

Agenda

Brownfield Redevelopment Authority

Board of Directors



City of Kalamazoo

Tuesday, June 4, 2024

9:00 AM

Community Room - 241 W. South Street, 2nd Floor

A. CALL TO ORDER/ROLL CALL

B. ADOPTION OF FORMAL AGENDA

C. NEW BUSINESS

1. Authorization of Funding Support in an Amount Not-to-Exceed \$15,500 for a Scope of Services the City of Kalamazoo is Executing with Plante Moran Realpoint for Real Estate Analysis Services.

(ACTION: Motion to authorize funding support in an amount not-to-exceed \$15,500 for a scope of services the City of Kalamazoo is executing with Plante Moran Realpoint for real estate analysis services).

D. POLICY DISCUSSION: HOUSING ACTIVITIES & INCENTIVES

1. Presentation & Work Session
2. Public Comments
3. Director Comments

E. POLICY DISCUSSION: LOCAL BROWNFIELD REVOLVING FUND

1. Presentation & Work Session
2. Public Comments
3. Director Comments

F. ADJOURNMENT



BRA Board of Directors Staff Report

City of Kalamazoo

TO: Brownfield Redevelopment Authority Board of Directors

FROM: Antonio Mitchell, Director of Community Planning and Economic Development
Prepared by: Jamie McCarthy

DATE: June 4, 2024

SUBJECT: Authorization of Funding Support in an Amount Not-to-Exceed \$15,500 for a Scope of Services the City of Kalamazoo is Executing with Plante Moran Realpoint for Real Estate Analysis Services.

RECOMMENDATION:

It is recommended the BRA authorize the City of Kalamazoo to use an amount not-to-exceed \$15,500 from Fund 243 Professional and Contractual Services in partial support of a scope of services with Plante Moran Realpoint.

BACKGROUND:

The City of Kalamazoo is seeking third-party support to review financial proforma for applicants seeking financial incentives and grants for real estate development projects. The professional consulting services will include review, analysis, recommendations, and conclusions that will be provided to staff and the Authority in final report format to inform all financial incentive decisions. The consulting services will be tracked and prorated by project and cost-shared by various budgets, including City of Kalamazoo Community Development Division and Brownfield Redevelopment Authority.

FISCAL IMPACT:

The long range revenue source for financial analysis costs will be provided for in applicant fees and will be taken into account in future fee schedule changes. In the short term, the cost for services will come from Professional and Contractual Services budget in Fund 243, which has \$38,976 remaining of \$70,000 budgeted for 2024. Currently, this fund is fully encumbered. However, \$57,097 in unallocated funds from Grounds Maintenance can be transferred into Professional and Contractual Services as needed.

May 21, 2024

Mr. Jim Ritsema
City Manager
City of Kalamazoo
241 W. South St.
Kalamazoo, MI 49007

VIA EMAIL TO: ritsemaj@kalamazoocity.org

RE: Proposal for Real Estate Consulting Services for City of Kalamazoo

Dear Mr. Ritsema:

Thank you for the opportunity to allow Plante Moran Realpoint, L.L.C. (“**PMR**”) to present this proposal to provide the Real Estate Consulting Services outlined in this letter (the “**Services**”) to City of Kalamazoo (“**KZOO**”).

PMR agrees on behalf of itself and each of its employees that no such person or entity shall represent the products or services of any related architect, engineer, property owner, landlord, contractor or vendor.

ENGAGEMENT

It is our understanding that the engagement generally will involve providing Real Estate Consulting Services for City of Kalamazoo (the “Project”). The consulting services to be provided by PMR for this engagement are more particularly described in the Scope of Services attached as Exhibit A (the “Services”) and will be performed subject to the Terms and Conditions attached as Exhibit B.

In preparing this proposal, PMR has made the following key assumptions regarding this engagement. These key assumptions have been relied upon by PMR in determining the required Scope of Services designated on Exhibit A, PMR's compensation for its Services, and the terms of this engagement:

Project Related Assumptions:

- KZOO continues to receive proposals and financial models from third-party developers interested in discussing and acquiring financial incentives and grants from KZOO.
- KZOO is interested in gaining third-party support to review financial proformas for “Projects” that they are actively discussing with developers.
- PMR’s rates and fee structure will be in alignment of those identified in the MIDeal contract with Plante Moran.
- KZOO will provide PMR with all available reports, project information, financial proformas and any other pertinent information as requested.
- KZOO will provide a designated representative that is authorized to make timely decisions on behalf of KZOO for the services. KZOO’s designated representative will be Ms. Jamie McCarthy.
- PMR’s review, recommendations, analysis, and conclusions are, in whole or in part, derived from and dependent on information provided by KZOO, the Project team, and other third parties neither contracted by nor controlled by PMR. PMR’s services do not include a review as to the accuracy of such information. Therefore, PMR provides no opinion on, or assurance of, the reliability of such information. Misstatements may exist that impact PMR’s Services and deliverables.

COMPENSATION

PMR will be compensated by KZOO for its Services in accordance with the payment terms in Exhibit B as follows:

Real Estate Consulting Services

Hourly Fee – PMR shall be paid a fee equal to the number of hours worked by each of PMR’s personnel multiplied by PMR’s hourly rate for such personnel, but not to exceed Twenty- Five Thousand no / 100 dollars (\$25,000.00), plus actual out of pocket expenses (mileage, travel, reproduction, etc.) incurred by PMR in the performance of its Services.

Progress Payments - PMR shall invoice KZOO monthly based on the collective number of hours work by each of PMR’s personnel multiplied by the PMR’s hourly rate for such personnel.

PMR’s hourly rates are as follows:

Partner	\$385-\$430
Principal	\$330-\$395
Senior Manager	\$310-\$380
Consulting Manager / Accounting Manager	\$255-\$360
Senior Consultant in Charge	\$200-\$270
Consultant / Staff Accountant	\$145-\$195

ACCEPTANCE & TERM

To accept this proposal including the terms of this letter and Exhibits A and B attached hereto, please sign below and return it to me. Upon execution, this proposal (including Exhibits A and B) will become a binding agreement (the "Agreement") between KZOO and PMR.

This Agreement is effective and PMR's Services will commence as of the Agreement's execution. The term of the Agreement shall continue for four (4) months from the effective date of the Agreement.

Should you have any questions please contact me at 248-603-5373.

Sincerely,

PLANTE MORAN REALPOINT, L.L.C.

Victoria N. Manix
Partner

We accept this proposal, including Exhibits A and B attached hereto, which sets forth the entire Agreement between KZOO and PMR for the Services specified herein. We acknowledge that such acceptance creates a binding agreement between KZOO and PMR.

Accepted and Agreed:

CITY OF KALAMAZOO

By: Mr. Jim Ritsema

Date

Its: City Manager

Exhibit A

Scope of Services

Upon execution of PMR's proposal dated May 21, 2024, this Exhibit A shall be incorporated into the Agreement between Plante Moran Realpoint, L.L.C. ("PMR") and City of Kalamazoo ("KZOO").

Real Estate Consulting Services: PMR shall commence providing its Real Estate Consulting Services upon the execution of the Agreement. The activities constituting PMR's Real Estate Consulting Services may be comprised from the following:

- 1. Review of Relevant Project Information:** PMR will review all relevant documentation related to the Projects. Unless otherwise specifically indicated by KZOO in writing, PMR may rely on the relevant information provided by KZOO. The activities constituting PMR's Review of relevant Information may be comprised from the following:
 - a. Review of financial proformas from the Project Developers
 - b. Review of project plans and narratives
 - c. Review of site plans and programming
 - d. Review of supplemental proformas such as TIF reimbursement projections
 - e. Review of any pertinent due diligence or other information provided by developers
- 2. Financial Proforma Review:** Upon review of Relevant Information, PMR will analyze various financial proformas, financial assumptions, and related components that are provided by Developers which may include the following:
 - a. Sources and uses including debt, incentive/grants, land value, etc.
 - b. TIF projections or other incentive related schedules/projections
 - c. Construction estimates
 - d. Operating and revenue cash flows and key assumptions
 - e. Return projections
- 3. Summary Report:** After completion of our review, PMR will communicate its findings to KZOO in a summary report that provides an analysis of various assumptions utilized by developers compared to market standards for each Project. Upon request by, PMR will provide an in-person or remote presentation of the findings outlined in the Summary Report.

Exhibit B

Terms and Conditions

Upon execution of PMR's proposal dated May 21, 2024, this Exhibit B shall be incorporated into the Agreement between Plante Moran Realpoint, L.L.C. ("PMR") and City of Kalamazoo ("KZOO").

1. PMR's SERVICES:

- 1.1. PMR's services (the "Services") include the consulting services designated in Exhibit A to the Agreement and additional services, if any, performed by PMR in connection with its engagement under the Agreement. PMR shall perform the Services in accordance with the Terms and Conditions in this Exhibit B.
- 1.2. PMR's Services are inherently advisory in nature. PMR has no responsibility for, nor do its Services include, any management decisions or management functions of KZOO in connection with this engagement to provide the Services outlined herein. PMR and KZOO acknowledge that PMR shall have no authority, express or implied, to enter into written or oral agreements on behalf of KZOO, to take any other actions with respect to KZOO's projects, transactions, or other business affairs of KZOO, or to commit or otherwise obligate KZOO in any manner whatsoever. Further, KZOO acknowledges that KZOO is responsible for all such management decisions and management functions; for the evaluation of the adequacy and results of PMR's Services and for making decisions and the results of those decisions with regard to the assistance, advice, recommendations, and reporting provided by PMR in connection with its Services; and for establishing and maintaining internal controls, including monitoring ongoing activities, in connection with this Agreement.

2. KZOO RESPONSIBILITIES:

- 2.1. KZOO represents that its Designated Representative identified in the assumptions to PMR's proposal has the necessary skill, knowledge, experience, and authority to act on KZOO's behalf to be the contact person for purposes of the communications between KZOO and PMR and to provide direction to PMR regarding the Project and PMR's Services.
- 2.2. KZOO shall provide full information to PMR regarding KZOO's requirements as necessary for the performance of PMR's Services.
- 2.3. KZOO shall provide information, review documents provided by PMR, and render decisions relating to PMR's Services on a timely basis so as not to delay the performance of PMR's Services.

- 2.4. KZOO shall engage third parties to provide services, including by way of example, surveyors, testing consultants, architects, engineers, attorneys and risk management consultants, as reasonably required for the performance of PMR's Services.
- 2.5. KZOO shall obtain all permits required for its use and operation of the project, facilities, and systems which are the subject of this engagement, including, by way of example, air and water discharge permits for operation of manufacturing process equipment.
- 2.6. KZOO shall pay PMR for Services in accordance with the payment terms in the Agreement and these Terms and Conditions. For Services rendered, these rights and obligations shall survive the Agreement's termination or expiration.
- 2.7. KZOO agrees to report promptly in writing to PMR any default or defect in PMR's services or non- conformance with any provision of this agreement.

3. PMR'S RESPONSIBILITIES:

- 3.1. PMR shall perform the Services in accordance with the standard of professional skill and care exercised by other consultants performing similar services under similar circumstances.
- 3.2. PMR does not warrant or guarantee the outcome of project pro formas, budgets or other financial projections, or any other analysis (collectively "Analysis") developed by PMR for use in connection with its Services. Analysis prepared by PMR represents PMR's professional judgment as a consultant. It is recognized, however, that neither PMR nor KZOO has control over the cost of labor, materials or equipment, market conditions, contractors' methods of determining bid prices or other competitive bidding or negotiating conditions. PMR cannot and does not warrant or represent that the outcome of bids or negotiated prices will not vary from any project budget proposed, established or approved by KZOO, or from any Analysis prepared by PMR.
- 3.3. PMR is not an attorney at law, and the Services provided by PMR exclude professional legal services. If the scope of PMR's Services includes assistance with the negotiations of agreements on behalf of KZOO, such agreements shall be subject to KZOO's approval. KZOO shall provide for the review of such agreements by KZOO's attorneys and insurance consultants as deemed to be appropriate by KZOO.

- 3.4. PMR's Services do not include with respect to any existing or planned building or property the identification or resolution of any life safety issues or the non-compliance with any building code or legal requirements.
- 3.5. PMR shall not be considered in breach of this Agreement, nor be liable, for any delay or failures in performance resulting from circumstances beyond its reasonable control including, without limitation, acts of God, acts of war or terrorism, shortage or disruption of materials or labor, accidents, epidemic, pandemic, quarantine, natural catastrophe or weather, or government acts or omission. Notwithstanding the foregoing, PMR and KZOO shall make a good faith effort to mitigate any impacts of such circumstances to PMR's Services.

4. COMPENSATION:

- 4.1. For the performance of Services, KZOO shall compensate PMR as provided in the Agreement. Unless provided otherwise in the Agreement, PMR shall submit monthly invoices for Services rendered by PMR to KZOO. All invoices shall be prepared in accordance with the compensation terms in the Agreement and KZOO agrees to pay invoices within thirty (30) days after receipt thereof; provided, however, that in the event KZOO disputes the accuracy for any invoice prepared and presented, payment for the portion which is disputed by KZOO may be withheld until such dispute is resolved. Time is of the essence with respect to KZOO's payment obligations hereunder. All billings not in dispute are payable within thirty (30) days of receipt of invoice. Interest at the rate of one and one half (1-1/2%) percent per month shall be added to delinquent payment amounts.
- 4.2. PMR shall be entitled to additional compensation if any of the following occur: increase in the Scope of Services designated in the Proposal or other changes in the scope of PMR's Services; change in any of the key assumptions of this engagement listed in the Agreement; change in the time period for performance of PMR's Services; change in the nature of the Services required to be performed, including changes that require more effort or resources of PMR; delay or interruption in the Project; or failure of KZOO to follow the advice and recommendations of PMR
- 4.3. Should PMR be required to provide evidence, prepare for hearings, evaluate claims, assist in the review or preparation of claims or defenses, or otherwise participate or assist in the resolution of legal disputes either: (i) on behalf of KZOO or (ii) resulting from PMR's role providing its Services to KZOO (unless caused by PMR's gross negligence or intentional misconduct), PMR will be reimbursed on a "Time and Materials" basis, which is defined to mean the numbers of hours of Services performed by PMR's personnel multiplied by PMR's then current standard hourly rates ("Standard Hourly Rates") plus the direct cost incurred by PMR in performance of such services.

4.4. Any taxes or fees, enacted by local, state or federal government subsequent to the date of this agreement, and based on gross receipts or revenues will be added to the amounts due under this agreement, in accordance with any such fees or taxes.

4.5. The rights and obligations of this Article 4 shall survive the Agreement's termination or expiration.

5. LIMITATION ON LIABILITY:

5.1. In no event shall KZOO or PMR be liable to the other for special, incidental or consequential damages, including without limitation, loss of anticipated profits, revenue or use of capital, loss of use of leased spaces, and penalties imposed under the leases, whether based on contract, tort, negligence, strict liability or otherwise; provided, however, that the foregoing shall not limit or preclude a claim of PMR with respect to compensation due to PMR under this Agreement.

5.2. Except for amounts due PMR under this Agreement, either party's liability under this Agreement shall not in any event exceed the amounts of compensation for Services paid to PMR under this Agreement.

5.3. Except for actions to enforce payment to PMR, any claim or cause of action arising under or otherwise relating to this engagement must be filed within one (1) year of the events giving rise to the claim or cause of action.

5.4. The rights and obligations of this Article 5 shall survive the Agreement's termination or expiration.

6. ENVIRONMENTAL CONDITION OF SITE:

6.1. PMR's Services shall not include any services or responsibility (including for the detection, identification, prevention, collection of samples, testing of samples, abatement, or disposal) related to known or unknown Constituents of Concern. Constituents of Concern shall include: (i) asbestos, (ii) petroleum, (iii) radioactive material, (iv) polychlorinated biphenyls (PCBs), (v) hazardous waste, (vi) lead, (vii) any viral, bacterial, or any other organism capable of inducing physical distress, harm, illness, or disease (including but not limited to any fungus, mold, mildew, mycotoxins, spores, or scents) or any byproduct thereof, or (viii) any other substance, product, waste, or other material listed under any other federal, state, or local (meaning any applicable jurisdiction) statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards concerning, any hazardous, toxic, or dangerous waste, substance, or material. The parties

further acknowledge that PMR is not, and shall not be considered or required to be, an "owner," "arranger," "operator," "generator," or "transporter" of any Constituents of Concern.

7. MISCELLANEOUS:

- 7.1. Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favor of a third party against either KZOO or PMR. The Services performed by PMR under this Agreement are for the sole benefit of KZOO, and shall not be relied upon by other parties.
- 7.2. PMR and KZOO may not assign their rights under this Agreement without the prior written consent of the other.
- 7.3. PMR shall be entitled to use KZOO's name, photographs, renderings, narrative descriptions and similar materials relating to PMR's Services in connection with publications, awards, press releases, and marketing materials.
- 7.4. Provided that KZOO has paid all amounts due to PMR under this Agreement, KZOO shall be entitled to use all studies, reports, summaries, cost estimates, budgets, and other documents prepared by PMR in the performance of its Services; provided, however that KZOO shall not disclose or permit other parties to use such information and documents. PMR shall be entitled to retain copies of such documents for PMR's files. Notwithstanding the foregoing, PMR shall retain all ownership and intellectual property rights in, and KZOO shall not use or permit the use by others of, all standard contract provisions and modifications, financial analysis programs and similar tools developed by PMR for PMR's use generally and not developed solely for purposes of this engagement.
- 7.5. Any disputes between KZOO and PMR relating to PMR's Services or this Agreement shall be governed by the laws of the State of Michigan without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan. Any controversy, dispute, or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding confidential arbitration in accordance with the applicable arbitration rules of the American Arbitration Association. Such confidential arbitration shall be held in Oakland County Michigan, and the judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction. In the event of any dispute between the parties arising out of or in connection with this Agreement or these Terms and Conditions, the prevailing party shall

be entitled to recover its costs incurred in connection therewith, including reasonable attorney fees.

- 7.6. No failure by KZOO or PMR to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy for a breach of this Agreement, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition.
- 7.7. The rights and obligations of this Article 7 shall survive the Agreement's termination or expiration.

8. TERMINATION

- 8.1. This Agreement may be terminated by KZOO upon thirty (30) days prior written notice if PMR is in default under this Agreement and fails to cure such default within such thirty-day period. In addition, provided that KZOO is acting in good faith, KZOO shall be entitled to terminate this Agreement without cause upon thirty (30) days prior written notice to PMR.
- 8.2. PMR may terminate this Agreement or suspend its Services upon thirty (30) days prior written notice in the event of any of the following defaults by KZOO and failure of KZOO to cure such default within such thirty (30) day period: KZOO fails to make payment of amounts due to PMR under this Agreement; KZOO fails to follow the advice or recommendations of PMR; or KZOO otherwise is in default under this Agreement.
- 8.3. If PMR's Services are suspended for more than thirty (30) consecutive days, PMR may terminate this Agreement upon thirty (30) days prior written notice to KZOO.
- 8.4. In the event this Agreement is terminated for any reason, PMR shall be compensated on an equitable basis for services performed as of the effective date of termination in accordance with this Agreement. Upon any such termination and payment of amounts due to PMR, the parties hereto shall be released of any and all further liability hereunder.
- 8.5. This Agreement shall commence upon execution of the Agreement between PMR and KZOO and shall continue in effect for the term described in the Agreement, as may be extended by agreement of the parties, unless terminated sooner under the terms of this Section.
- ## **9. THIS AGREEMENT:**
- 9.1. KZOO and PMR accept the obligations of good faith and fair dealing towards each other with respect to this engagement.

- 9.2. This Agreement includes the proposal executed by PMR and KZOO, Exhibit A Scope of Services, Exhibit B Terms and Conditions, and other documents, if any, listed in the Agreement. This Agreement sets forth the entire, integrated agreement between PMR and KZOO, supersedes all prior proposals, negotiations, representations and agreements, whether written or oral, between PMR and KZOO, and shall govern the relationship between PMR and KZOO with respect to all Services provided by PMR to KZOO in connection with the engagement described in the Agreement. This Agreement may be amended only by written instrument signed by both PMR and KZOO.
- 9.3. Neither this Agreement nor PMR's performance of Services shall be deemed to create a partnership or joint venture between KZOO and PMR.
- 9.4. The parties to this Agreement have jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as jointly drafted by the parties hereto and no presumption of burden of proof is to arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

End of Exhibit B