated if the project has not been completed, expenditures made, as represented by the Company, in Section 12’C of its application, by sending a copy of this Agreement along with a copy of the City Council Resolution authorizing such action to the State Tax Commission.

- 5.) **Grid4 Communications**, agrees that it will operate the Project in accordance with all applicable Federal, State and Local laws or regulations, including but not limited to zoning, outside storage, industrial waste disposal, air and water quality, noise control, other environmental regulations, and all of the terms and conditions of the Consent Judgment governing the parcel.
- 6.) By execution of the Agreement, it is understood that the Company's investment in the Project, and the City of Troy's investment in the granting of the IFEC is to encourage economic growth within the City of Troy.

The City of Troy acknowledges that in some instances economic conditions may prevent the Company from complying fully with this Agreement, and the terms of the Application. The City of Troy will give the Company an opportunity to explain the reasons for any variations from the representations contained in the Application and will evaluate the Company's situation prior to taking any action authorized by Paragraph 4 and 5 of this Letter of Agreement.

- 7.) This Agreement constitutes the entire Agreement between the parties and there are no other remedies for breach of this Agreement other than as specified in this Agreement or as provided for in Public Act 198.

This agreement may only be altered upon mutual consent of both parties.

CITY OF TROY
INDUSTRIAL FACILITIES EXEMPTION
CERTIFICATE LETTER OF AGREEMENT
(Signature page)

Signed: _____ (date) _____

Name:

Title:

Signed: _____ (date) _____
Louise E. Schilling , Mayor
City of Troy
500 W Big Beaver
Troy, MI 48084-5285

Signed: _____ (date) _____
Tonni L. Bartholomew
City Clerk

**PLANT REHABILITATION AND INDUSTRIAL DEVELOPMENT DISTRICTS
(EXCERPT)
Act 198 of 1974**

207.565 Revocation of exemption certificate; request; grounds; notice; hearing; order; effective date; revocation of certificate issued for speculative building; reinstatement of certificate.

Sec. 15.

(1) Upon receipt of a request by certified mail to the commission by the holder of an industrial facilities exemption certificate requesting revocation of the certificate, the commission shall by order revoke the certificate in whole or revoke the certificate with respect to its real property component, or its personal property component, whichever is requested.

(2) The legislative body of a local governmental unit may by resolution request the commission to revoke the industrial facilities exemption certificate of a facility upon the grounds that, except as provided in section 7a, completion of the replacement facility or new facility has not occurred within 2 years after the effective date of the certificate, unless a greater time has been authorized by the commission for good cause; that the replacement, restoration, or construction of the facility has not occurred within 6 years after the date the initial industrial facilities exemption certificate was issued as provided in section 7a, unless a greater time has been authorized by the commission for good cause; that completion of the speculative building has not occurred within 2 years after the date the certificate was issued except as provided in section 7a, unless a greater time has been authorized by the commission for good cause; that a speculative building for which a certificate has been issued but is not yet effective has been used as other than a manufacturing facility; that the certificate issued for a speculative building has not become effective within 2 years after the December 31 following the date the certificate was issued; or that the purposes for which the certificate was issued are not being fulfilled as a result of a failure of the holder to proceed in good faith with the replacement, restoration, or construction and operation of the replacement facility or new facility or with the use of the speculative building as a manufacturing facility in a manner consistent with the purposes of this act and in the absence of circumstances that are beyond the control of the holder.

(3) Upon receipt of the resolution, the commission shall give notice in writing by certified mail to the holder of the certificate, to the local legislative body, to the assessor of the assessing unit, and to the legislative body of each local taxing unit which levies taxes upon property in the local governmental unit in which the facility is located. The commission shall afford to the holder of the certificate, the local legislative body, the assessor, and a representative of the legislative body of each taxing unit an opportunity for a hearing. The commission shall by order revoke the certificate if the commission finds that completion except as provided in section 7a of the replacement facility or new

facility has not occurred within 2 years after the effective date of the certificate or a greater time as authorized by the commission for good cause; that completion of the speculative building has not occurred within 2 years after the date the certificate was issued except as provided in section 7a, unless a greater time has been authorized by the commission for good cause; that a speculative building for which a certificate has been issued but is not yet effective has been used as other than a manufacturing facility; that the certificate issued for a speculative building has not become effective within 2 years after the December 31 following the date the certificate was issued; or that the holder of the certificate has not proceeded in good faith with the replacement, restoration, or construction and operation of the facility or with the use of the speculative building as a manufacturing facility in good faith in a manner consistent with the purposes of this act and in the absence of circumstances that are beyond the control of the holder.

(4) The order of the commission revoking the certificate shall be effective on the December 31 next following the date of the order and the commission shall send by certified mail copies of its order of revocation to the holder of the certificate, to the local legislative body, to the assessor of the assessing unit in which the facility is located, and to the legislative body of each taxing unit which levies taxes upon property in the local governmental unit in which the facility is located.

(5) A revocation of a certificate issued for a speculative building shall specify and apply only to that portion of the speculative building for which the grounds for revocation relate.

(6) Notwithstanding any other provision of this act, upon the written request of the holder of a revoked industrial facilities exemption certificate to the local unit of government and the commission and the submission to the commission of a resolution of concurrence by the legislative body of the local unit of government in which the facility is located, and if the facility continues to qualify under this act, the commission may reinstate a revoked industrial facilities exemption certificate.

History: 1974, Act 198, Imd. Eff. July 9, 1974 ;-- Am. 1982, Act 417, Imd. Eff. Dec. 28, 1982 ;-- Am. 1996, Act 513, Imd. Eff. Jan. 13, 1997 ;-- Am. 2008, Act 170, Imd. Eff. July 2, 2008

Popular Name: Act 198