Agenda
Brownfield Redevelopment Authority
Board of Directors

City of Kalamazoo

Thursday, September 19, 2024 7:45 AM

CPED Main Conference Room - 245 N. Rose Street, Suite 100

A. CALL TO ORDER/ROLL CALL

B. ADOPTION OF FORMAL AGENDA

C. APPROVAL OF MINUTES

1. Approval of minutes from the BRA meeting on August 15, 2024.

D. PUBLIC COMMENTS

E. DIRECTOR COMMENTS

F. NEW BUSINESS

1. Approve the Brownfield Plan Development and Reimbursement Agreement with 5135 Portage Road, LLC for the Brewster Redevelopment Project and Authorizing the Chairperson to Sign in Substantially the Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

2. Approval of the Brewster's Redevelopment Project Grant Agreement with 5135 Portage Road, LLC and Authorize the Chairperson to Sign in Substantially the Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

3. Approval of the Fifth Amendment to the Purchase and Sale Agreement with 116 West Cedar, LLC and Burdick@Cedar, LLC for the Property at 116 W Cedar Street and Authorizing the Chairperson to Sign in Substantially to Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

4. Approval of an Assignment of Option Agreement for 125 E North Street and Authorizing the Chairperson to Sign in Substantially the Form Attached, Subject

to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

5. Approval of a Letter of Intent with Davis Creek Land Development Co. to Purchase Property at Davis Creek Business Park.

6. Nomination and Approval of New Officer Positions for Chair, Vice Chair, and Treasurer/Secretary Effective October 1, 2024.

7. Adoption of FY 2025 Budgets for Fund 242 and Fund 243, in Substantially the Form Attached, Subject to Non-Substantive Changes by Management Services Department.

G. UNFINISHED BUSINESS

H. COMMUNICATIONS AND ANNOUNCEMENTS

I. STAFF REPORTS AND UPDATES

1. U.S. EPA FY 2025 Assessment Coalition Grants - Solicitations Open/Due November 14, 2024

J. ADJOURNMENT

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY BOARD MEETING
Thursday, August 15, 2024
Community Planning and Economic Development
245 N. Rose Street, Kalamazoo, MI 49007

MEMBERS PRESENT: Jason Novotny; Sharon Ferraro; Lucas Middleton; Rachel Bair; Kevan Hess; Kyle Gulau

MEMBERS ABSENT: Torean Greeley; Alonzo Wilson; Andrew Schipper; Nathan Bolton; Michael Gurnee

CITY COMMISSIONERS/CITY STAFF PRESENT: Jamie McCarthy (Sustainable Development Coordinator); Jerrid Burdue (EDC Liaison/Neighborhood Business & Special Projects Coordinator); Jessica Wood (Attorney, Dickinson Wright); Logan Mulholland (Fishbeck, Consultant); Jared Chambers (Business Specialist); Heidi Waffle (Brownfield Project Assistant); Antonio Mitchell (CPED Director); Chelsie Downs-Hubbarth (Community Investment Manager)

Meeting was called to order at 8:15 AM by Chair Novotny.

MOTION TO EXCUSE ABSENT MEMBERS: Director Ferraro moved to excuse absent members; seconded by Director Hess. Motion approved by voice vote unanimously.

APPROVAL OF AGENDA: Director Middleton moved the approval of the agenda as amended; seconded by Director Gulau. Motion approved by voice vote unanimously.

Ms. McCarthy shared Item 3 would be added to Staff Reports and Updates to discuss 2025 Budget Planning.

APPROVAL OF MINUTES: Director Gulau moved approval of minutes from the meeting of June 20, 2024 as presented; seconded by Director Hess. Motion approved by voice vote unanimously.

PUBLIC COMMENTS

None.

DIRECTOR'S COMMENTS

Director Novotny shared he will be abstaining from New Business Item 3 due to involvement with the project. Vice-Chair Middleton will be signing the documents related to that item of business.

NEW BUSINESS

1. Adoption of a Resolution Approving Reimbursement Request #2 for 215 E Michigan Avenue in the Amount of $51,642.

Ms. McCarthy shared information on the Reimbursement Request, as found in the agenda packet.

Ms. Mulholland shared the items that were included in Reimbursement Request #2.

Director Middleton asked if there is further information for the upper levels of the building yet. McCarthy has not heard of anything yet.

Director Middleton moved adoption of Resolution Approving the Implementation of the 12th Amendment to the City of Kalamazoo's Revised Brownfield Plan and Recommending Adoption by City Commission; seconded by Director Bair.
A roll call vote was taken, and the motion passed unanimously.

2. Adoption of a Resolution Accepting an EGLE Brownfield Grant Agreement and Authorizing the Board Chair to Sign.

Ms. McCarthy shared this is a 2-year grant agreement between the BRA and EGLE. The state is allowing up to one million dollars. Some of the first activities they will be approving is further site assessment. Time will tell what exact work will have to happen.

Mr. Greg Dobson, AVB representative, shared they plan to begin after September 4.

Mr. Curt Aardema, AVB representative, said they are finishing up site plan review as well.

Director Hess moved Adoption of a Resolution Accepting an EGLE Brownfield Grant Agreement and Authorizing the Board Chair to Sign; seconded by Director Middleton.
A roll call vote was taken, and the motion passed unanimously.

3. Adoption of a Resolution Approving the Purchase and Sale Agreement with Zone 32, Phase II, LLC, and Authorizing the Vice Chair to Sign.

Ms. McCarthy shared the board saw this item on their agenda in June and approved staff to make changes and legal counsel to approve. Legal counsel has been working with the developer's legal counsel over the last couple months, digging into some of the terms of the agreement. Staff felt that they wanted to bring it back to the board to bring the changes to their attention. The changes can be found in the agenda packet. A commitment to the MSHDA affordable units, coverage of closing costs, and a 16-month investigation period are all adjustment items made to the agreement.

Director Gulau asked about the affordable housing mix and associated discounted property price, and if they are worried that the mix will change and go against the discounted price.

Ms. McCarthy explained they tend to match whatever the project actually ends up providing at their MSHDA closing.

Director Bair moved adoption of a Resolution Approving the Purchase and Sale Agreement with Zone 32, Phase II, LLC, and Authorizing the Vice Chair to Sign; seconded by Director Middleton.
A roll call vote was taken, and the motion passed unanimously. Director Novotny Abstained.

UNFINISHED BUSINESS

None.

COMMUNICATIONS AND ANNOUNCEMENTS

None.

STAFF REPORTS AND UPDATES

1. Quarterly Budget Report – Fund 242 Local Brownfield Revolving Fund

Ms. McCarthy shared information on the budget, as found in the agenda packet.

2. Quarterly Budget Report – Fund 243 Brownfield Operating Budget

Ms. McCarthy shared information on the budget, as found in the agenda packet.

3. 2025 Budget Planning

Ms. McCarthy shared information on the Tax Increment Revenues (TIR) that were paid at the end of July. She explained the different amounts that went to developers, BRA Admin, LBRF revenue, and a small bond that was paid to the Building Authority. With the knowledge of 2024 property values, she presented the 2025 TIR Budget estimate for these same categories.

Ms. McCarthy spoke on the Professional & Contractual Services they can expect to be budgeted for 2025. This includes third-party financial review services. She highlighted obtaining professional services for real estate marketing to continue the work that was completed on a land re-use strategy started with the Projects & Finance Committee. She shared the revenues from BRA property sales could go towards the real estate services. She is not sure what an RFP for this service looks like yet.

The 2025 National Brownfields Conference will be in Chicago, IL. Ms. McCarthy would like to hear if any of the board members might be interested in attending, so they can discuss setting money aside. She is interested in knowing if there are additional professional development opportunities they may want to have next year, such as when Ryan Kilpatrick presented on housing and housing proforma.

Ms. McCarthy shared there are BRA property due care items that can be addressed for 2025, including Davis Creek Business Park and 701 E Michigan.

Ms. McCarthy asked the board if there are other priorities or items that they feel need to be budgeted for. She said they can reach out to her about those as staff works on developing draft budgets over the next couple of weeks.

Director Gulau shared he is interested in the Brownfield Conference and other professional development. He likes the item regarding property due care. He noted the balance of the revolving fund and proposed thinking about ideas on how they can use some of those funds in 2025.

Director Hess said the sale of 508 Harrison will be nice to get revenue and also cut down on the maintenance budget. He also mentioned Ryan Kilpatrick’s presentation was very educational for the board and the public, and he would be in favor of something like that again.

Director Novotny asked about marketing in partner with EDC.

Director Hess asked if there is a list of projects that have been completed with the revolving fund. Ms. McCarthy shared it has only been in the last five years that they have had a lot of revenues coming into that fund, which makes sense based on the timeline of when the BRA started. She will grab some of the information to share.

Director Gulau asked about the real estate marketing. Ms. McCarthy shared information on hiring an agent and likely working from a contract rather than commission based. She explained the unique situation of trying to sell Brownfield properties and what may be required from a real estate agent. Director Gulau agreed the services would be valuable because it would solve the staff capacity problem and offer expertise. He said what happens if they are successful and there are a lot of interested buyers coming to the door. How do they know they are getting good deal-flow? He said they have to make sure the real estate agent isn't just a middle person that passes people off to staff because that wouldn't solve the capacity problem. He asked how do they make sure the real estate agent knows enough about Brownfield stuff to make sure it saves city staff time?

Director Hess said from the city perspective they want to look at what are we spending to maintain these properties, what would we be bringing in if they are put back on tax rolls, and then factor that in when thinking of compensation offers for an agent. Something to think about is that that agent will get a lot of exposure as well, so that is the reason they will be interested. He said you do want to have a strategy and you don't want to saturate the market. It will be very interesting to see these proposals as they put them out or if they even get proposals. He added that one of the requirements would be making sure the agent is very knowledgeable about the Brownfield process or have them go through a training. They could also attach a list of similar parcels on the MLS to show similar Brownfield projects that have occurred.

Director Middleton asked about professional development opportunities that would allow them to connect with other Michigan Brownfield authorities. He also said an interesting topic may be potential synergies with Land Banks.

ADJOURNMENT: The meeting was adjourned at 9:04 A.M. by Chair Novotny.

Heidi Waffle Recording Clerk	Chair Signature	Printed Name/Chair

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, BRA Staff Liaison

DATE: September 19, 2024

SUBJECT: Approve the Brownfield Plan Development and Reimbursement Agreement with 5135 Portage Road, LLC for the Brewster Redevelopment Project and Authorizing the Chairperson to Sign in Substantially the Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

RECOMMENDATION:

It is recommended the BRA approve the Brownfield Plan Development and Reimbursement Agreement with 5135 Portage Road, LLC for the Brewster Redevelopment Project and authorize the Chairperson to sign

BACKGROUND:

The Brewster Redevelopment Project ("Project") includes full redevelopment of the former Brewster's restaurant at Portage Road and I-94, adjacent to the Kalamazoo/Battle Creek International Airport. The site is composed of a former gas station and a closed, vacant restaurant. The gas station site is contaminated, and the restaurant is obsolete and requires asbestos abatement. 5135 Portage Road, LLC ("Developer") intends to begin construction of a new four-story hotel in late 2024, following additional site assessment, demolition, and due care activities to address contamination. The hotel will be designed as a four-story Residence Inn by Marriott, one of the nation's strongest hospitality brands. It will create approximately 15 new FTE jobs, increase the tax base, support other local businesses, remove a vacant building on the site, address hazardous materials, contaminated soils, and any exposure issues for the public.

The City of Kalamazoo City Commission approved the Brownfield Plan in June 2024, EGLE awarded a $1,000,000 Brownfield Redevelopment Grant in July 2024, and the City also supported a Commercial Facilities Tax Abatement District in August 2024 to advance the project.

FISCAL IMPACT:

The Development and Reimbursement Agreement commits the BRA to capture and reimburse the developer for actual expenses incurred up to $1,017,200 or 15 years, whichever occurs first. The BRA costs for administration, up to $162,475 will be covered by Tax Increment Revenues from the plan.

BROWNFIELD PLAN DEVELOPMENT AND REIMBURSEMENT AGREEMENT

THIS BROWNFIELD PLAN DEVELOPMENT AND REIMBURSEMENT AGREEMENT (the "Agreement"), is entered into on ______________, 2024, between the **CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY,** a Michigan public body corporate established pursuant to Act 381 of the Public Acts of 1996, as amended, MCL 125.2651 et seq. ("Act 381"), whose address is 245 N. Rose, Suite 100, Kalamazoo, Michigan 49007 (the "Authority"), and **5135 PORTAGE ROAD, LLC,** a Michigan limited liability company, whose address is 4200 W. Centre Avenue, Portage, Michigan 49024 (the "Developer").

RECITALS

A. The Authority, and the City of Kalamazoo (the "City"), have determined that brownfield redevelopment constitutes the performance of an essential public purpose which protects and promotes the public health, safety and welfare.

B. The City has established a Brownfield Redevelopment Authority and the Authority, and the City have adopted a Brownfield Plan specifically for this site (the "Plan"), pursuant to the provisions of Act 381.

C. The Authority and the City have designated certain properties that have conditions of environmental contamination, blight or obsolescence as appropriate sites for creating a Plan.

D. Act 381 permits the use of the real and personal property tax revenues generated from the increase in value (the "Increment") to brownfield sites constituting Eligible Property under Act 381 resulting from their redevelopment to pay or reimburse the payment of costs of conducting Eligible Activities (these costs are referred to as "Eligible Costs") and permits the reimbursement to Developer of Eligible Costs it has incurred.

E. Developer currently owns property in the City commonly known as 5135 Portage Road, Kalamazoo, MI 49002, Parcel ID 10-02-215-006, and 5147 Portage Road, Kalamazoo, MI 49002, Parcel ID 10-02-215-005

F. The Property has been included in the Plan and qualified as an "Eligible Property" under the terms of Act 381.

G. Developer intends to redevelop and renovate the Property, which is functionally obsolete, into a commercial space occupied by a four-story national flag hotel building on the site with approximately 95 rooms. The total capital investment on the project is expected to be approximately $18 million. These investments are expected to create at least 15 new full-time equivalent positions paying an average wage of $15 per hour. Commencement of construction of the project is intended to begin within six months of the Effective Date of this Agreement and be completed within 24 months thereafter (Together, this description constitutes the “Project”).

H. The Project will require the Developer to incur Eligible Costs associated with certain Eligible Activities including site assessments, baseline environmental assessment activities, asbestos and lead surveys, pre-demolition surveys, asbestos abatement and demolition, soil remediation sampling, excavation and transport and disposal of contaminated soil and fill, public infrastructure improvements and site preparation, Brownfield Plan/Work Plan preparation and contingency and which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The Developer's Eligible Costs shall not exceed $1,017,200 (over a period not-to-exceed 19 years and/or actual expenses incurred and documented to the Authority's satisfaction. Developer and Authority are applying for an EGLE grant and any eligible expenses paid for by the grant shall not be reimbursed).

I. The parties are entering into this Agreement to establish the procedure for the reimbursement from Tax Increment Revenues under Act 381 as amended.

J. The obligation of Developer to develop the Project on the Property is contingent upon Developer's ability to secure the following:

- Developer shall have obtained all necessary governmental and quasi-governmental approvals needed to develop the Property and permit the use of the Property for the Project, including, for example and not limitation, a special use permit, site plan approvals, zoning variances and/or rezoning, building permits, and any and all other permits, consents and final approvals and authorizations necessary to develop, construct and utilize the Property for the Project.

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements set forth herein, the parties agree as follows:

1. **Recitals.** The above recitals are acknowledged as true and correct, and are incorporated by reference into this Paragraph.

2. **The Plan.** The Plan, approved by the Authority and the Kalamazoo City Commission, is attached as Exhibit B and incorporated as part of this Agreement. To the extent provisions of the Plan or this Agreement conflict with Act 381, Act 381 controls.

3. **Term of Agreement.** Pursuant to the Plan and this Agreement, the Authority agrees it shall capture and reimburse the Developer that amount of Tax Increment Revenues generated from real and personal property taxes allowed by law on the Eligible Property. At any time after the completion of the Project, Developer may give to the Authority written notice directing the Authority to commence the capture of such Tax Increment Revenues (the "Capture Commencement Notice"). Completion of the Project shall be deemed achieved once a final certificate of occupancy is obtained for the Project. Capture will begin in the first full year after Developer's delivery of the Capture Commencement Notice, and will continue until the earlier of:

3.1. Full reimbursement to the Authority of its Administrative Costs, plus reimbursement to the Developer of the Property as outlined in the Plan, including reimbursement of Eligible Costs for those Eligible Activities set forth in Paragraph 5, plus an additional amount captured by the Authority for an additional five full years of tax capture ("Additional Authority Amount") such Additional Authority Amount to be designated for the Local Brownfield Revolving Fund "Local Fund"; or

3.2. Up to 19 full years following the commencement of the reimbursement to the Developer of the Property as outlined in the Plan. With the last five of the 19 years designated for Local Brownfield Revolving Fund (LBRF) capture only.

4. Evidence of Ownership. Not later than the date of delivery of the Capture Commencement Notice, Developer shall provide to the Authority each of the following: (a) evidence satisfactory to the Authority that the Developer has acquired fee simple title to the Property, which evidence shall include (without limitation) a copy of a recorded deed to the Property in favor of the Developer; and (b) a copy of a commitment for owner's title insurance with respect to the Property (the "Commitment"), which Commitment shall show the Developer as record owner of the Property, and shall otherwise be in form and reasonably substance satisfactory to the Authority.

5. Eligible Activities. The Developer shall diligently pursue completion of the Eligible Activities summarized in the Plan and set forth in this Paragraph. The Authority shall, in accordance with the terms of this Agreement, reimburse the Developer for Eligible Costs incurred on or after the date of the inclusion of this Project in the Plan. For purposes of this Agreement, "Eligible Costs" means costs incurred in conducting Eligible Activities including environmental due diligence and due care activities, site assessment and baseline environmental assessment activities, lead and asbestos abatement, building demolition, public infrastructure, site demolition, site preparation, Brownfield Plan/Work Plan Preparation, and a contingency amount, and which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals, and/or any other Eligible Activities permitted under Act 381 and summarized in the Plan.

6. Reimbursement Source. During the term of this Agreement and except as otherwise set forth in this Agreement, the Authority shall reimburse the Developer for its Eligible Costs, in accordance with the process herein, and as limited under this Agreement, from all available (actually captured) Tax Increment Revenues collected from the real and personal property taxes on the Property.

7. Reimbursement Process.

7.1. Cost Reimbursement Request. Before December 31 of the year Developer provides the Capture Commencement Notice (and in no event more than two (2) years following the Completion Date (any submittal occurring after that two (2) year period being a ("Late Submittal"), the Developer will provide sufficient documentation of the Eligible Costs incurred including the dates of each Eligible Activity, a complete description of the work, proof of payment, detailed invoices for the costs involved for each Eligible Activity, sworn statements, lien waivers from Developer's general contractor (to include verification that all applicable subcontractors were paid in full) and other back up documentation reasonably requested by the Authority; a written statement certifying to the Authority that all such costs are Eligible Costs; and a final certificate of occupancy to document completion of the Project or such other certificate as is required under any tenant lease for the applicable portion of the Project in order for Developer to turnover such space to its tenant. The information and documentation described in the preceding sentence comprise the "Completed Request".

Failure to provide the above noted information when due, or within the time permitted by the Authority under Paragraph 7.1, shall not extend the term of the Agreement and consequently may result in foregone reimbursement, to the Developer by the Authority, for Eligible Costs.

7.2. **Authority Staff Review.** The Authority Staff shall review each reimbursement request within 30 days after receiving it. If Authority Staff determines that the documentation submitted by the Developer is not a Completed Request, then Developer shall reasonably cooperate in the Authority's review by providing, within 30 days of the Authority's written request, any additional documentation of the Eligible Costs as is reasonable and necessary by the Authority in order to complete its review. Within 45 days following the receipt of such supplemental information, the Authority shall make the determination of whether the costs are eligible for reimbursement. If the Developer wishes to challenge that determination, it shall provide written notice to the Authority within 15 days of the Authority Staff's written determination, and the issue shall be brought to the Authority within 45 days thereafter for its determination. The Developer shall not be entitled to any claim or cause of action for consequential damages against the Authority as a result of any determinations made in good faith regarding whether or not any cost submitted by the Developer constitutes an "Eligible Cost," and hereby grants the City and the Authority and their respective officers, agents and employees, a complete release and waiver of any such claims or causes of action as a result of the foregoing. Any dispute arising out of a request for reimbursement shall not affect Developer's right to receive reimbursements as to the undisputed portions of the Completed Request.

7.3. Reimbursement. Before July 31 of the year after Developer delivers a Capture Commencement Notice (and as property taxes are received each subsequent year) after both the summer and winter taxes are captured and collected on the Property, the Authority shall reimburse its Administrative Costs and pay approved Eligible Costs to the Developer from Tax Increment Revenues that are generated from the Property in accordance with the Plan and Paragraph 7 to the extent that taxes have been captured and are available in that fiscal year. The Authority shall receive ten (10) percent of Tax Increment Revenues each year until its Administrative Costs are fully reimbursed, unless a lower percentage is otherwise designated by the Authority.

In the event that there are insufficient Tax Increment Revenues available in any given year to reimburse all of Developer's Eligible Costs, as described in Paragraph 5, then the Authority shall reimburse the Authority or Developer only from available Tax Increment Revenues. The Authority shall make additional payments, on an annual basis as property taxes are received, toward the Developer's remaining unpaid Eligible Costs during the term of this Agreement. Except as otherwise provided in this Agreement, the Developer shall not be entitled to receive any interest on amounts for which reimbursement is requested under this Agreement. The Developer shall not be entitled to reimbursement under this Agreement unless all real and personal property taxes have been timely and completely paid, including all penalties, interest and other amounts due in relation thereto when due. For purposes of this Agreement, to be timely paid, taxes must be paid before the date on which they can no longer be paid without penalties or interest. The repayment obligation under this Agreement shall expire upon the earlier of the full payment by the Authority to the Developer of all amounts due to the Developer from the Tax Increment Revenues or up to 14 full years from the beginning of Tax Increment Revenue capture. Notwithstanding anything herein to the contrary, if there is a reduction of the Tax Increment Revenue capture for the Project from that projected, then the Authority may, in good faith, upon request from the Developer to extend the term of this Agreement and/or the capture and reimbursement term to allow for the full reimbursement to Developer for all of the Developer's Eligible Costs, unless the reduction of the Tax Increment Revenue capture is the result of a tax appeal.

7.4. Method of Reimbursement. The Authority will reimburse the Developer for Eligible Costs as follows:

Checks shall be payable to and delivered by certified mail (or through electronic transfer if available through Developer) to:

5135 Portage Road, LLC
4200 W. Centre Avenue
Portage, Michigan 49024

8. Adjustments. The parties acknowledge that adjustments regarding the amount of Tax Increment Revenue paid to the Developer may occur under any of the following circumstances:

8.1. Audit or Court Ruling: In the event that a state agency of competent jurisdiction conducting an audit of payments made to the Developer under this Agreement or a court of competent jurisdiction determines that any portion of the payments made to the Developer under this Agreement is unlawful, the Developer shall pay back to the Authority that portion of the payments made to the Developer within 30 days of the determination made by a state agency or the court as the case may be. However, the Developer shall have the right, before any such repayment is made, to appeal on its or the Authority's behalf, any such determination made by a state agency or court as the case may be. If the Developer is unsuccessful in such an appeal, the Developer shall repay the portion of payments found to be unlawful to the Authority within thirty (30) days of the date when the final determination is made on the appeal. The Developer shall be responsible for payment of all of the City's and Authority's legal fees associated with any determination of whether a cost for which reimbursement is requested constitutes an "Eligible Cost" and all of the City's and Authority's legal fees associated with the review or determination of such issues by any state agency or court.

8.2. Property Tax Appeal: In the event the Developer, or any subsequent owner of real estate on the Property, files an appeal related to the taxable value of parcels of property included in the Brownfield Plan, the Authority shall do the following:

(a) The Authority will hold the Tax Increment Financing Reimbursement payments in a separate account for the Authority until the pending appeal is adjudicated;

(b) Once any tax appeals are adjudicated, the Authority will either return the funds held in escrow to the local unit in compliance with any tax appeal rulings or will make payments pursuant to Section 7 of this Agreement.

8.3. Reduction of Property Assessments. If the Authority (i) incurs Costs on behalf of the Developer with respect to the Project, Site or Application and (ii) the Developer initiates, participates in or supports any proceeding or process which results in a reduction of the tax increment capture for the Project from that projected and along the same term as contained within the Plan, then the provisions under Paragraph 3 will require a recalculation regarding the amount of Tax Increment Revenues that the Authority previously paid to Developer (the excess amount determined to have been paid is the "Excess Amount") as a result of such lower assessments. If that amount is less than the actual amount of Tax Increment Revenues that the Authority has already paid to the Developer, the Excess Amount shall be offset against future reimbursements to Developer of Eligible Costs.

9. Responsibilities of Developer. In consideration of the inclusion of the Property into the Plan and the resulting financial benefits, which it expects to receive, and the Authority's commitments to capture of Tax Increment Revenue and to assist the Developer in the Project, Developer agrees to the following:

9.1. Project. At its sole expense, the Developer shall use its best efforts to conduct the activities described in the Plan and to construct the Project. Notwithstanding anything herein to the contrary, the Developer's obligation to commence construction of the Project shall be subject to Developer's determination, in its business discretion, that the Project is viable. The total capital investment on all phases of the project is expected to be approximately $18 million. Subject to matters beyond the reasonable control of the Developer (e.g., war, acts of God, failure to obtain governmental approvals, governmental restrictions, exceptional health concerns for which a "stay at home" or "shelter in place" order is issued by an applicable governmental authority, etc. and any other delays due to war, terrorism, lock-out, fire, or other casualty, unavailability of materials, unanticipated construction delay, acts or omission of governmental authorities, severe weather, or other causes beyond the reasonable control of Developer and its contractors) (collectively "Force Majeure" events), the Developer shall commence construction of the Project within a commercially reasonable time after the date that Developer secures all necessary approvals, authorizations, permits and entitlements for the Project and otherwise satisfies all requirements of Developer's lenders or other financing parties for the Project (collectively, the "Approvals", and such date on which Developer is required to commence construction being the "Commencement Date"). Subject to Force Majeure, the Developer shall use commercially reasonable efforts to substantially complete the Project to the point of obtaining a certificate of occupancy within 24 months after the Commencement Date. Under no circumstances shall the Authority have any responsibility or liability for remediation or redevelopment of the Property, or for conducting any "Eligible Activities" at the Property, except for its obligations under this Agreement to provide funds to the extent available as permitted in Paragraph 7 hereof with respect to payments from Tax Increment Revenues.

9.2. Employment Opportunities. To make every reasonable effort to work with the City and community employment agencies to hire city residents for new employment opportunities created by the Project, and to encourage the local contracting of employment opportunities through re-entry employment programs. Regardless of Developer's ability to hire city residents it shall make every reasonable effort to follow, and to cause any contractors hired to perform work on the Project, to follow the City's "Ex-Offender Purchasing" policy regarding hiring new employees who will work on the Project. A copy of this policy is attached as Exhibit C and Developer will provide a copy of it to its general contractor prior to performing any work on the Project.

9.3. Ordinances. Develop the Property, including landscaping and all other improvements required for the Project, in compliance with all local ordinances, site plan reviews, and this Agreement. The redevelopment of the Property shall be subject to all zoning approvals. This Agreement does not obligate any governing municipality to grant any such approvals.

9.4. Project Sign. Place on the Property during rehabilitation/redevelopment a development sign provided by the Authority to promote the Project and the Authority's participation in it. Upon completion of the Project, the sign will be returned to the Authority.

9.5. Promotion and Marketing. Permit the Authority to cite or to use any renderings or photographs or other materials of the Project as an example of private/public partnership and brownfield site redevelopment.

9.6. Cooperation. Assist and cooperate with the Authority in providing information that the Authority may require in providing necessary reports to governmental or other agencies, including, but not limited to, information regarding the amount of Developer expenditures and capital investments, jobs created, and square footage developed or rehabilitated with respect to the Project.

10. Responsibilities of the Authority. In consideration of the preceding commitments of Developer the Authority further agrees to:

10.1. Agency Contacts. Provide Developer with appropriate service/employment agency contacts for the identification of City residents to interview for potential employment; and

10.2. Tax Increment Revenues. To utilize Tax Increment Revenue to reimburse Developer for Eligible Costs incurred by Developer in completing the Project subject to actual capture and as limited and detailed in this Agreement.

11. Developer's Representations, Warranties and Covenants. The Developer hereby makes the following representations, warranties and covenants:

11.1. Eligible Property. To Developer's knowledge and belief, the Property is "eligible property" as defined in Act 381 and is eligible for the capture of Tax Increment Revenues pursuant to Act 381.

11.2. Eligible Costs. The Developer will only submit for reimbursement under Paragraph 7 hereof such costs that it has reasonably determined are Eligible Costs within the meaning of Act 381.

11.3. Due Authorization. The representatives signing this Agreement are duly authorized by the Developer to enter into this Agreement.

12. Events of Default. Each of the following shall constitute an event of default:

12.1. Any representation or warranty made by the Developer in this Agreement proves to have been incorrect or incomplete in any material respect when made or deemed to be made.

12.2. The Developer fails to observe or perform any covenant or agreement contained in this Agreement for 30 days after written notice thereof shall have been given to the Developer by the Authority.

12.3. The Developer abandons or withdraws from the reuse and redevelopment of the Property.

12.4. The Developer fails to pay when due any funds which are required to be paid to the Authority pursuant to this Agreement, including but not limited to its real and personal property taxes as set forth in Paragraph 7 hereof, and such failure continues for thirty (30) days after written notice from the Authority.

12.5. The Developer terminates its existence in order to avoid its obligations under this Agreement.

13. Remedies upon Default.

13.1. If any event of default as defined above shall occur and be continuing for 30 days after written notice of default from the Authority (or such additional time as may be reasonably necessary to cure the default at issue provided that Developer has commenced such cure within the initial thirty (30) days and is proceeding in good faith to cure), the Authority shall have the right, but not the obligation, to exercise any of the following rights and remedies either individually or concurrently:

(a) Terminate this Agreement effective immediately upon notice to the Developer;

(b) All other remedies available at law or in equity;

(c) In addition, if the Developer fails to substantially complete the Project within the timelines required by this Agreement (but subject to Force Majeure), or if Developer otherwise defaults prior to substantial completion of the Project, Developer shall pay back to the Authority (within thirty (30) days following demand by the Authority) any amounts paid to Developer as reimbursement for Eligible Costs with respect to such incomplete phase of the Project pursuant to the terms of this Agreement or otherwise; and

(d) Withhold, suspend or rescind reimbursement to Developer for Eligible Costs from Tax Increment Revenue as set forth in Paragraph 5 until Developer has cured such default to the satisfaction of the Authority. Any such action by the Authority shall not under any circumstances extend the time period under subparagraph 3.2 unless specifically approved by the Authority.

(e) The Authority is responsible for its own cost and expenses including attorney fees incurred by the Authority to enforce its rights under this Agreement.

13.2. If the Authority fails in any material respect to perform or provide the

Tax Increment Revenue incentives, and such failure continues for a period of thirty (30) days after written notice from Developer to the Authority specifying the alleged default (or such additional time as may be reasonably necessary to cure the default at issue provided that the Authority has commenced such cure within the initial thirty (30) days and is proceeding in good faith to cure), the Developer shall have the option to exercise one or any combination of remedies under this Agreement or otherwise available at law or in equity, including without limitation, to withhold or suspend the performance of all or any of the commitments under Paragraph 9. The Developer is responsible for its own cost and expenses including attorney fees incurred by Developer to enforce its rights under this Agreement.

14. Legislative Authorization. This Agreement is governed by and subject to the restrictions set forth in Act 381. In the event that there is legislation enacted in the future which alters or affects the amount of Tax Increment Revenues subject to capture, Eligible Properties, or Eligible Activities, then the Developer's rights and the Authority's obligations under this Agreement may be modified accordingly by agreement of the parties.

15. Freedom of Information Act. Developer stipulates that all petitions and documentation submitted by Developer shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, MCL 15.231 et seq., and no claim of trade secrets or other privilege or exception to the Freedom of Information Act will be claimed by Developer as it relates to this Agreement or petitions and supporting documentation.

16. Plan Modification. The Plan and this Agreement may be modified to the extent allowed under the Act by mutual agreement of the parties.

17. Notices. All notices and other communications required or permitted under this Agreement shall be in writing, shall be deemed given when delivered, and shall be sent by personal delivery, overnight courier, or registered mail, return receipt requested, to the following addresses (or any other address that is specified in writing by either party):

If to Developer:

5135 Portage Road, LLC
4200 W. Centre Avenue
Portage, Michigan 49008

If to the Authority:

City of Kalamazoo
Brownfield
Redevelopment Authority
241 West South Street
Kalamazoo, Michigan
49007

With copy to:

Jessica L. Wood,
Dickinson Wright PLLC
200 Ottawa Avenue NW,
Suite 900
Grand Rapids, Michigan
49503

18. **Indemnification.** Developer shall defend, indemnify and hold harmless the Authority and the City, and any of their respective past, present and future members, officials, employees, agents or representatives from all losses, demands, claims, judgments, suits, costs and expenses (including without limitation the costs and fees of attorneys or other consultants) arising from or related to (i) the capture and use of Tax Increment Revenue paid to Developer as a reimbursable payment under this Agreement made in excess of the amount of tax increment revenues the Authority is determined by the State or court to be allowed by law to use for that reimbursement, and (ii) the Project.

19. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

20. **Binding Effect/Third Parties.** This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors, but it may not be assigned by any party without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned or delayed. The Developer may make a collateral assignment of this Agreement to any institutional lender in connection with any financing for the Project. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not party to this Agreement.

21. **Waiver.** No failure of either party to complain of any act or omission on the part of the other party, no matter how long this same may continue, is considered as a waiver by that party to any of its rights hereunder. No waiver by either party, expressed or implied, of any breach of any provision of this Agreement is considered a waiver or a consent to any subsequent breach of this same or other provision.

22. **Authorization.** Each of the parties represents and warrants to the other that this Agreement and its execution by the individual on its behalf are authorized by the board of directors or other governing body of that party.

23. **Entire Agreement.** This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them.

24. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

25. **Estoppel.** At the request of Developer, the Authority will, within twenty (20) days after request, deliver to Developer, or anyone designated by Developer, an estoppel certificate stating that, as of the date of the certificate, Developer: (i) has performed all of its undertakings under this Agreement; (ii) has met all of its obligations for capital investment, square footage or job creation criteria; (iii) has substantially completed the Project in accordance with project plans or satisfied the requirements set forth in the approved site plan; (iv) has fulfilled commitments under Paragraph 9; and (v) is otherwise not in default under this Agreement, if all the above are true. Further, the Authority shall indicate that the Agreement is in full force and effect and is unmodified; or if modified, Developer has complied with all modifications and that Developer is not in default under the Agreement; or if Developer is in default, stating the nature of the default.

26. Definitions. The following capitalized terms are used in this Agreement with the following meanings:

"Administrative Costs" means the Authority's out-of-pocket costs associated with the Project (including reasonable attorney fees and costs, environmental consulting fees and costs, and similar fees and costs) as well as the Authority's indirect costs associated with the Project (including allocation of the fixed costs of the Authority staff);

"Brownfield Plan" is defined by Section 2(e) of Act 381;

"Due Care Activities" is defined by Section 2(m) of Act 381;

"Eligible Activities" is defined by Section 2(o) of Act 381;

"Eligible Property or Properties" is defined by Section 2(p) Act 381;

"Tax Increment Revenues" is defined by Section 2(ss) of Act 381, and, for purposes of this Agreement, includes school taxes and local (non-school) taxes.

[Signatures appear on the following pages)

In witness of their intent to be legally bound by the terms of this Agreement, each of the parties has set forth its signature below by its duly authorized representative.

CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

____

By: _________________________________

Its: _________________________________

5135 PORTAGE ROAD, LLC

____

By: _________________________________

Its: _________________________________

EXHIBITS:

A (Legal Description of Property)
B (Copy of Brownfield Plan)
C (Ex-Offender Purchasing)

4876-1472-5056 v1 [105916-1]

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, BRA Staff Liaison

DATE: September 19, 2024

SUBJECT: Approval of the Brewster's Redevelopment Project Grant Agreement with 5135 Portage Road, LLC and Authorize the Chairperson to Sign in Substantially the Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

RECOMMENDATION:

It is recommended the BRA approve of the Brewster's Redevelopment Project Grant Agreement with 5135 Portage Road, LLC.

BACKGROUND:

At the August 15, 2024 meeting of the BRA, the Board of Directors approved a grant agreement with the Michigan Department of Environment, Great Lakes, and Energy. The $1,000,000 grant is for the Brewster Redevelopment Project located at 5135 and 5147 Portage Road in Kalamazoo to assist with cost for assessments, due care planning, and contaminated soil removal and disposal, and to address other environmental conditions associated with redevelopment, including site demolition and potential vapor mitigation.

The attached Brewster's Redevelopment Project Grant Agreement ("Agreement") outlines the terms and conditions between BRA and the project developer for pass-through funding from the EGLE grant award. The BRA will provide up to $970,000 in grant funding to the developer on a reimbursement basis for actual costs incurred at the site. All costs must be detailed in an approved work plan by EGLE.

FISCAL IMPACT:

The BRA will receive up to $1,000,000 over a 2-year grant period on a reimbursement basis from EGLE for brownfield eligible activities for the project. The cost of administration up to $30,000 will be paid to BRA by the grant. The remaining grant funds will be passed through to the developer on a reimbursement basis.

BREWSTER'S REDEVELOPMENT PROJECT GRANT AGREEMENT

This **BREWSTER'S REDEVELOPMENT PROJECT GRANT AGREEMENT** ("Agreement") is entered into between the City of Kalamazoo Brownfield Redevelopment Authority, a Michigan public body corporate established pursuant to Act 381 of the Public Acts of 1996, as amended, MCL 125.2651 *et seq*., whose address is 245 N. Rose Street, Suite 100, Kalamazoo, MI 49007 (the "Authority"), and 5135 Portage Road, LLC, a Michigan limited partnership whose address is 4200 W. Centre Avenue, Portage, MI 49024 ("Developer") (collectively, the "Parties").

RECITALS

A. The Authority agreed to assist and support Developer in seeking state incentives. To that end, Developer and Authority have collaborated to apply for a Brownfield Grant ("Project Proposal") from the Michigan Brownfield Redevelopment Program established under the auspices of the State of Michigan Department of Environment, Great Lakes & Energy ("EGLE"). The Project Proposal is attached as Exhibit A. The Project Proposal includes a proposed budget ("Budget Table"), which is attached as Exhibit B.

B. The Authority anticipates the award of a grant from EGLE (the "EGLE Grant") in the amount of $1,000,000, inclusive of Authority administration cost of $30,000, to facilitate assessment, due care planning, and contaminated soil removal and disposal, and to address other environmental conditions associated with the redevelopment of a property located at 5135 and 5147 Portage Road, Kalamazoo, MI 49001 (the "Property").

C. The Authority anticipates execution of an EGLE Brownfield Grant Agreement (the "EGLE Grant Agreement") between EGLE and the Authority, which will outline the terms and conditions of the EGLE Grant and which, upon execution, is incorporated herein by reference.

D. The Authority will, in turn, award up to $970,000 of the EGLE Grant proceeds (the "Grant Proceeds") to Developer for reimbursement of eligible costs to further the redevelopment of the Property, which is currently a surface parking lot and vacant former restaurant, into a four-story hotel, as further detailed in the Project Proposal and Budget Table (the "Project"). The administration cost is payable to the Authority, which will act as Grant Administrator, as permitted by the EGLE Grant Agreement.

E. The Parties desire to document their agreement regarding disbursements of the Grant Proceeds to fund the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. <u>Recitals.</u> The above recitals are acknowledged as true and correct and are incorporated by reference into this paragraph.

2. Compliance with EGLE Grant. Developer represents and warrants to the Authority that Developer is eligible to receive the Grant Proceeds under the terms of the EGLE Grant Agreement. Developer shall use the Grant Proceeds solely for the purposes specified in the EGLE Grant Agreement in connection with the development of the Project. Developer agrees to comply with all terms and conditions of the EGLE Grant Agreement. Developer shall provide to the Authority on a timely basis such information regarding the Project and the use of the Grant Proceeds as the Authority may request from time to time in order for the Authority to comply with the EGLE Grant Agreement's deliverables and reporting requirements.

3. Disbursement of Grant Funds. The Authority shall disburse the Grant Proceeds to Developer for reimbursement of eligible Project costs within 45 days of EGLE's approval of a reimbursement request. Developer shall in no event use any portion of the Grant Proceeds to pay costs not eligible for reimbursement under the EGLE Grant Agreement.

4. Deliverables and Reporting Requirements.

    a. Developer must complete and submit quarterly progress reports according to a form and format prescribed by EGLE and must include a narrative of the progress of the Project, including details regarding activities completed, documentation of milestones (including invoices and proof of payment), and photographs of on-site activities at the end of each quarter by the following dates: 10/1, 1/15, 4/15, 7/15.

    b. Developer shall provide a final project report in a format prescribed by EGLE. Developer shall submit the final status report, including all supporting documentation for expenses, along with the final project report and any other outstanding requirements, as soon as reasonably practicable, but in no case later than 60 days prior to the expiration of the EGLE Grant Agreement.

    c. If fifteen percent (15%) or more of the Grant Proceeds are expended in a single quarter, payment requests may be submitted more than once during that quarter.

    d. Following Section XIX, Closeout, and Appendix A of the EGLE Grant Agreement, the Authority may withhold to Developer an amount equal to 10% of the grant award until the project is completed. This amount will be released to Developer upon final approval by EGLE of the final status report and close-out report.

5. Developer Representations.

    a. Developer agrees to abide by all applicable local, state, and federal laws, rules, ordinances, and regulations in the performance of this Agreement.

    b. By acceptance of this Agreement, Developer commits to complete the Project consistent within the time period allowed and in accordance with the terms and conditions set forth in the EGLE Grant Agreement, provided that the completion of the Project may be subject to force majeure delays that are common in constructing a project such as weather delays, material shortages, pandemics, etc..

c. All local, state, and federal permits, if required, are the responsibility of Developer.

d. Developer shall be solely responsible to pay all applicable taxes and fees, if any, that arise from Developer's receipt of the Grant Proceeds.

e. Developer is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports and other services submitted to EGLE under this Agreement. Developer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in drawings, designs, specifications, reports or other services.

f. EGLE's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Developer of responsibility for the technical adequacy of the work. EGLE's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or the EGLE Grant Agreement or of any cause of action arising out of the performance of this Agreement or the EGLE Grant Agreement.

g. Developer agrees to use the Grant Proceeds only for eligible expenses related to the scope of the work described in the EGLE Grant Agreement.

h. Developer acknowledges that it is a crime to knowingly and willingly file false information with EGLE for the purpose of obtaining this Agreement, the EGLE Grant Agreement, or any Grant Proceeds under this Agreement, and that any such filing may subject Developer, its agents, and/or employees to criminal and civil prosecution and/or termination of the EGLE Grant.

i. Developer shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq*.

6. Notices. Any notice or other communication under this Agreement is only effective if in writing, signed by an authorized representative of the party sending the notice, and delivered to the other party in person or either by certified mail, with return receipt requested, or first-class mail, in both cases with postage fully paid and mailed to:

FOR DEVELOPER:

5135 Portage Road, LLC
4200 W. Centre Avenue
Portage, MI 49024

FOR AUTHORITY:

City of Kalamazoo Brownfield Redevelopment Authority
c/o Jamie McCarthy
Its: Attorney-in-Fact

245 N. Rose Street, Suite 100
Kalamazoo, MI 49007

w/copies to the Authority's Attorney

Jessica Wood
Dickinson Wright PLLC
200 Ottawa Ave. NW
Suite 1000
Grand Rapids, MI 49503

7. Assignment. Developer may not assign any of its rights under this Agreement without the express written consent of the Authority.

8. Repayment of Grant Proceeds. If Developer shall default in the performance of any of its obligations under this Agreement, and fails to cure such default with ninety (90) days following written notice thereof from the Authority, then it shall be deemed an "Event of Default" by Developer under this Agreement, provided that developer shall have additional time to cure the default if the Developer is actively working in good faith to cure the Event of Default. If an Event of Default by Developer results in a repayment obligation under the EGLE Grant Agreement whereby the Authority is required to repay all of any portion of the Grand Proceeds to EGLE, then Developer shall be responsible to reimburse the Authority for any such amounts required to be repaid to EGLE under the EGLE Grant Agreement; provided, however, that before making any repayment to EGLE under the EGLE Grant Agreement, the City shall first provide written notice to Developer of such repayment obligation and afford Developer all reasonable opportunities to address and cure the alleged failure or default giving rise to such repayment obligation prior to making any such repayment, including without limitation, the opportunity to seek to resolve such alleged failure or default directly with EGLE. Developer's repayment obligations shall include any and all costs and reasonable attorney fees that the Authority may incur to enforce such obligation of Developer pursuant to this Agreement.

9. Governing Law. This Agreement is governed under applicable Michigan law. Both parties had the assistance of or the opportunity to consult with legal counsel in the negotiation and preparation of this Agreement. Therefore, no construction or ambiguity of this Agreement is resolved against either party.

10. Suspension Clause. Upon an Event of Default by Developer under this Agreement, in addition to the remedy set forth in Paragraph 8, the Authority shall be permitted to withhold future disbursements of Grant Proceeds until such Event of Default is cured by Developer to the Authority's reasonable satisfaction.

11. Amendments. This Agreement may only be amended by the mutual agreement of the Parties, evidenced in writing.

12. Indemnity and Insurance. Developer shall maintain its current level of liability insurance, with the Authority as an additional named insured. Developer must comply with applicable

workers' compensation laws while engaging in activities authorized under this Agreement. Developer shall submit verification of insurance satisfactory to Authority prior to its first request for reimbursement. Developer shall indemnify and hold the Authority harmless for all liabilities as a result of claims, judgments, or costs arising out of activities to be carried out by Developer under this Agreement if the liability is caused by Developer, or any employee or agent of Developer acting within the scope of their employment or agency. Nothing in this Agreement should be construed as a waiver of any governmental immunity by the Authority, its agents, or its employees as provided by law.

13. Access Agreement. Developer agrees to execute a separate access agreement for the Property.

14. Non-Discrimination. Developer shall comply with the Elliot Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national original, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Developer agrees to include in every subcontract entered into by Developer after the date hereof for the performance of Developer's remediation activities under this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

15. State Cancellation. The Parties acknowledge that the EGLE Grant Agreement may be cancelled by EGLE within 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding, upon request by the Authority, or upon mutual agreement by EGLE and the Authority. EGLE may honor requests for just and equitable compensation for all satisfactory and eligible work completed under the EGLE Grant Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the State. The Parties agree that the Authority will be held harmless if EGLE cancels the EGLE Grant Agreement; provided, however, that the Authority shall provide prompt notice to the Developer of any such proposed termination and shall not voluntarily cancel the EGLE Grant Agreement until the Grant Proceeds have been fully disbursed to Developer.

16. Miscellaneous. The City and Developer each represents and warrants to the other that the person signing this Agreement on its respective behalf has the full consent and authority of its governing body. This Agreement shall bind and benefit the Authority, Developer, and their respective successors, assigns, heirs and personal representatives. This Agreement, including the grant application, contains all the representations and statements by the Authority and Developer to one another and expresses the entire understanding between the Parties. All prior or contemporaneous communications concerning the EGLE Grant are merged in and replaced by this Agreement. This Agreement may be signed in

counterparts, which together shall comprise a single agreement, and the effective date for which shall be the date it is signed by both parties. By signing this Agreement, Developer is certifying that it is not an Iran-linked business, and that is contractors are not Iran-linked businesses, as defined in MCL 129.312. Each of the exhibits attached hereto is expressly incorporated herein and made a part of this Agreement. In the event of any inconsistency between this Agreement and the exhibits attached hereto, this Agreement (without reference to such exhibits) shall govern.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the below date.

Dated: _____________

CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

By:___________________________________
Jason Novotny
Its: Chair

Dated: _____________

5135 PORTAGE ROAD, LLC

By: 5135 Portage Road, LLC

Its: General Partner

By:___________________________________
____
Its: Authorized Representative

EXHIBIT A

BROWNFIELD GRANT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY AND THE CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

BROWNFIELD GRANT AGREEMENT

BETWEEN THE

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

AND THE CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

This Grant Agreement ("Agreement") is made between the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Remediation and Redevelopment Division ("State"), and city of Kalamazoo Brownfield Redevelopment Authority ("Grantee").

The purpose of this Agreement is to provide funding in exchange for work to be performed for the project named below. The State is authorized to provide grant assistance pursuant to Clean Michigan Initiative Implementation, Public Act 196, of Act 451 of 1994 as amended. This Agreement is subject to the terms and conditions specified herein.

PROJECT INFORMATION:

Project Name: Brewster's Redevelopment	Location Code: 7M44
Amount of grant: $1,000,000	Tracking Code: 2024-2555
Start Date: Date executed by the State	End Date: Two Years after Start Date

GRANTEE CONTACT INFORMATION:

Name/Title: Jamie McCarthy, Staff Liaison

Organization: City of Kalamazoo Brownfield Redevelopment Authority

Address: 241 West South Street

City, State, ZIP: Kalamazoo, Michigan 49007

Phone Number: 269-337-8789

E-Mail Address: mccarthyj@kalamazoocity.org

Federal ID Number: 38-6004627

SIGMA Vendor Number: CV0047780

STATE’S CONTACT INFORMATION:

Name/Title: Douglas Koop, Brownfield Coordinator

Division/Bureau/Office: Remediation and Redevelopment Division

Address: 525 West Allegan Street

City, State, ZIP: Lansing, Michigan 48933

Phone Number: 517-245-5054

E-Mail Address: KoopD@Michigan.gov

The individuals signing below certify by their signatures that they are authorized to sign this Agreement on behalf of their agencies and that the parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

FOR THE GRANTEE:

E-SIGNED by Jason Novotny on 2024-08-16 12:45:33 EDT	Jason Novotny/Chair	2024-08-16 12:45:33 UTC
Signature	Name/Title	Date

FOR THE STATE:

E-SIGNED by Mike Neller on 2024-08-16 13:14:05 EDT	Mike Neller, Director	2024-08-16 13:14:05 UTC
Signature	Name/Title	Date

I. PROJECT SCOPE

This Agreement and its appendices constitute the entire Agreement between the State and the Grantee and may be modified only by written agreement between the State and the Grantee.

(A) The scope of this project is limited to the activities specified in Appendix A and such activities as are authorized by the State under this Agreement. Any change in project scope requires prior written approval in accordance with Section III, Changes, in this Agreement.

(B) By acceptance of this Agreement, the Grantee commits to complete the project identified in Appendix A within the time period allowed for in this Agreement and in accordance with the terms and conditions of this Agreement.

II. AGREEMENT PERIOD

Upon signature by the State, the Agreement shall be effective from the Start Date until the End Date on page 1. The State shall have no responsibility to provide funding to the Grantee for project work performed except between the Start Date and the End Date specified on page 1. Expenditures made by the Grantee prior to the Start Date or after the End Date of this Agreement are not eligible for payment under this Agreement.

III. CHANGES

Any changes to this Agreement other than budget line item revisions 20 percent or less of the total Agreement amount shall be requested by the Grantee or the State in writing and implemented only upon approval in writing by the State. The State reserves the right to deny requests for changes to the Agreement or to the appendices. No changes can be implemented without approval by the State.

IV. GRANTEE DELIVERABLES AND REPORTING REQUIREMENTS

The Grantee shall submit deliverables and follow reporting requirements specified in Appendix A of this Agreement.

(A) The Grantee must complete and submit quarterly progress reports according to a form and format prescribed by the State and must include supporting documentation of eligible project expenses. These reports shall be due according to the following:

Reporting Period	Due Date
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	Before October 15*
October 1 – December 31	January 31

*Due to the State's year-end closing procedures, there will be an accelerated due date for the report covering July 1 – September 30. Advance notification regarding the due date for the quarter ending

September 30 will be sent to the Grantee. If the Grantee is unable to submit a report in early October for the quarter ending September 30, an estimate of expenditures through September 30 must be submitted to allow the State to complete its accounting for that fiscal year.

The forms provided by the State shall be submitted to the State's contact at the address on page 1. All required supporting documentation for expenses must be included with the report as outlined in Appendix A.

(B) The Grantee shall provide a final project report in a format prescribed by the State. The Grantee shall submit the final status report, including all supporting documentation for expenses, along with the final project report and any other outstanding products within 30 days from the End Date of the Agreement.

(C) The Grantee must provide electronic copies of all products and deliverables in accordance with Appendix A.

(D) All products shall acknowledge that the project was supported in whole or in part by EGLE, per the guidelines provided by the program.

(E) If 15 percent (15%) or more of the grant amount is expended in a single quarter, payment requests may be submitted once monthly during that quarter.

V. <u>GRANTEE RESPONSIBILITIES</u>

(A) The Grantee agrees to abide by all applicable local, state, and federal laws, rules, ordinances, and regulations in the performance of this grant.

(B) All local, state, and federal permits, if required, are the responsibility of the Grantee. Award of this grant is not a guarantee of permit approval by the State.

(C) The Grantee shall be solely responsible to pay all applicable taxes and fees, if any, that arise from the Grantee's receipt or execution of this grant.

(D) The Grantee is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services submitted to the State under this Agreement. The Grantee shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in drawings, designs, specifications, reports, or other services.

(E) The State's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Grantee of responsibility for the technical adequacy of the work. The State's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(F) The Grantee acknowledges that it is a crime to knowingly and willingly file false information with the State for the purpose of obtaining this Agreement or any payment under the Agreement, and that any such filing may subject the Grantee, its agents, and/or employees to criminal and civil prosecution and/or termination of the grant.

VI. USE OF MATERIAL

Unless otherwise specified in this Agreement, the Grantee may release information or material developed under this Agreement, provided it is acknowledged that the State funded all or a portion of its development.

The State, and federal awarding agency, if applicable, retains a royalty-free, nonexclusive and irrevocable right to reproduce, publish, and use in whole or in part, and authorize others to do so, any copyrightable material or research data submitted under this grant whether or not the material is copyrighted by the Grantee or another person. The Grantee will only submit materials that the State can use in accordance with this paragraph.

VII. ASSIGNABILITY

The Grantee shall not assign this Agreement or assign or delegate any of its duties or obligations under this Agreement to any other party without the prior written consent of the State. The State does not assume responsibility regarding the contractual relationships between the Grantee and any subcontractor.

VIII. SUBCONTRACTS

The State reserves the right to deny the use of any consultant, contractor, associate, or other personnel to perform any portion of the project. The Grantee is solely responsible for all contractual activities performed under this Agreement. Further, the State will consider the Grantee to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Grant. All subcontractors used by the Grantee in performing the project shall be subject to the provisions of this Agreement and shall be qualified to perform the duties required.

IX. NON-DISCRIMINATION

The Grantee shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Grantee agrees to include in every subcontract entered into for the performance of this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

X. UNFAIR LABOR PRACTICES

The Grantee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq*.

XI. LIABILITY

(A) The Grantee, not the State, is responsible for all liabilities as a result of claims, judgments, or costs arising out of activities to be carried out by the Grantee under this Agreement, if the liability is caused by the Grantee, or any employee or agent of the Grantee acting within the scope of their employment or agency.

(B) Nothing in this Agreement should be construed as a waiver of any governmental immunity by the Grantee, the State, its agencies, or their employees as provided by statute or court decisions.

XII. CONFLICT OF INTEREST

No government employee, or member of the legislative, judicial, or executive branches, or member of the Grantee's Board of Directors, its employees, partner agencies, or their families shall benefit financially from any part of this Agreement.

XIII. ANTI-LOBBYING

If all or a portion of this Agreement is funded with federal funds, then in accordance with 2 CFR 200, as appropriate, the Grantee shall comply with the Anti-Lobbying Act, which prohibits the use of all project funds regardless of source, to engage in lobbying the state or federal government or in litigation against the State. Further, the Grantee shall require that the language of this assurance be included in the award documents of all subawards at all tiers.

If all or a portion of this Agreement is funded with state funds, then the Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the State of Michigan's lobbying statute, MCL 4.415(2). "'Lobbying' means communicating directly with an official of the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of litigation against the State. Further, the Grantee shall require that language of this assurance be included in the award documents of all subawards at all tiers.

XIV. DEBARMENT AND SUSPENSION

By signing this Agreement, the Grantee certifies that it has checked the federal debarment/suspension list at www.SAM.gov to verify that its agents, and its subcontractors:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or the state.

(2) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, as defined in 45 CFR 1185; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in subsection (2).

(4) Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

(5) Will comply with all applicable requirements of all other state or federal laws, executive orders, regulations, and policies governing this program.

XV. AUDIT AND ACCESS TO RECORDS

The State reserves the right to conduct a programmatic and financial audit of the project, and the State may withhold payment until the audit is satisfactorily completed. The Grantee will be required to maintain all pertinent records and evidence pertaining to this Agreement, including grant and any required matching funds, in accordance with generally accepted accounting principles and other procedures specified by the State. The State or any of its duly authorized representatives must have access, upon reasonable notice, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Grantee will provide proper facilities for such access and inspection. All records must be maintained for a minimum of five years after the final payment has been issued to the Grantee by the State.

XVI. INSURANCE

(A) The Grantee must maintain insurance or self-insurance that will protect it from claims that may arise from the Grantee’s actions under this Agreement.

(B) The Grantee must comply with applicable workers’ compensation laws while engaging in activities authorized under this Agreement.

XVII. OTHER SOURCES OF FUNDING

The Grantee guarantees that any claims for reimbursement made to the State under this Agreement must not be financed by any source other than the State under the terms of this Agreement. If funding is received through any other source, the Grantee agrees to delete from Grantee's billings, or to immediately refund to the State, the total amount representing such duplication of funding.

XVIII. COMPENSATION

(A) A breakdown of costs allowed under this Agreement is identified in Appendix A. The State will pay the Grantee a total amount not to exceed the amount on page 1 of this Agreement, in accordance with Appendix A, and only for expenses incurred and paid. All other costs necessary to complete the project are the sole responsibility of the Grantee.

(B) Expenses incurred by the Grantee prior to the Start Date or after the End Date of this Agreement are not allowed under the Agreement, unless otherwise specified in Appendix A.

(C) The State will approve payment requests after approval of reports and related documentation as required under this Agreement.

(D) The State reserves the right to request additional information necessary to substantiate payment requests.

(E) Payments under this Agreement may be processed by Electronic Funds Transfer (EFT). The Grantee may register to receive payments by EFT at the SIGMA Vendor Self Service web site (https://sigma.michigan.gov/webapp/PRDVSS2X1/AltSelfService).

(F) An amount equal to ten percent (10%) of the grant award will be withheld by the State until the project is completed in accordance with Section XIX, Closeout, and Appendix A.

XIX. CLOSEOUT

(A) A determination of project completion, which may include a site inspection and an audit, shall be made by the State after the Grantee has met any match obligations, satisfactorily completed the activities, and provided products and deliverables described in Appendix A.

(B) Upon issuance of final payment from the State, the Grantee releases the State of all claims against the State arising under this Agreement. Unless otherwise provided in this Agreement or by State law, final payment under this Agreement shall not constitute a waiver of the State's claims against the Grantee.

(C) The Grantee shall immediately refund to the State any payments in excess of the costs allowed by this Agreement.

XX. CANCELLATION

This Agreement may be canceled by the State, upon 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding, upon request by the Grantee, or upon mutual agreement by the State and Grantee. The State may honor requests for just and equitable compensation to the Grantee for all satisfactory and eligible work completed under this Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the State and the State will no longer be liable to pay the grantee for any further charges to the grant.

XXI. TERMINATION

(A) This Agreement may be terminated by the State as follows.

(1) Upon 30 days written notice to the Grantee:

a. If the Grantee fails to comply with the terms and conditions of the Agreement, or with the requirements of the authorizing legislation cited on page 1, or the rules promulgated thereunder, or other applicable law or rules.
b. If the Grantee knowingly and willingly presents false information to the State for the purpose of obtaining this Agreement or any payment under this Agreement.

c. If the State finds that the Grantee, or any of the Grantee's agents or representatives, offered or gave gratuities, favors, or gifts of monetary value to any official, employee, or agent of the State in an attempt to secure a subcontract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement.
d. If the Grantee or any subcontractor, manufacturer, or supplier of the Grantee appears in the register of persons engaging in unfair labor practices that is compiled by the Michigan Department of Licensing and Regulatory Affairs or its successor.
e. During the 30-day written notice period, the State shall withhold payment for any findings under subparagraphs a through d above, and the Grantee will immediately cease charging to the grant and stop earning match for the project (if applicable).

(2) Immediately and without further liability to the State if the Grantee, or any agent of the Grantee, or any agent of any subcontract is:

a. Convicted of a criminal offense incident to the application for or performance of a State, public, or private contract or subcontract;
b. Convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;
c. Convicted under State or federal antitrust statutes; or
d. Convicted of any other criminal offense that, in the sole discretion of the State, reflects on the Grantee's business integrity.
e. Added to the federal or state Suspension and Debarment list.

(B) If a grant is terminated, the State reserves the right to require the Grantee to repay all or a portion of funds received under this Agreement.

XXII. IRAN SANCTIONS ACT

By signing this Agreement, the Grantee is certifying that it is not an Iran linked business, and that its contractors are not Iran linked businesses, as defined in MCL 129.312.

XXIII. ACCESS AGREEMENTS

A voluntary access agreement or court-ordered access must be secured by the Grantee prior to performance of the scope of work described in Appendix A for any portion of the project area or property where grant activities will be undertaken and that is not owned by the Grantee. Evidence of access must be provided to the State at its request.

XXIV. GRANT ADMINISTRATION

Grant Administration costs are eligible for reimbursement in accordance with Appendix A. Grant administration costs will be limited to three percent (3%) of the total award amount.

XXV. INELIGIBLE EXPENSES

Although the following costs may be related to the scope of work described in Appendix A, the following are ineligible for reimbursement under the grant:

Office equipment; software; insurance; taxes, except sales taxes; replacement or purchase of equipment; drinking water supply replacement, defined as but is not limited to, providing bottled water, constructing a new well, and extending or constructing a water supply system; operation and maintenance of long term response and due care activities; restoration of property or infrastructure, unless included in Appendix A; fees for attorneys or legal advice except for administrative or management costs directly related to implementing the grant; grant recipient staff time for application submittal; costs for eligible activities reimbursed under the Brownfield Redevelopment Financing Act, 1996 Public Act 381, as amended (Act 381); costs incurred for activities outside a State-approved work plan; labor overtime rates; and training.

Travel costs for either vehicle use or vehicle mileage will be reimbursed, but not both. Vehicle mileage will be reimbursed at a maximum of the federal rate allowed by the Internal Revenue Service at the time the costs are incurred.

Fees, such as those incurred for state or local permits; underground storage tank registration; late fees; or other fees may be eligible at the State's discretion. Other expenses may be determined ineligible in the course of invoice reviews.

XXVI. BIDS, CONTRACTORS

(A) For contracts for work performed under this agreement that totals $20,000 or more, the Grantee shall provide, or cause to be provided, the qualifications of the selected contractor(s) to the State. The State reserves the right to object to the selected contractor(s) or their qualifications. If the State has objections, it will inform the Grantee in writing within 30 days of receipt of the selected contractor's qualifications.

(B) For any contract for work performed under this agreement that totals $20,000 or more, except professional services, the Grantee shall solicit, or cause to be solicited, bids from at least three qualified contractors. The way in which bids or requests for quotes (RFQs) are solicited must be done in a manner acceptable to the Grantee. The Grantee shall provide the State copies of the bid specifications, proof of bid solicitation to at least three qualified contractors, copies of all bids received, a bid tabulation, and a written contractor recommendation. If the contractor that submitted the lowest bid is not the contractor selected, the Grantee must submit written justification for the selection.

(C) Any contractor(s) retained for corrective action on regulated underground storage tanks shall be a qualified underground storage tank consultant that meets the requirements of Section 21325 of Part 213, Leaking Underground Storage Tanks of the NREPA.

(D) Any contractor(s) and professionals retained with state funds must possess appropriate qualifications, experience, licensing, and insurance for the work including but not limited to, surveying; engineering; asbestos, lead, mold, and hazardous material abatement; and transport, storage, and disposal of hazardous and non-hazardous waste.

(E) Subsurface work on contaminated properties that involves penetrating or disturbing the existing surfaces; working with subsurface infrastructure, monitoring wells, or sewers; handling of existing soil, sediments, or groundwater; or other site activities with the reasonable potential for unacceptable human exposure must be conducted by personnel in accordance with OSHA and MIOSHA requirements, including under HAZWOPER, MIOSHA-STD-1216 and 29 CFR 1910.120, as applicable.

(F) Contractor markup on subcontractors and equipment is limited to a maximum of ten percent (10%) of the original cost, and subject to approval by the State.

XXVII. WORK PLANS AND PROJECT IMPLEMENTATION

(A) Prior to conducting any activities under the Agreement, the Grantee or its contractor shall submit a detailed work plan to the State for its approval. Work plans must include a description of the proposed activities, a budget, and a schedule for conducting the activities under Appendix A. A supplementary work plan, budget, and schedule are required for each subsequent phase of work. The Grantee and its contractor shall not proceed with grant- funded activities until the State approves the work plan, budget, and schedule in writing. The State may approve, modify and approve, or require amendments to the work plan.

(B) The Grantee or its contractor shall implement the work plan upon the State's written approval and according to the schedules contained therein. Changes or additions to the work plan may be submitted in writing and are subject to approval by the State. Changes to work plans without prior approval from the State, or performance of activities that are not part of an approved work plan or an amendment to a work plan, may result in the Grantee being responsible for payment of unapproved activities.

XXVIII. ECONOMIC DEVELOPMENT

(A) The Grant Recipient acknowledges by its signature of this Agreement that there have been no material changes in the economic development proposal, property ownership, or other conditions of the property or project since the date the grant funds were awarded.

(B) In the event the proposed development changes or is not implemented, the Grantee shall immediately notify the State in writing and shall try to secure a new development project for the property. The Grantee shall then notify the State in writing of the proposed development. The alternate development project is also subject to approval by the State.

XXIX. OTHER TERMS AND CONDITIONS

(A) The State may withhold the grant until the State determines that the Grantee is able to proceed with the project scope described in Appendix A, pursuant to Part 196, Section 19612(3), of the NREPA.

(B) Following completion of the project, the State may conduct compliance inspections to determine whether the project is being maintained for the use specified in this Agreement.

(C) The Grantee acknowledges, by signature of this Agreement, that the State is not obligated to provide additional funding beyond the Agreement amount should additional environmental costs be necessary to complete the project.

(D) If necessary to allow for completion of the project, the Grantee and State may mutually agree to extend the term of the Agreement. Agreement extensions should be requested by the Grantee or the State in writing, prior to the Agreement end date. This Agreement may only be extended by a signed agreement between both parties.

APPENDIX A

APPENDIX A

for BROWNFIELD REDEVELOPMENT GRANT / LOAN AGREEMENT

Project Details			
Project Name and Address	Brewster's Redevelopment 5135 and 5147 Portage Road Kalamazoo, Michigan 49002	Grantee / Borrower	City of Kalamazoo Brownfield Redevelopment Authority
Tracking Code	2024-2555	Location Code	7M44
Capital Investment	$23,000,000	Jobs Created	15 full-time equivalents
Total Grant Funding	$1,000,000	Total Loan Funding	$0

PROJECT DESCRIPTION:
The grant will be used to facilitate the redevelopment of two adjoining properties in Kalamazoo. The site will be redeveloped into a 93 room, 4 story hotel.

The property includes a former gas station where a release was documented in 1997 at the time underground storage tanks were removed from the site. The grant will be used to investigate shallow soil conditions to better delineate the lateral and vertical extent of petroleum contamination and to determine whether an additional source of petroleum exists that would pose a risk for vapor intrusion under the new buildings. The grant will also pay for the demolition of a former restaurant and removal of asphalt parking area.

ANTICIPATED SCOPE OF WORK / BUDGET: The scope of work will take place within the project boundaries identified in Figure 1 and includes the following activities to facilitate the safe reuse of the property:

1. Assessment and investigation including, but not limited to a Phase I Environmental Site Assessment, Baseline Environmental Assessment, and additional investigation and sampling of shallow soils to evaluate potential vapor intrusion risks and the presence or absence of additional source material from the 1997 release.

2. Due care including, but not limited to the transport and disposal of contaminated soils generated during the construction activity, and, if determined through investigation, the excavation, transport, disposal, and placement of clean backfill beneath select areas of the new buildings to eliminate vapor intrusion risk.

3. Demolition and asbestos abatement including, but not limited to demolition of the on-site building, pavement, and other site features.

4. To request closeout of the grant, the Grantee must provide a comprehensive grant closeout report in the format provided by EGLE. The report will include a summary of each activity completed under the grant, relevant documentation, and any outstanding deliverables.

5. During the time of the grant funded activities, the Grantee is required to install a full color, 48" by 96" grommeted vinyl sign, or equivalent, on the property displaying the Department of Environment, Great Lakes, and Energy (EGLE) logo. An image file with the sign design will be provided to the Grantee by the brownfield coordinator.

6. Grant administration including, but not limited to grant management, tracking, and reporting activities by Grantee.

7. Contingency for unanticipated conditions that may be encountered during the performance of eligible activities. Contingency will not be utilized without authorization from EGLE.

Task	Grant
1. Assessment and Investigation	$86,500
2. Due Care	$555,000
3. Demolition and Asbestos Abatement*	$200,000
4. EGLE Grant Closeout Report	$5,000
5. EGLE Sign	$500
6. Grant Administration	$30,000
7. Contingency	$123,000
Total	$1,000,000

* Demolition and abatement costs (Task 3) cannot exceed the total combined cost of environmental activities (Tasks 1-2) funded by EGLE and other sources. If demolition and abatement occur before the environmental activities, demolition and abatement reimbursement will be deferred until the environmental activity costs incurred equal or exceed the costs incurred for demolition and abatement.

In addition to the broad budget items above, the grant loan may be used for work plan and budget development, bid solicitation, technical specifications, oversight, project management, reporting and other task related activities approved by the EGLE brownfield coordinator. Operation and maintenance plans must be prepared for any engineering controls implemented with the grant funding. All grant-eligible work, including tasks not listed above, must be approved in advance. Work completed without an approved work plan may not be eligible for grant reimbursement.

The grant administration and EGLE sign budgets are approved upon signature of this agreement. Prior to the start of any other grant-eligible work, a work plan must be submitted to EGLE for review and approval.

A pre-approved budget amount for work plan development is provided that includes up to $3,000 per work plan. If development of a work plan is expected to cost more than the pre-approved budget, the anticipated cost to develop the work plan must be approved by the brownfield coordinator in advance, or the excess cost will not be eligible for reimbursement. Work plan development will be paid for under the appropriate budget items listed above. Refer to EGLE's Brownfield Eligible Activity Resource document when preparing the work plan.

Progress reports must be submitted quarterly even if no expenses were incurred during the quarter. Progress reports must include invoices for expenses incurred during the quarter.

Project deliverables for activities paid for by the grant must be provided to EGLE throughout the course of the grant. Deliverables may include, but are not limited to, bid documentation as required by the agreement, invoices and appropriate backup documentation for reimbursement, technical reports, and summaries of activities completed under the grant (including dates, quantities, transport and/or disposal documentation, monitoring summaries, photos, logs, figures/as built drawings/site plans, data/analytical results, or other relevant documentation.) A copy of EGLE's Brownfield Grant and Loan Deliverable Guidance will be provided during the Kick-Off Meeting or can be requested at any time.

Ten percent of the grant award or amount spent will be retained by EGLE until the project is complete, including receipt of all deliverables and closeout reporting.

SCHEDULE: The grant administration will be conducted during the entire length of the agreement. Work under the contingency task will be completed as necessary. Following the start of the agreement, the remaining tasks are anticipated to be conducted in the timeframes described below.

Task #	Task	Schedule (Months following signed agreement)
1	Assessment and Investigation	Months 1-3
2	Due Care	Months 2-12
3	Demolition and Asbestos Abatement	Months 2-6
4	EGLE Grant Closeout Report	By Month 24

A more detailed schedule for above tasks shall be provided by the Grantee within the project work plans.

EGLE

FIGURE

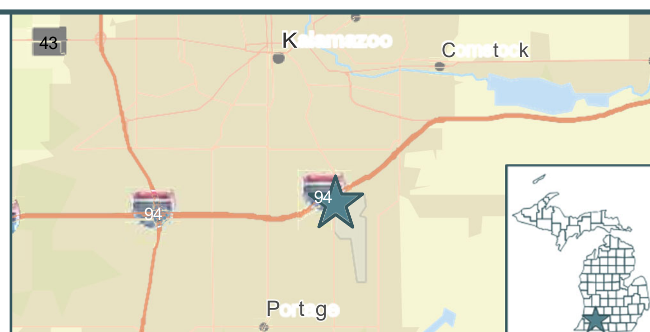
Brewster's Redevelopment

MICHIGAN BROWNFIELD REDEVELOPMENT PROGRAM

5 35 d 5 47 P t g R d
K 49002

Project Boundary

EGLE Remediation and Redevelopment Division, 4/18/2024



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, BRA Staff Liaison

DATE: September 19, 2024

SUBJECT: Approval of the Fifth Amendment to the Purchase and Sale Agreement with 116 West Cedar, LLC and Burdick@Cedar, LLC for the Property at 116 W Cedar Street and Authorizing the Chairperson to Sign in Substantially to Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

RECOMMENDATION:

It is recommended the BRA approve the Fifth Amendment to the Purchase and Sale Agreement for 116 W Cedar Street and Authorize the Chairperson to Sign.

BACKGROUND:

City staff met with representatives of the development team to discuss initial design and financial models for a residential development at the site located at 116 W Cedar Street. In June 2024, the BRA approved matching funds in support of an EGLE Environmental Justice Impact Grant the City submitted to assist with demolition at the site. The City is still awaiting award of the grant, which EGLE anticipates announcing in October 2024. Staff and the development team are requesting an additional six-month extension of the investigation period to continue working on the design and pro forma for the project. It is anticipated the project will put forth an application for a brownfield plan to support brownfield-eligible activities. The project will also continue work on building and site design elements in conjunction with financial modeling.

FISCAL IMPACT:

No fiscal impact is anticipated at this time.

FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

The City of Kalamazoo Brownfield Redevelopment Authority, a Michigan public corporate body, whose address is 245 N. Rose Street, Suite 100, Kalamazoo, Michigan 49007, (the "BRA") and 116 WEST CEDAR, LLC a Michigan domestic limited liability company, having an address at 750 Trade Centre Way, Suite 100, Portage, Michigan 49002 ("116 West Cedar"), and BURDICK@CEDAR, LLC, a Michigan domestic limited liability company, having an address at 4200 West Centre Avenue, Portage, Michigan 49024 ("Burdick@Cedar"), (collectively, the "**Purchaser**") entered a Purchase and Sale Agreement dated September 27, 2021 (hereinafter, the "**Agreement**"), for the Premises described and located at 116 West Cedar Street, Kalamazoo, MI 49007.

BACKGROUND

A. On September 15, 2022, the BRA and Purchaser signed the First Amendment to Purchase and Sale Agreement to extend the Investigation Period by an additional 12 months to end March 31, 2023 at 5:00 p.m. Eastern Daylight Time.

B. On August 15, 2023, the BRA and Purchaser signed the Second Amendment to the Purchase and Sale Agreement on August 15, 2023, to extend the Investigation Period by an additional 12 months to end March 31, 2024 at 5:00 p.m. Eastern Daylight Time.

C. On March 28, 2024, the BRA and Purchaser signed the Third Amendment to the Purchase and Sale Agreement to extend the Investigation Period until June 28, 2024 at 5:00 p.m. Eastern Daylight Time.

D. On June 27, 2024, the BRA and Purchaser signed the Fourth Amendment to the Purchase and Sale Agreement to extend the Investigation Period until September 27, 2024 at 5:00 p.m. Eastern Daylight Time.

E. Since signing the Fourth Amendment to the Purchase and Sale Agreement, Purchaser has made progress toward its redevelopment plans and the BRA and Purchaser desire to further extend the Investigation Period.

F. Both BRA and Purchaser agree to enter this Fifth Amendment to Purchase and Sale Agreement:

   1. The first sentence of Section 4, <u>Investigation Period</u> at page 2 of the Agreement, is amended to read:

      "The '**Investigation Period**' commences on the Effective Date of this Agreement and expires on March 27, 2025 at 5:00 p.m. Eastern Daylight Time."

2. In all other regards the Agreement is unchanged and affirmed by the parties.
3. This Amendment becomes effective on the last signature date set forth below.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Fourth Amendment to Purchase and Sale Agreement.

[Signatures by the authorized representatives of the parties are on the following page.]

City of Kalamazoo Brownfield Redevelopment Authority

__________________________________ Dated: __________________
Jason Novotny, Authorized Signer

116 W. CEDAR, LLC

__________________________________ Dated: __________________
Roger E. Hinman, Manager
Authorized Representative

BURDICK@CEDAR, LLC

__________________________________ Dated: __________________
Joseph L. Gesmundo, Manager
Authorized Representative

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, BRA Staff Liaison

DATE: September 19, 2024

SUBJECT: Approval of an Assignment of Option Agreement for 125 E North Street and Authorizing the Chairperson to Sign in Substantially the Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

RECOMMENDATION:

It is recommended the BRA approve the assignment of the Purchase Option Agreement to Zion Place 4 Limited Dividend Housing Association Limited Partnership.

BACKGROUND:

As the Low Income Housing Tax Credit portion of the project is slated to go before the MSHDA Board of Directors for approval this fall, the project continues to make legal arrangements for closing. This includes the new legal entity, Zion Place 4 Limited Dividend Housing Association LImited Partnership who will purchase the property once the project has closed on MSHDA financing. Estimating MSHDA's capacity for projects in their existing pipeline, the development team indicated they are planning to close in early February.

FISCAL IMPACT:

There is no fiscal impact anticipated at this time.

Community Planning and Economic Development Department | 245 N. Rose Street, Ste 100, Kalamazoo, MI 49007
Voice: (269) 337-8744 | Fax: (269) 337-8513 | www.kalamazoocity.org

ASSIGNMENT OF OPTION AGREEMENT

THIS ASSIGNMENT OF OPTION AGREEMENT ("**Assignment**") is made and entered into as of this ___ day of __________, 2024, by and between **ZION PLACE 9 LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP**, a Michigan limited partnership ("**Assignor**"), and **ZION PLACE 4 LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP**, a Michigan limited partnership ("**Assignee**") (Assignor and Assignee are sometimes referred to herein, together, as the "**Parties**"). All capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to them in the Option Agreement (as such term is defined below).

RECITALS

A. The City of Kalamazoo Brownfield Development Authority, a Michigan public body corporate ("**Seller**") and Hollander Development Corporation, a Michigan corporation ("**Original Buyer**") entered into that certain Option Agreement dated as of March 11, 2022, with respect to certain real property 125 E. North Street, Kalamazoo, Michigan, and being more particularly described therein (the "**Property**"), which was assigned by Original Buyer to Assignor by that certain Assignment of Option Agreement dated effective as of September 30, 2022 (as amended and assigned, the "**Option Agreement**").

B. The Parties desire to enter into this Assignment to, among other things, assign Assignor's rights and interests in the Option Agreement to Assignee and to evidence Assignee's assumption of Assignor's obligations and liabilities under the Option Agreement to the extent of the assigned interest.

ASSIGNMENT:

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Assignment of Option Agreement. Assignor hereby assigns and transfers to Assignee all of its right, title, claim and interest in and to the Option Agreement, the Property, and the sums paid or deposited in escrow or to Seller by Assignor in connection with the Option Agreement.

2. Assumption. Assignee hereby acknowledges and agrees to all of the terms of the Option Agreement and accepts the foregoing assignment and assumes and agrees to perform all obligations of Assignor under the Option Agreement in accordance with the terms hereof.

3. Ratification of Agreements. Except as expressly amended and modified under this Assignment, the Parties hereby ratify and affirm the terms and provisions of the Option Agreement in their entirety.

4. General. The captions and section numbers shall not be considered in any way to affect the interpretation of this Assignment. This Assignment shall be binding upon and inure to

the benefit of the parties hereto, and their respective successors, assigns, heirs and personal representatives. This Assignment shall not be construed with resort to any presumption against the preparer or maker hereof.

5. Counterparts. This Assignment may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one and the same instrument. Delivery of this Assignment may be accomplished by electronic facsimile reproduction ("**FAX**") or via electronic mail via .PDF ("**PDF**"); if FAX or PDF delivery is utilized, the original document shall be promptly executed and/or delivered, if requested.

[SIGNATURES ON FOLLOWING PAGE]

[SIGNATURE PAGE TO ASSIGNMENT OF OPTION AGREEMENT]

IN WITNESS WHEREOF, the Assignor and Assignee have executed this Assignment as of the day and year first above written.

"ASSIGNOR"

ZION PLACE 9 LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP,
a Michigan limited partnership

By: Zion Place 9 GP, LLC,
a Michigan limited liability company
Its: General Partner

By:____________________________
Jason Muniz
Its: Manager
Date: ____________, 2024

"ASSIGNEE"

ZION PLACE 4 LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP,
a Michigan limited partnership

By: Zion Place 4 GP, LLC,
a Michigan limited liability company
Its: General Partner

By:____________________________
Jason Muniz
Its: Manager
Date: ____________, 2024

[SIGNATURE PAGE TO ASSIGNMENT OF OPTION]

IN WITNESS WHEREOF, the Seller hereby consents to the foregoing assignment and has executed this Assignment as of the day and year first above written.

"SELLER"

CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY, a Michigan public body corporate

By:________________________________
Print Name:__________________________
Title:_______________________________

Date: __________________, 2024

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, BRA Staff Liaison

DATE: September 19, 2024

SUBJECT: Approval of a Letter of Intent with Davis Creek Land Development Co. to Purchase Property at Davis Creek Business Park.

RECOMMENDATION:

It is recommended the BRA approve of a Letter of Intent with Davis Creek Land Development Co. to purchase approximately 3 acres of property at Davis Creek Business Park for renewable energy development connected with a planned business expansion.

BACKGROUND:

Davis Creek Land Development Co. ("Purchaser") owned property within the Davis Creek Business Park (DCBP) operated by Seven Point Supply as a cannabis facility. The Purchaser is seeking additional property adjacent to the existing facility for solar energy development. The development is an important part of a larger development plan to expand the cannabis facility at the existing property. The renewable energy development is an approximately $2 million investment for a 392 kW solar array. The facility expansion will be 60,000 SF of production space and 10,000 SF of administrative office space. It is expected to create up to 65 FTE.

The property at DCBP is jointly owned by BRA and City of Kalamazoo. Following City land disposition policy, the Letter of Intent (LOI) will be signed by all parties and will be in effect for up to 90 days. During this time, the Purchaser will obtain a boundary survey for the new parcel. The BRA, City, and Purchaser will negotiate a sale price, and if acceptable, will bring forward a Purchase and Sale Agreement to the BRA for approval.

FISCAL IMPACT:

No direct fiscal impact is anticipated from this action. The property is currently tax exempt and selling to private developer for renewable energy development will generate ad valorem taxes. The tax revenues for this type of development are considerably less than other uses that require more property improvements, however, the committee was in support of this development concept when paired with the adjacent cannabis facility expansion.

Brownfield Redevelopment Authority

245 N. Rose, Suite 100, Kalamazoo, MI 49007
Phone 269.337.8082 | Fax 269.337.8182

development@kalamazoocity.org
www.kalamazoocity.org/development

September 19, 2024

Kyle Barker
Davis Creek Land Development Co, LLC
107 W Michigan Ave, Ste. 500
Kalamazoo, Michigan 49007

Re: Letter of Intent – Sale of Approximately Three Acres of Property at Davis Creek Business Park (PIN: 06-25-393-003)

Dear Mr. Barker:

This Letter of Intent ("LOI") follows conversations you have had on behalf of Davis Creek Land Development Co, LLC ("Developer") with City of Kalamazoo staff towards eventual expansion of the cannabis facility at 2830 Full Circle Drive in Kalamazoo, Michigan. The proposed renewable energy development project is located on real estate owned by the City of Kalamazoo and the Brownfield Redevelopment Authority ("BRA"). The future parcel is located in Davis Creek Business Park and will be split from Parcel ID 06-25-393-006 and adjacent to the property at 2830 Full Circle Drive. It will be more fully described following a legal boundary survey.

We understand that you would like to reserve, on a temporary basis, the rights to purchase approximately three acres of City of Kalamazoo and BRA-owned property. The development concept is to develop this portion of the parcel for renewable energy generation ("Project") to supply energy to the facility expansion project immediately east of the parcel. This LOI shall serve to memorialize the next steps that Developer and BRA, respectively, will undertake towards the eventual purchase of the Property and development of the Project. To that end, and upon execution of this LOI, Developer shall use its best efforts and due diligence to complete the outlined tasks within the timeframes provided.

In consideration of $100.00, and other good and valuable consideration the receipt of which is hereby confirmed, the BRA grants Developer, subject to the conditions and requirements of this LOI, the exclusive right to purchase and redevelop the approximately three acres of property located in the Davis Creek Business Park to be split from Parcel ID 06-25-393-006 and adjacent to 2830 Full Circle Drive, which right shall terminate at the close of business on December 19, 2024 ("Exclusivity Period"). For the duration of the Exclusivity Period, the BRA and City of Kalamazoo will not entertain or enter into any agreement with any other entity expressing an interest in acquiring or redeveloping the portion of Parcel ID 06-25-393-06 described above and shown approximately in Exhibit A.

During the Exclusivity Period:

1. BRA and City of Kalamazoo will
    - Provide Developer, upon request, with any environmental reports, surveys, and any other documentation in its possession that may assist Developer in evaluating whether to enter into a Purchase and Development Agreement;

    - Subject to a mutually acceptable separate access agreement between Developer and BRA, permit Developer and its environmental consultant(s) or other agents access to the

Property for any inspections, assessments, and/or any testing reasonably and customarily appropriate in exercising due diligence activities.
- Obtain a real estate appraisal to determine fair market value of the subdivided portion of the property.

2. Developer will
   - Obtain a boundary survey and legal description of the approximately 3-acre portion of the parcel and submit to BRA staff to satisfy requirements of a land division application.

   - Develop and submit draft site redevelopment plans for the Project consistent with City of Kalamazoo ordinances and present draft plan at a Projects Meeting scheduled with Community Planning & Economic Development Department;

   - Submit planning and financial documents for the Project to BRA staff, including draft building designs for facility expansion, site plans, and sources and uses of all outside financing (i.e., tentative proforma) in enough detail for the BRA to tentatively determine the feasibility of the Project.

3. Joint efforts
   - BRA and City of Kalamazoo staff and Developer will regularly communicate with one another and, as necessary, keep BRA Board of Directors updated on Developer's progress toward finalizing plans for the successful redevelopment of the Property. All parties will work to negotiate term of sale of the property for BRA Board of Directors and City Commission approval.

Before the conclusion of the Exclusivity Period, Developer shall notify the BRA in writing of its intent to finalize purchase of the Property, which purchase shall be subject to a mutually acceptable Purchase and Development Agreement memorializing the terms and conditions of sale and development. Upon such notification, a formal Purchase and Development Agreement will be prepared and submitted to you for your review and execution. Developer understands that this LOI does not address all issues to be negotiated by the parties.

If this LOI satisfactorily summarizes the terms under which Developer is interested in pursuing the potential purchase and redevelopment of the Property, so indicate by signing and returning a copy of this LOI to me. This LOI is not a binding contract to sell and purchase. This LOI supersedes any and all previous negotiations between BRA and Developer, whether written or verbal.

Sincerely,

CITY OF KALAMAZOO &
BROWNFIELD REDEVELOPMENT AUTHORITY

______________________	____________________________
By: Antonio Mitchell Its: Attorney-in-fact	By: James Ritsema Its: City Manager

ACCEPTED:

Date: ____________________ By: ___________________________________

Mr. Kyle Barker

cc: Jessica Wood, Brownfield Redevelopment Authority Legal Counsel
Aaron Leal, City Attorney
Jamie McCarthy, Sustainable Development Coordinator

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: Heidi Waffle, Brownfield Project Assistant

DATE: September 19, 2024

SUBJECT: Nomination and Approval of New Officer Positions for Chair, Vice Chair, and Treasurer/Secretary Effective October 1, 2024.

RECOMMENDATION:

It is recommended the BRA Board nominate and approve the new officer positions for Chair, Vice Chair, and Treasurer/Secretary, effective October 1, 2024.

BACKGROUND:

The BRA bylaws include three officer positions that serve to lead board meetings and execute official documents, as approved by the board. The board nominates and elects new officers each year to serve a 1-year term. The officer positions include a Chair, Vice Chair, and officer that serves both as Treasurer and Secretary. Current board members holding officer positions are listed below. The practice of the Executive Committee has been to rotate the Vice Chair into the position of Chair and the Treasurer/Secretary into the position of Vice Chair. A new member would be nominated to the Executive Committee to serve as Treasurer/Secretary. It is recommended the board discuss and nominate candidates for officer positions to serve the board.

2024 Officers:
• Director Jason Novotny, Chair
• Director Lucas Middleton, Vice Chair
• Director Kyle Gulau, Treasurer/Secretary

FISCAL IMPACT:

No fiscal impact is anticipated from this action.

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, BRA Staff Liaison

DATE: September 19, 2024

SUBJECT: Adoption of FY 2025 Budgets for Fund 242 and Fund 243

RECOMMENDATION:

It is recommended the BRA adopt the FY 2025 Budgets for Fund 242 and Fund 243.

BACKGROUND:

The narratives below further describe how certain discretionary line items are anticipated to be prioritized by the Board and staff for the proposed FY 2025 budgets.

FUND 242 –LOCAL BROWNFIELD REVOLVING FUND

Expenditures

Professional & Contractual Services $165,000

<u>BRA Property Marketing</u> $125,000

- Environmental due diligence/site preparation for BRA property marketing initiative which may include contract(s) with environmental firms, title companies, surveyors, etc.
- Estimated expenditures:
  - Up to $85,000 for environmental
  - Up to $20,000 for title commitments
  - Up to $20,000 for site surveys, pre-development investigations, etc.

<u>Davis Creek Business Park</u> $40,000

- Operation and maintenance of stormwater management system installed as part of grant funded activities, required as part of due care obligations

TIF Reimbursement – Developers $500,000

116 W Cedar Street $100,000

- Demolition and abatement for existing building at the site; committed as part of the EGLE Environmental Justice Grant

2025 Project Requests – TBD $400,000

- Discretionary budget for BRA to entertain developer requests in 2025 when approving brownfield plans as projects are evaluated and determined to be high priority based upon City master plan, sub-area plans, and neighborhood plans

TIF Reimbursement – Infrastructure $850,000

Public Right-of-Way Improvements

- Alcott & Reed $55,000

Improvements in public infrastructure, including lighting, pedestrian crosswalks, and other placemaking improvements in the right=of-way as match to planned improvements as part of the Safe Streets for All grant and surrounding private development projects

- North Pitcher $85,000

Planning phase - public infrastructure, sidewalks, lighting, placemaking, and other improvements for non-motorized/pedestrian connections

- Kalamazoo/Rivers Edge $60,000

Remaining public improvements along trailway and Kalamazoo River related to Rivers Edge redevelopment project

- Downtown/Vine $150,000

Contingency funding for demolition and abatement of BRA-owned former public safety building, public improvements, and/or unidentified environmental conditions; remaining public improvements along trailway at Arcadia Creek related to Ironworks redevelopment project

2025 City Project Requests – TBD $500,000

- Discretionary budget for BRA to entertain City requests in 2025 when approving brownfield plans as projects are evaluated and its is determined that additional public improvements can be leveraged with LBRF dollars, especially when supported by City master plan, sub-area plans, and neighborhood plans or other at the recommendation of other boards focused on economic development

FUND 243 –BROWNFIELD OPERATING FUND

Expenditures

Professional & Contractual Services $274,000

Brownfield Technical Consulting $50,000
- Fishbeck Contract for professional services

Third Party Financial Review Services $70,000
- Contractor – TBD (Request for Proposals currently outstanding)

Snow Removal Contract $24,000
- Niewonder &Sons under existing contract

Property Management/Due Care $80,000
- Fence repair and maintenance, tree services, signage, clean-up and board-up services, and other miscellaneous property maintenance to meet legal due care obligations

Property/Real Estate Marketing Services $50,000
- Contractor – TBD (Request for Proposals in 2025)

Staffing (salary + benefits) $106,458 + $43,453

- 70% Brownfield Staff Liaison (McCarthy)
- 100% Brownfield Assistant, half-time (Waffle)
- 25% Administrative Assistant (Cheeseman)

Professional Development $20,000

- 2025 National Brownfields Conference
  1-2 Staff registration + travel support
  5-6 Board registration + travel support

- Additional Training Opportunities
  Online or in-person training, cost to cover facilitators or registration fee(s)

FISCAL IMPACT:

Fund 242 could see approximately 25% of the current fund balance spent down in the FY 2025 budget. There is no current fund balance anticipated to be used for Fund 243 in the FY 2025 budget.

		2023 Budget	2023 Actuals	2024 Budget	2024 YTD Budget	2025 Projected Budget	Notes
Fund 242: Local Brownfield Revolving Fund							
EXPENDITURES							
242-735-00.000-801.000	PROFESSIONAL AND CONTRACTUAL SERVICES	$1,575,000.00	$0.00	$246,650.00	$0.00	$165,000.00	
242-735-00.000-801.001	BANK FEES	$0.00	$0.00	$0.00	$0.00	$0.00	
242-735-00.000-967.005	TIF REIMBURSEMENTS - DEVELOPERS	$0.00	$0.00	$73,995.00	$0.00	$500,000.00	
242-735-00.000-967.006	TIF REIMBURSEMENTS - INFRASTRUCTURE	$0.00	$0.00	$12,325.00	$0.00	$850,000.00	
Total		$1,575,000.00	$0.00	$332,970.00	$0.00	$1,515,000.00	
REVENUE							
242-735-00.0000-405.000	LOCAL TAX CAPTURE	$140,000.00	$308,356.21	$143,300.00	$73,024.48	$240,000.00	Estimate based on future projects in valuation and capture timelines
242-735-00.000-665.001	INTEREST ON INVESTMENTS	$12,000.00	$136,563.23	$105,000.00	$0.00	$121,758.00	0.03 multiplier (per Management Services)
242-735-00.000-669.001	UNREALIZED GAIN/LOSS ON INVEST	$0.00	$31,607.02	$0.00	$0.00	$0.00	
242-735-00.000-684.000	USES OF RESERVES (BUDGET ONLY)	$1,423,000.00	$0.00	$0.00	$0.00	$1,153,242.00	
Total		$1,575,000.00	$476,526.46	$248,300.00	$73,024.48	$1,515,000.00	

		2023 Budget	2023 Actuals	2024 Budget	2024 YTD Budget	2025 Projected Budget	Notes
Fund 243: Brownfield Redevelopment Authority Fund							
REVENUES							
243-735-00.000-405.000	LOCAL TAX CAPTURE	$2,086,967.00	$2,803,476.51	$3,075,470.00	$26,949.03	$3,194,500.00	Estimate based on 2024 values and TIR
							$2,650,000 - Local Tax Capture - Developers
							$0 - Local Tax Capture - BRA
							$119,300 - Local Tax Capture - Ramp 3
							$425,200 - Local Tax Capture - BRA Admin Fee
243-735-00.000-586.101	CONTRIBUTIONS FROM GENERAL FUND	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-586.272	CONTRIB FR ECONOMIC INITIATIVE FUND	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-607.001	APPLICATION FEE	$0.00	$0.00	$0.00	$10,000.00	$50,000.00	Estimate based on past applications
243-735-00.000-642.002	SALE OF PROPERTIES HELD FOR RESALE	$0.00	$0.00	$300,000.00	$34,192.50	$368,000.00	Based on existing PSA, likely to close
243-735-00.000-665.001	INTEREST ON INVESTMENTS	$1,000.00	$96,387.57	$25,500.00	$0.00	$25,000.00	0.03 multiplier (per Management Services)
243-735-00.000-665.002	INTEREST - LOANS	$2,300.00	$1,975.88	$2,000.00	$0.00	$2,000.00	
243-735-00.000-667.001	PROPERTY RENT REVENUES	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-669.001	UNREALIZED GAIN/LOSS ON INVEST	$0.00	$38,949.07	$0.00	$0.00	$0.00	
243-735-00.000-676.000	REIMBURSEMENTS	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-680.000	OTHER REVENUES	$23,000.00	$5,850.00	$20,000.00	$0.00	$0.00	
243-735-00.000-680.001	LOAN PRINCIPAL PAYMENT	$34,176.00	$32,199.66	$34,176.00	$0.00	$32,800.00	Rivers Edge - MDEQ/EGLE Loan Payment
243-735-00.000-680.901	LOAN PRINCIPAL PAYMENT - CONTRA	$0.00	$32,199.64	$0.00	$0.00	$0.00	
243-735-00.000-684.000	USE OF RESERVES (BUDGET ONLY)	$0.00	$0.00	$0.00	$0.00	$0.00	
Total		$2,147,443.00	$3,011,038.33	$3,457,146.00	$71,141.53	$3,672,300.00	

EXPENDITURES							
243-735-00.000-702.001	BASE PAY					$106,458.00	
	CUMMULATIVE BENEFITS					$43,453.00	
243-735-00.000-727.001	OFFICE SUPPLIES AND FORMS	$500.00	$87.85	$3,000.00	$275.06	$0.00	
243-735-00.000-727.002	MEETING SUPPLIES	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-729.000	OPERATING SUPPLIES	$1,000.00	$512.08	$12,000.00	$254.11	$2,500.00	Based on past expenses (revised down)
243-735-00.000-750.000	REPAIR AND MAINTENANCE SUPPLIES	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-801.000	PROFESSIONAL AND CONTRACTUAL SERVICES	$175,000.00	$41,796.77	$70,000.00	$31,023.95	$274,000.00	
243-735-00.000-801.001	BANK FEES	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-801.004	AUDIT FEES	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-802.001	LEGAL SERVICES	$0.00	$51,771.50	$120,000.00	$25,127.86	$120,000.00	Existing contract with Dickinson-Wright
243-735-00.000-802.010	RECORDING FEES	$0.00	$0.00	$600.00	$0.00	$0.00	
243-735-00.000-802.011	LEGAL NOTICES	$0.00	$0.00	$1,500.00	$0.00	$1,500.00	
243-735-00.000-804.001	ENVIRONMENTAL STUDIES	$95,000.00	$0.00	$55,000.00	$0.00	$0.00	Using LBRF in 2025
243-735-00.000-804.002	ENVIRONMENTAL REMEDIATION	$95,000.00	$0.00	$95,000.00	$0.00	$0.00	Using LBRF in 2025
243-735-00.000-810.000	OTHER OPERATIONAL	$20,500.00	$879.80	$0.00	$0.00	$20,000.00	Professional Dvlpmt (Natl Brownfields Conf)
	Question about Projects Budgets						
243-735-00.000-810.003	MEMBERSHIPS AND SUBSCRIPTIONS	$500.00	$114.11	$2,500.00	$0.00	$3,000.00	
243-735-00.000-815.000	SOFTWARE AND APPLICATIONS	$0.00	$765.15	$0.00	$0.00	$0.00	
243-735-00.000-829.002	PROPERTY TAX EXPENSE	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-830.001	ADMINISTRATIVE FEES	$28,002.00	$23,340.00	$15,096.00		$39,297.00	Per Management Services, from cost allocation plan (based on transations volume)
243-735-00.000-880.000	PROMOTION AND ADVERTISTING	$30,000.00	$5,714.42	$12,000.00	$12,024.00	$12,500.00	
243-735-00.000-920.001	ELECTRICITY	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-920.002	NATURAL GAS	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-920.003	WATER AND SEWER	$0.00	$0.00	$0.00	$0.00	$0.00	

243-735-00.000-930.000	REPAIRS AND MAINTENANCE SERVICES	$0.00	$7,303.00	$0.00	$0.00	$0.00	
243-735-00.000-930.001	GROUNDS MAINTENANCE	$90,000.00	$41,493.60	$90,000.00	$32,704.61	$18,000.00	Mowing only for 2025
243-735-00.000-931.000	VEHICLE MAINTENANCE SERVICES	$2,400.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-960.369	TRANSFER TO BA DEBT FUND					$119,300.00	Ramp 3 bond repayment
243-735-00.000-965.001	BAD DEBTS EXPENSE	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-967.002	ASSETS HELD FOR RESALE	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-967.003	TAX REVERTED PROPERTY	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-967.005	TIF REIMBURSEMENTS - DEVELOPERS	$1,815,587.00	$2,434,724.28	$2,615,900.00	$0.00	$2,650,000.00	Estimate based on 2024 values and TIR
243-735-00.000-971.000	LAND	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-973.000	LAND IMPROVEMENTS	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-974.000	BLDGS, ADDITIONS & IMPROVEMENTS	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-00.000-977.000	VEHICULAR EQUIPMENT	$0.00	$0.00	$4,954.00	$0.00	$4,954.00	EDC/BRA Share
243-735-00.000-979.000	INFRASTRUCTURE	$0.00	$0.00	$0.00	$0.00	$0.00	
243-735-01.000-920.001	ELECTRICITY (667 East Michigan)					$2,000.00	
243-735-07.00-801.000	Allied/Panelyte (Due Care)					$37,500.00	Shared contractual services, owners rep
243-735-00.00-991.003	MDEQ 600 E Michigan (Rivers Edge) Loan Pymt (Principal)					$14,781.00	Based on amortization schedule
243-735-00.00-993.003	MDEQ 600 E Michigan (Rivers Edge) Loan Pymt (Interest)					$1,624.00	Based on amortization schedule
Total		$2,353,489.00	$2,608,502.56	$3,097,550.00	$101,409.59	$3,470,867.00	