

Agenda

Brownfield Redevelopment Authority

Board of Directors

City of Kalamazoo



Thursday, March 20, 2025

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 February 20, 2025.

D. PUBLIC COMMENTS

E. DIRECTOR COMMENTS

F. NEW BUSINESS

1. Approval of the Sixth Amendment to the Purchase and Sale Agreement related to 116 West Cedar Street to extend the investigation period.

(**ACTION:** Motion to approve and authorize the Sixth Amendment to the Purchase and Sale Agreement related to 116 West Cedar Street to extend the investigation period, with such amendment being in such form as approved by the Board Chair and subject to review by legal counsel.)

2. Adoption of Resolution Approving a Development and Reimbursement Agreement with Helping Other People Exceed Thru Navigation for the Tiny Houses of Hope Project

(**ACTION:** Motion to adopt a resolution approving and authorizing a Development Agreement to provide advance reimbursements to Tiny Home of Hope in a not to exceed amount of \$60,000, with such agreement being in such form as approved by the Board Chair and subject to review by legal counsel.)

3. Adoption of a Resolution Approving the Second Amendment to the Brownfield Plan Development Agreement related to 266 E. Michigan Avenue in order to

provide Local Brownfield Revolving Funds for Water Main Connection Fees.

(**ACTION:** Motion to adopt a Resolution approving and authorizing the Second Amendment to the Brownfield Plan Development Agreement related to 266 E. Michigan Avenue in order to provide LBRF funds for water main connection fees, with such amendment being in such form as approved by the Board Chair and subject to review by legal counsel.)

4. Approval of a Contract Renewal with Dickinson-Wright to provide legal services to the Brownfield Redevelopment Authority from April 2025 - December 2026.

(**ACTION:** Motion to approve and authorize a Contract Renewal with Dickinson-Wright to provide legal services to the Brownfield Redevelopment Authority from April 2025 - December 2026.)

G. UNFINISHED BUSINESS

H. COMMUNICATIONS AND ANNOUNCEMENTS

I. STAFF REPORTS AND UPDATES

J. ADJOURNMENT

**CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY BOARD MEETING
Thursday, February 20, 2025
Community Planning and Economic Development
245 N. Rose Street, Kalamazoo, MI 49007**

MEMBERS PRESENT: Sharon Ferraro; Rachel Bair; Kevan Hess; Jason Novotny; Kyle Gulau; Nathan Bolton

MEMBERS ABSENT: Lucas Middleton; Andrew Schipper; Michael Gurnee; Alonzo Wilson

CITY COMMISSIONERS/CITY STAFF PRESENT: Jamie McCarthy (Development Manager); *Jessica Wood (Attorney, Dickinson Wright); Logan Mulholland (Fishbeck, Consultant); Jared Chambers (Business Specialist); Heidi Waffle (Brownfield Project Assistant)

*Attorney Wood attended the meeting virtually.

Meeting was called to order at 8:56 AM by Chair Novotny.

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

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

Chair Novotny shared Item 5 would be added under New Business for a Bronco Commons update.

Director Gulau also motioned to switch Item 3 of New Business to Item 1.

APPROVAL OF MINUTES: Director Ferraro moved approval of minutes from the meeting of January 16, 2025 as presented; seconded by Director Gulau. Motion approved by voice vote unanimously.

PUBLIC COMMENTS

Mr. Fritz Brown, representative of TreyStar, shared he is with the 215 E Michigan project – Item 1 on the amended agenda, which has a Brownfield, OPRA, and loan from the EDC. He said they today they are asking for the \$9,785 for demolition work on the upstairs. From the beginning they promised to put a compatible use in the upstairs, and they decided the best course of action would be to have TreyStar offices move up there. He said the project is still healthy and going strong. He appreciates everything the board has done for their project and everything they do.

DIRECTOR'S COMMENTS

None.

PUBLIC HEARING

1. Public hearing for an Act 381 Brownfield Plan for the Redevelopment Project at 447 W North St and 707 N Westnedge Ave, Kalamazoo, MI.
 - a. Opening of the Public Hearing: The public hearing was opened at 9:01 AM.
 - b. Project Presentation: Ms. Logan Mulholland, Fishbeck consultant, explained the project and

brownfield plan, as found in the agenda packet. She shared they qualify as a housing property, but because they are not seeking a financing gap, they will not need to meet compliance requirements.

- c. Public Comment Period: None.
- d. Board of Directors Comments: None.
- e. Closing of the Public Hearing: The public hearing was closed at 9:07 AM.

NEW BUSINESS

1. Adoption of a Resolution Approving Reimbursement Request #3 for 215 E Michigan Avenue in the Amount of \$9,785.

Ms. Mulholland shared information regarding the request, as found in the agenda packet.

**Director Gulau moved adoption of a Resolution Approving Reimbursement Request #3 for 215 E Michigan Avenue in the Amount of \$9,785; seconded by Director Bolton.
A roll call vote was taken, and the motion passed unanimously.**

2. Approval of an Interlocal Agreement between the Brownfield Redevelopment Authority and Northside Cultural Business District Authority to Capture Tax Increment Revenue for 447 West North Street, Kalamazoo, Michigan.

Ms. McCarthy shared these interlocal agreements are signed by both parties and will be recorded with the County. Per legal counsel, they are also going to add a not-to-exceed dollar amount to the agreement that matches the brownfield plan.

**Director Ferraro moved approval of an Interlocal Agreement between the Brownfield Redevelopment Authority and Northside Cultural Business District Authority to Capture Tax Increment Revenue for 447 West North Street, Kalamazoo, Michigan; seconded by Director Bair.
A roll call vote was taken, and the motion passed unanimously.**

3. Adoption of a Resolution Approving the Implementation of an Act 381 Brownfield Plan for the Redevelopment Project at 447 W North St and 707 N Westnedge Ave and Recommending City Commission Adopt the Plan.

Ms. McCarthy shared the loan agreement will come forward on a future agenda as a separate item.

**Director Hess moved adoption of a Resolution Approving the Implementation of an Act 381 Brownfield Plan for the Redevelopment Project at 447 W North St and 707 N Westnedge Ave and Recommending City Commission Adopt the Plan; seconded by Director Bolton.
A roll call vote was taken, and the motion passed unanimously.**

4. Approval of a Contract Renewal with Dickinson-Wright to provide legal services to the Brownfield Redevelopment Authority from April-December 2025.

**Director Gulau moved approval of a Contract Renewal with Dickinson-Wright to provide legal services to the Brownfield Redevelopment Authority from April-December 2025; seconded by Director Bolton.
A roll call vote was taken, and the motion passed unanimously.**

5. Approval for the Chairperson and Legal Counsel to Negotiate More Substantive Changes Beyond What the Board Approved at the Meeting on January 16, 2025 for the Development and Reimbursement Agreement

Relating to 3625 W Michigan Avenue.

Ms. McCarthy shared in the previous month the board approved a draft development and reimbursement agreement for the Bronco Commons brownfield plan. It is the first housing TIF project the board has seen. The way the terms were laid out in the previous draft included a very specific AMI and income limit. She shared the development team has talked about the specific AMI limits that were listed in the agreement and how restrictive they are to find an exact income match for an exact unit rental rate. She said the City is still very interested in making sure that those AMI limits are at or around the 100% AMI level. The development team is close to getting their draft work plan done. They are also asking about a restrictive covenant that the City wants to have recorded while the TIF repayment period is active. These items are the current negotiation points, and staff feels that these are starting to be substantive changes that went beyond what the board approved in the previous month. This item is brought to the board today seeking approval to continue these negotiations with the board chair and legal counsel.

Director Hess asked if they feel the terms are unfair or if they are just so new that it is just part of the negotiation to work through.

Ms. Mulholland and Attorney Wood said MSHDA is still working on things, so they are running into negotiations due to that as well.

Director Gulau asked if we are surprised by the request of the developers. He asked if the reporting requirements and that they won't be able to match the AMI per unit are their main concerns.

Ms. McCarthy shared it is not necessarily the rental rates that they are concerned about. The developer gave an example that they would have to look for and find someone who makes exactly within a certain pay-band. There have been discussions about giving a range of what AMI the units need to be at so there is a bigger pool of potential renters with a larger pay-band. They are checking that with MSHDA because the guidance is not yet clear about whether the rents and incomes have to match perfectly or if some gap is allowed for them to have a larger renter pool. She said it is negotiating the risks to the developer and the tolerance of the City to make sure the right renters are getting into these units – but that they also are not creating unneeded vacancies and driving up vacancy rates for these developments.

Director Hess said he would be in favor of giving them some flexibility. The biggest thing is that they can fill the need for what the community has.

Director Gulau moved approval for the Chairperson and Legal Counsel to Negotiate More Substantive Changes Beyond What the Board Approved at the Meeting on January 16, 2025 for the Development and Reimbursement Agreement Relating to 3625 W Michigan Avenue; seconded by Director Hess. A roll call vote was taken, and the motion passed unanimously.

UNFINISHED BUSINESS

None.

COMMUNICATIONS AND ANNOUNCEMENTS

None.

STAFF REPORTS AND UPDATES

1. Financial Reports (2024 Year End – Fund 242 Local Brownfield Revolving Fund & Fund 243 BRA Operations).

Ms. McCarthy shared information on the financial reports from the 2024 fiscal year. She explained revenues that came in due to payment of two Part Two brownfield applications, as well as property sale proceeds from 508 Harrison and 708 Ampersee. For state brownfield grants, they had up to 2.03 million budgeted for revenues in case they happened to work all the way through their grants. They did not, so there is 1.7 million rolling over into next years budget. These projects include the Brewsters redevelopment site and River’s Edge.

Ms. McCarthy moved on to the expenses, which were estimated as best as possible based on what they expect to spend in all of those categories. She pointed out that professional and contractual services had some contracts that were shifted over from grounds maintenance. The revenues in and expenses out do not always match up due to the fact they take in local tax increment financing in one year and pay it out in a subsequent year.

Ms. McCarthy shared they had more TIF revenues into the LBRF than was originally budgeted. There are no other significant sources of funding into this fund. The only expenses out of the LBRF was the loan to Zone 32 for their pre-development costs.

ADJOURNMENT: The meeting was adjourned at 9:31 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: March 20, 2025

SUBJECT: Approval of the Sixth Amendment to the Purchase and Sale Agreement related to 116 West Cedar Street to extend the investigation period.

RECOMMENDATION:

It is recommended the BRA approve the Sixth Amendment to the Purchase and Sale Agreement related to 116 West Cedar Street to extend the investigation period for an additional 6-month period.

BACKGROUND:

City staff continue to meet with representatives of the development team to discuss design and zoning considerations for a residential development at the site, as well as explore financial incentives at the local and state levels. Staff is recommending an additional six-month extension of the investigation period to allow the development team to continue progress on the site design and project pro forma. 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 anticipated at this time.

SIXTH AMENDMENT TO THE 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**”), 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**,” and together with 116 West Cedar, the “**Purchaser**”) entered a Purchase and Sale Agreement dated September 27, 2021 (hereinafter, the “**Agreement**”), for the property 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 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. On September 26, 2024, the BRA and Purchaser signed the Fifth Amendment to the Purchase and Sale Agreement to extend the Investigation Period until March 27, 2025 at 5:00 p.m. Eastern Daylight Time.
- F. Since signing the Fifth 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.
- G. Both BRA and Purchaser agree to enter this Sixth Amendment to the Purchase and Sale Agreement.

AGREEMENT

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

“The ‘**Investigation Period**’ commences on the Effective Date of this Agreement and expires on September 30, 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 shall become effective on the last signature date set forth below.

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

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

CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

Lucas Middleton, Authorized Signer

Dated: _____

116 W. CEDAR, LLC

Roger E. Hinman, Manager
Authorized Representative

Dated: _____

BURDICK@CEDAR, LLC

Joseph L. Gesmundo, Manager
Authorized Representative

Dated: _____



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: March 20, 2025

SUBJECT: Adoption of Resolution Approving a Development and Reimbursement Agreement with Helping Other People Exceed Thru Navigation for the Tiny Houses of Hope Project

RECOMMENDATION:

It is recommended the BRA adopt a Resolution approving the Development and Reimbursement Agreement with Helping Other People Exceed Thru Navigation for the Tiny Houses of Hope Project.

BACKGROUND:

On March 3, 2025 the City of Kalamazoo City Commission adopted a Brownfield Plan in support of the Tiny Houses of HOPE Development. The project provides permanent, affordable, supportive, and safe housing for adults without dependents who have a criminal background and/or a history of substance use disorder and meet eligibility requirements. Phase I of the development consists of three 400-square-foot tiny homes at 447 West North Street, completed in 2024 by HOPE through Navigation, a local nonprofit services organization. Phase II will incorporate an on-site leasing building offering Wrap-Around Navigation Services and Supports tailored to the population served.

The attached Development and Reimbursement Agreement with the Developer provides a Tax Increment Revenue (TIR) advance for unanticipated brownfield expenses encountered during the first phase. These eligible activities are outlined in the Brownfield Plan. The TIR advance will be paid from the Local Brownfield Revolving Fund (LBRF). Future TIR captured from local property taxes will be used to reimburse the LBRF.

The Agreement provides direct payment to the Developer's General Contractor, Adam Garland Construction, Inc. for site demolition activities in an amount not-to-exceed \$32,952.00. The Developer is eligible for a direct payment in an amount not-to-exceed \$24,000.

FISCAL IMPACT:

The fiscal impact for this item is related to the amounts approved in the Act 381 Brownfield Plan presented to the BRA on February 20, 2025. Administrative costs to implement the plan will be covered by the Tax Increment Revenues captured from the project.

The Agreement provides direct payment to the Developer's General Contractor, Adam Garland Construction, Inc. for site demolition activities in an amount not-to-exceed \$32,952.00. The Developer is eligible for a direct payment in an amount not-to-exceed \$24,000.

**CITY OF KALAMAZOO BROWNFIELD
REDEVELOPMENT AUTHORITY**

**A RESOLUTION APPROVING THE BROWNFIELD PLAN DEVELOPMENT
AND REIMBURSEMENT AGREEMENT BETWEEN THE BROWNFIELD
REDEVELOPMENT AUTHORITY AND HELPING OTHER PEOPLE
EXCEED THRU NAVIGATION, LLC**

Boardmember _____, supported by Boardmember _____,
moved the adoption of the following resolution:

WHEREAS:

1. On February 20, 2025, following a public hearing, the Authority approved a resolution recommending the City of Kalamazoo City Commission adopt the Act 381 Brownfield Plan for 447 W. North Street and 707 N. Westnedge Avenue (the "Plan"); and
2. On March 3, 2025 the City of Kalamazoo City Commission adopted the Plan for 447 W. North Street and 707 N. Westnedge Avenue; and
3. The parties are entering into this Agreement to establish the procedure for the reimbursement from Tax Increment Revenues under Act 381 as amended. The Agreement authorizes the direct payment to Adam Garland Construction, Inc. in an amount not-to-exceed \$32,952 and to the Developer in an amount not-to-exceed \$24,000.

RESOLVED:

1. That the Brownfield Plan Development and Reimbursement Agreement between the Authority and the Developer substantially in the form presented at this meeting is approved with such modifications not materially adverse to the Authority, approved as to content by the Authority's Chair and as to form by the Authority's legal counsel; and
2. That the Chairperson of the Board of Directors of the Authority is authorized and directed to execute the approved Agreement for and on behalf of the Authority; and
3. That all resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

YEAS: Boardmembers _____

NAYS: Boardmembers _____

ABSTAIN: Boardmembers _____

ABSENT: Boardmembers _____

RESOLUTION DECLARED ADOPTED.

Dated: March 20, 2025

_____, Secretary

CERTIFICATION

I, the undersigned duly qualified and acting Secretary of the City of Kalamazoo Brownfield Redevelopment Authority, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Directors of the Brownfield Redevelopment Authority at a meeting held on March 20, 2025, and that public notice of said meeting was given pursuant to, and in accordance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

Dated: March 20, 2025

_____, Secretary

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

This Development and Reimbursement Agreement (the "Agreement"), is entered into on _____, 2025 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 241 W. South St., Kalamazoo, Michigan 49007 (the "Authority"), and Helping Other People Exceed Thru Navigation, whose address is 806 S. Westnedge Ave., Kalamazoo, Michigan 49008 (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 and Authority owns property in the City located at 447 W. North Street and 707 N. Westnedge Avenue (the "Property") and legally described on the attached Exhibit A.
- F. The Property has been included in the Plan, attached as Exhibit B, and qualified as an "Eligible Property" under the terms of Act 381.
- G. Developer intends to redevelop the site for residential housing and commercial uses at the Property. The site will be home to six tiny houses for those with criminal backgrounds and/or substance use disorder history who meet eligibility requirements. These investments are expected to create six jobs at this location and six residential units reserved for households with income at or below 120% of Area Median Income and would increase the property tax base within the City of Kalamazoo (the "Project").
- H. The Project will require the Developer to incur Eligible Costs associated with certain Eligible Activities including due diligence, due care, and site demolition, which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The Developer's Eligible Costs shall not exceed \$56,952, comprised of a payment of \$32,952 to the General Contractor for site demolition and up to \$24,000 to Developer for due diligence at 707 N. Westnedge Avenue.
- I. The parties are entering into this Agreement to establish the procedure for advancing funds from the Local Brownfield Revolving Fund (the "Fund") to reimburse Developer

for Eligible Costs, the reimbursement of the Fund from Tax Increment Revenues from eligible property over time under Act 381 as amended, and terms of repayment for any Tax Increment Revenue shortfall.

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 City of 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, the Authority shall capture that amount of Tax Increment Revenues generated from real and personal property taxes allowed by law on the Eligible Property. Capture will begin in the first full year after the year the Project is completed, which is achieved once a final certificate of occupancy is obtained, and will continue until the earlier of:

3.1 Full reimbursement to the Authority of its Administrative Costs, plus Full reimbursement of costs advanced from the Fund to the Developer for all approved Eligible Costs 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") to be designated to the Fund; or

3.2 12 years. With five of the 12 years designated for the Fund only.

4. Evidence of Ownership. Prior to the execution of this Agreement, 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, shall reflect that all material conditions to the issuance of a policy thereunder have been satisfied, and shall otherwise be in form and 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 reimburse the Developer for Eligible Costs incurred on or after the date of the inclusion of this Project in the Plan, unless otherwise agreed upon by the Authority and included in the Plan, and may include environmental, non-environmental, and housing development activities, including due diligence, due care, and site demolition, which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals.

6. Reimbursement Source. Subject to the terms and conditions of this Agreement and during its term, except as otherwise set forth in this Agreement, the Authority shall reimburse the Developer for its Eligible Costs, as limited under this Agreement, only from available monies from the Fund, which shall be reimbursed and replenished from all available Tax Increment Revenues collected from the real and personal property taxes on the Property.

7. Reimbursement Process.

7.1 Cost Reimbursement Documentation. 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 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 Project completion. Failure to provide the above noted information when due, or within the time permitted by the Authority under Paragraph 7.2, may result in foregone reimbursement or advance payment, to the Developer by the Authority, for Eligible Costs that have not been requested within the timeframe described above.

7.2 Authority Staff Review. The Authority Staff shall review each reimbursement request within 60 days after receiving it. If Authority Staff determines that the documentation submitted by the Developer is not complete, then Developer shall cooperate in the Authority's review by providing, within 30 days of the Authority's request, any additional documentation of the Eligible Costs as deemed reasonable and necessary by the Authority in order to complete its review. Within 30 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 30 days of the determination, and the issue shall be brought to the Authority within 45 days thereafter for a final determination. The Developer shall not have any further appeal rights to challenge the final determination of the Authority and shall not be entitled to any claim or cause of action 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 claims or causes of action as a result of the foregoing.

7.3 Reimbursement. After a certificate of occupancy has been obtained, and contingent upon Developer's compliance with the terms herein, the Authority shall pay approved Eligible Costs to the Developer as an advance from the Fund and use Tax Increment Revenues that are generated from the Property to reimburse the Fund in accordance with the Plan and Paragraph 7 herein.

(a) The Authority shall receive ten (10) percent of Tax Increment Revenues each year until fully reimbursed for all Administrative Costs, unless otherwise designated by the Authority.

(b) When an Act 381 Work Plan is approved by the State of Michigan, the Authority will capture 50% of the State Education Tax to be held for the State Brownfield Redevelopment Fund ("SBRF"), in accordance with Section 13(b)(14) of Act 381.

(c) Once the Authority is fully reimbursed for its Eligible Costs, the Fund shall receive the available Tax Increment Revenue, less Administrative and SBRF Costs, during the term of this Agreement, until all of the amounts for which advance payments have been made have been fully re-paid to the Fund, or the repayment obligation expires, whichever occurs first.

(d) The Developer shall not be entitled to advance payment 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 advance payment obligation under this Agreement shall expire upon

the earlier of (i) the full payment by the Authority to the Developer of all amounts due the Developer from the Fund or (ii) 7 years from the beginning of Tax Increment Revenue capture.

7.4 Method of Payment. Subject to the terms of this Agreement, the Authority will issue advance payment from the Fund to the Developer for Eligible Costs as follows:

Checks shall be payable to and delivered by certified mail (or through electronic transfer if available through Contractor) directly to General Contractor for site demolition in an amount not-to-exceed \$32,952.00 to:

Adam Garland Construction Inc.
6825 Stadium Drive
Kalamazoo, MI 49009

Check shall be payable to and delivered by certified mail (or through electronic transfer if available through Developer) for due diligence in an amount not-to-exceed \$24,000 to:

Helping Other People Exceed Thru Navigation
806 S Westnedge Avenue
Kalamazoo, MI 49008

8. Adjustments. The parties acknowledge that adjustments regarding the amount of advance payments from the Fund 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 other owner of real estate on the Property, files an appeal with the Michigan Tax Tribunal, 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 Revenues in a separate account for the Authority until the pending appeal is adjudicated.
- b. The Authority will halt any payment of advanced funds requested by Developer until the pending appeal is adjudicated.
- c. 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, the Developer indemnifies and will fully reimburse the Authority within 30 days of notification from the Authority as to the amount and the due date for all Costs as defined within the Plan, expenses or reduction in revenue from what was Projected as the tax increment capture.

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, Developer agrees to the following:

9.1 Project. At its sole expense, Developer shall use its best efforts to conduct the activities described in the Plan to construct the Project. The Developer intends to transform the property into an affordable housing development. The new investment planned for this site includes construction of six tiny houses and two commercial buildings for an initial planned investment of \$1,200,000. The Developer shall construction and make available for rent at least 6 Income Restricted Units which shall be rented at rates affordable to households at or below 120% AMI according to MSHDA annual Income and Rent Limits for Kalamazoo County. Subject to matters beyond the reasonable control of Developer (e.g., war, acts of God, exceptional health concerns for which a “stay at home” or “shelter in place” order is issued by an applicable governmental authority, etc.) (“Force Majeure”), Developer shall commence construction of the Project on a date (“Commencement Date”) that is within six months of full execution of the Agreement. Developer shall use commercially reasonable efforts to substantially complete the Project to the point of receiving a Certificate of Occupancy within 36 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 the Fund.

9.2 Employment Opportunities. Developer shall 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 construction and site related work. Regardless of the 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 and “Non-discrimination” policy regarding hiring employees who will work on the Project. A copy of the policies are attached as Exhibit

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 to promote the Project and the Authority’s participation in it utilizing a logo or any artwork provided by 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 Income and Rent Documentation and Reporting.

(a) The Developer shall provide on an annual basis to the Authority no later than June 15 each year during the term of reimbursement a report as requested by the Authority, including but not limited to, for the preceding calendar year pursuant to the reporting requirements under Section 16 of Act 381:

1. Total Investment and new capital investment since the prior year's report
2. Square footage of the new construction or renovation, including whether the space is residential, commercial, or other use
3. New jobs created
4. Total number of housing units and total number of Income Restricted Units, indicating the number rented to residents at or below 120% of AMI
5. Number of Income Restricted Units rented during the annual reporting period
6. Number of Income Qualified renting households assisted during the annual reporting period
7. Income Restricted Unit rental rates
8. Racial and socioeconomic data on the individuals purchasing or renting the Income Restricted Units, or if this data is not available, racial and socioeconomic data on the census tract in which the housing units are located

(b) Other information required to be reported to the State of Michigan to verify compliance with Act 381 unless that information is readily available to the City of Kalamazoo Treasurer.

9.7 Payment of Authority Legal and Professional Fees. To the extent the following costs and fees are not paid to the Authority from Tax Increment Revenues, the Developer shall reimburse the Authority for its legal and professional fees and disbursements incurred in connection with the review, approval and administration of the Plan for this Project, including any further amendments thereto; the preparation and negotiation of this Agreement, as it may be amended from time to time; and all documents and matters related thereto, including future expense. Developer shall reimburse the Authority for such expenses within 30 days from the date that the Authority sends an invoice and request for payment to Developer.

9.8 Repayment of Advanced Fund Payments. During the Term of this Agreement, if the Property becomes exempt from property taxes or is sold or transferred, the Developer shall promptly repay to the Authority any and all advanced payments made to Developer from the Fund. Further, if the Tax Increment Revenues collected from the Property are insufficient to reimburse the Fund for the advanced payments made to the Developer, the Developer shall promptly repay to the Authority such shortfall.

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. Subject to actual capture and as limited and detailed in this Agreement, to utilize available Fund monies to reimburse Developer for Eligible Costs incurred by Developer in completing the Project and to reimburse the Fund with available Tax Increment Revenues collected pursuant to the Plan.

10.3 Cooperation. Cooperate and utilize its best efforts to obtain any governmental approvals required to close the transaction contemplated by this Agreement.

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

11.1 Eligible Property. 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 or indicates its intention to do so.

12.4 The Developer fails to pay any funds within 30 days of the date due 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.

12.5 The Developer terminates its existence.

12.6 Any material provision of this Agreement shall cease to be valid and binding on the Developer or shall be declared null and void; the validity or enforceability of such provision shall be contested or denied by the Developer; or the Developer denies that it is bound by this Agreement.

13. Remedies upon Default. If any event of default as defined above shall occur and be continuing for 30 days after written notice of default from the Authority, 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) In addition, if Developer fails to substantially complete the Project with 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 repay 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 phases of the Project pursuant to the terms of this agreement or otherwise;

(c) Withhold, suspend or rescind reimbursement to Developer for Eligible Cost from Tax Increment Revenue or the Fund as set forth in Paragraph 7 until Developer as 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;

(d) Declare any and all payments made to Developer to be paid back immediately to the Authority in full, including the Authority's costs of enforcement and collection thereof; and

(e) All other remedies available at law or in equity.

Following a default by Developer, or following expiration or termination of this Agreement for any reason, Developer shall then be responsible for all subsequent Project costs, including Eligible Costs, without contribution from Tax Increment Revenues collected by the Authority from taxes levied on the Property or any appropriated Fund balances.

14. Legislative Authorization. This Agreement is governed by and subject to the restrictions set forth in the Act. 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:	Helping Other People Exceed Thru Navigation 806 W. Westnedge Avenue Kalamazoo, Michigan 49008
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If to the Authority:	City of Kalamazoo Brownfield Redevelopment Authority 241 West South Street Kalamazoo, Michigan 49007
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With copy to:	Authority Attorney
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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 or Fund monies 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 Authority and any other parties. 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. Definitions. The following capitalized terms are used in this Agreement with the following meanings:

“AMI” means Area Median Income and is the midpoint of a specific area’s household income distribution;

“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 and/or any third party monitoring of rent and income restricted units.)

“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.

“Housing Development Activities Financing Gap” (the “Financing Gap”) is a MSHDA Eligible Activity defined in Act 381 in part as reimbursement provided to a developer to

fill a financing gap associated with the development of housing units priced for Income Qualified households.

"Income Qualified" or "Income Qualifications" means household incomes at or below 120% of AMI for Kalamazoo County, as determined annually by MSHDA.

"Income Restricted Units" means residential rental units occupied by Income Qualified households.

"MSHDA" means the Michigan State Housing Development Authority.

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 _____

Title _____

Date _____

DEVELOPER

By _____

Title _____

Date _____

EXHIBITS:

A (Legal Description of Property)

B (Copy of Brownfield Plan)

C (Ex-offender Purchasing Policy)



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: March 20, 2025

SUBJECT: Adoption of a Resolution approving the Second Amendment to the Brownfield Plan Development Agreement related to 266 E. Michigan Avenue in order to provide Local Brownfield Revolving Funds for Water Main Connection Fees.

RECOMMENDATION:

It is recommended the BRA adopt a Resolution approving the Second Amendment to the Brownfield Plan Development Agreement related to 266 E. Michigan Avenue in order to provide Local Brownfield Revolving Funds for water main connection fees.

BACKGROUND:

The mixed-use redevelopment project at 266 E. Michigan Avenue has encountered an unanticipated increase in the Water System Capacity Buy-In Fee assessed by the City of Kalamazoo Department of Public Services Water Resources Division. Staff and the Developer have discussed options to address this cost increase.

Staff recommends that the Brownfield Redevelopment Authority approve an amendment to the Development Agreement to provide a one-time payment from the Local Brownfield Revolving Fund (LBRF) to cover the difference between the originally estimated fee (\$3,760.00) and the actual fee assessed.

Terms of the Amendment

- The Authority will provide a one-time payment from the LBRF to assist with the increased cost of the Water System Buy-In Fee.
- The payment will be limited to the difference between the estimated fee (\$3,760.00) and the final assessed fee, based on acceptable documentation.
- Payment will be made within ninety (90) days of the Authority's receipt of satisfactory documentation of the final fee and permit approvals for the water main connection.

- This funding is in addition to the previously approved Tax Increment Revenues (up to \$303,875.00) committed to the project.

Upon Board approval, staff will execute the amended agreement with the Developer and proceed with processing the reimbursement upon completion of the work and receipt of required documentation.

FISCAL IMPACT:

A yet-to-be determined amount of funding from the Local Brownfield Revolving Fund will be reimbursed to 266 Michigan Ave Kalamazoo LLC for the Water System Capacity Buy-In Fee for 266 E. Michigan Avenue, Kalamazoo MI. The payment will be limited to the difference between the estimated fee by the City of Kalamazoo, Public Services Department (\$3,760.00) and the final assessed fee by the Department, based on acceptable documentation by the Authority.

**CITY OF KALAMAZOO BROWNFIELD
REDEVELOPMENT AUTHORITY**

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A
SECOND AMENDMENT TO BROWNFIELD PLAN DEVELOPMENT
AGREEMENT WITH 266 MICHIGAN AVE KALAMAZOO LLC**

Boardmember _____, supported by Boardmember _____,
moved the adoption of the following resolution:

WHEREAS:

1. The Authority and 266 Michigan Ave Kalamazoo LLC (the “Developer”) entered into a binding agreement dated November 19, 2020 (the “Agreement”) concerning the procedure and requirements for the reimbursement of tax increment revenues for certain eligible expenses related to the redevelopment of qualifying eligible property located at 266 E. Michigan Avenue, all pursuant to an Act 381 Brownfield Plan for 266 E. Michigan Avenue; and
2. On December 21, 2023, following a public hearing, the Authority approved a resolution recommending the City of Kalamazoo City Commission adopt the Act 381 Brownfield Plan Amendment #1 for 266 E. Michigan Avenue (the “Amended Plan”); and
3. The City of Kalamazoo City Commission approved the Amended Plan on February 1, 2024, and on February 9, 2024 the Authority and Developer executed the First Amendment to the Agreement to include certain terms and conditions for the reimbursement of certain eligible costs as set forth in Amended Plan (the “First Amendment to Brownfield Plan Development Agreement”).

RESOLVED:

1. That the Second Amendment to Brownfield Plan Development Agreement between the Authority and the Developer substantially in the form presented at this meeting is approved with such modifications not materially adverse to the Authority, approved as to content by the Authority’s Executive Director and as to form by the Authority’s legal counsel; and
2. That the Chairperson of the Board of Directors of the Authority is authorized and directed to execute the approved Agreement for and on behalf of the Authority; and
3. That all resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

YEAS: Boardmembers _____

NAYS: Boardmembers _____

ABSTAIN: Boardmembers _____

ABSENT: Boardmembers _____

RESOLUTION DECLARED ADOPTED.

Dated: March 20, 2025

_____, Secretary

CERTIFICATION

I, the undersigned duly qualified and acting Secretary of the City of Kalamazoo Brownfield Redevelopment Authority, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Directors of the Brownfield Redevelopment Authority at a meeting held on March 20, 2025, and that public notice of said meeting was given pursuant to, and in accordance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

Dated: March 20, 2025

_____, Secretary

SECOND AMENDMENT TO BROWNFIELD PLAN DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO BROWNFIELD PLAN DEVELOPMENT AGREEMENT (the “Second Amendment”) is entered into by and 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 **266 MICHIGAN AVE KALAMAZOO LLC**, a Michigan limited liability company whose address is 1000 Front Ave. NW, Grand Rapids, Michigan 49504 (“Developer,” and together with the Authority, the “Parties”).

RECITALS

A. The Authority and Developer entered into a Brownfield Plan Development Agreement dated November 19, 2020 (the “Agreement”) concerning the procedure and requirements for the reimbursement of tax increment revenues for certain eligible expenses related to the redevelopment of qualifying eligible property located at 266 E. Michigan Avenue, Kalamazoo, Michigan 49007 (the “Property”), all pursuant to an Act 381 Brownfield Plan for the Property and as further described in the Agreement and incorporated herein by reference.

B. On February 1, 2024, the City of Kalamazoo City Commission approved the Act 381 Brownfield Plan Amendment #1 for 266 E. Michigan Avenue, and the Authority and Developer executed the First Amendment to the Brownfield Plan Development Agreement on February 9, 2024 (the “First Amendment”).

C. The Parties now desire to further amend the Agreement to clarify certain rights and obligations of the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions contained in the Agreement, the First Amendment, and this Second Amendment, including its recitals, and the benefits to be derived therefrom, receipt of which is severally acknowledged, the Authority and Developer hereby agree as follows:

Section 1. Amendment to Recital H. Recital H is hereby amended in its entirety to read as follows:

The Project will require the Developer to incur Eligible Costs associated with certain Eligible Activities including lead and asbestos surveys, environmental due diligence, lead and asbestos abatement, demolition, and infrastructure improvements, which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The Developer’s Eligible Costs to be reimbursed by Tax Increment Revenues shall not exceed \$303,875.00. An additional amount to fund a portion of the Water System Capacity Buy-In Fee, as described in Section 5.2, shall be advanced from the Local Brownfield Revolving Fund.

Section 2. Amendment to Section 5. Section 5 of the Agreement is hereby amended to read in its entirety as follows:

5. Eligible Activities.

5.1 The Developer shall diligently pursue completion of the Eligible Activities summarized in the Plan and set forth in this Paragraph. The Authority shall reimburse the Developer for Eligible Costs incurred on or after the date of the inclusion of this Project in the Plan, unless otherwise agreed upon by the Authority and included in the Plan, and may include environmental due diligence and Due Care Activities, site preparation, lead and asbestos abatement, demolition, and infrastructure improvements which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals.

5.2 In addition to the Tax Increment Revenues committed to the Project as described in Recital H (not to exceed \$303,875.00), the Authority shall provide a one-time payment to Developer from the Local Brownfield Revolving Fund (LBRF) to be exclusively used to pay a portion of the fee charged by the City of Kalamazoo Department of Public Services Water Resources Division for connection to the water main. Such amount shall be equal to the difference between the Water System Capacity Buy-In Fee stated in the Cost Estimate Proposal dated May 14, 2024 (\$3,760.00) and the actual amount charged by the City of Kalamazoo Department of Public Services Water Resources Division, as evidenced by documentation acceptable to the Authority. Such funds shall be paid to the Developer within ninety (90) days of the Authority's receipt of evidence satisfactory to the Authority, in their sole opinion, of the actual amount charged by the City of Kalamazoo Department of Public Services Water Resources Division and of permit approvals related to the water main connection.

Section 3. Amendment to Section 9.1. Section 9.1 of the Agreement is hereby amended in its entirety to read as follows:

At its sole expense, Developer shall use its best efforts to conduct the activities described in the Plan and to rehabilitate the existing building on the Property and complete the Project. The Developer intends to transform the property into first floor restaurant space with thirteen (13) residential mixed-rate apartments on the upper floors. The Project is expected to generate a total capital investment of approximately \$4.6 million. The redevelopment of the Property shall be completed no later than December 31, 2025. 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.

Section 4. Ratification. The Agreement, as amended by the First Amendment, is in all other respects hereby ratified and confirmed.

Section 5. Effective Date. This Second Amendment shall be dated and shall become effective on the last signature date set forth below.

[Signatures on Following Page.]

The signatories below warrant that they are empowered to enter into this Second Amendment.

Dated: _____

**CITY OF KALAMAZOO BROWNFIELD
REDEVELOPMENT AUTHORITY**

By: _____
Lucas Middleton

Its: Chair

Dated: _____

266 MICHIGAN AVE KALAMAZOO LLC

By: _____

Name:

Its:

[Signature Page to Second Amendment to Brownfield Plan Development Agreement]



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: March 20, 2025

SUBJECT: Approval of a Contract Renewal with Dickinson-Wright to provide legal services to the Brownfield Redevelopment Authority from April 2025 - December 2026.

RECOMMENDATION:

It is recommended the BRA approve a Contract Renewal with Dickinson-Wright to provide legal services to the Brownfield Redevelopment Authority from April 2025 - December 2026.

BACKGROUND:

The current contract with Dickinson Wright will expire on March 31, 2025. Purchasing Division obtained updated cost quote and hourly billing will remain the same in 2025 at \$240/hour rate. Staff is recommending a 21-month contract extension from April 2025 - December 2026 to align the contract with the budget year.

The adjusted not-to-exceed amounts for the contract extension are:

2025:

EDC funds of \$22,500 from 244-728-00.000-801.000

BRA funds of \$90,000 from 243-735-00.000-801.000

2026:

EDC funds of \$40,000 from 244-728-00.000-801.000

BRA funds of \$120,000 from 243-735-00.000-801.000

FISCAL IMPACT:

BRA funds of \$90,000 from 243-735-00.000-801.000 were included in the budget approved in 2025. Staff will work with the BRA when preparing the 2026 budget to approve funding for legal services to include the funds necessary to cover contract costs for the remaining portion of the contract through December 2026.

BID FORM FOR CONTRACT EXTENSION AWARD

The undersigned agrees to provide *Legal Consulting Services for BRA and EDC* for the City of Kalamazoo in conjunction with a contract extension to the original contract. The term of the contract extension shall begin on or about **April 1, 2025**, and expire on or about **December 31, 2026**, depending on date of approval. The contract provides for changes in requirements and price adjustments based on the City's needs and changes in cost for the contactor. All other terms, requirements, and conditions of the original contract, including any addendums, are hereby continued in force and effect during the term of this contract extension.

The undersigned having become thoroughly familiar with the original contract documents and any modifications incorporated herein agrees to provide *Legal Consulting Services for BRA and EDC* to the City of Kalamazoo for the following unit prices as stated below:

LEGAL CONSULTING SERVICES FOR BRA AND EDC:

BILLING RATES

APRIL 1, 2025 – December 31, 2026

Member/Partner Attorney \$ 240 /hr

Associate Attorney \$ 240 /hr

CITY OF KALAMAZOO- INTENT TO RENEW
Legal Consulting Services for BRA and EDC

Page 2
Reference No. 91874-001.2

I hereby state that all the information I have provided is true, accurate and complete. I hereby state that I have the authority to submit this bid which will become a binding contract if accepted by the City of Kalamazoo. I hereby state that I have not communicated with nor otherwise colluded with any other bidder, nor have I made any agreement with nor offered/accepted anything of value to/from an official or employee of the City of Kalamazoo that would tend to destroy or hinder free competition.

The firm's identification information provided will be used by the City for purchase orders, payment and other contractual purposes. If the contractual relationship is with, or the payment made to, another firm please provide a complete explanation on your letterhead and attach to your bid. Please provide for accounts payable purposes:

Tax Identification Number (Federal ID): 38-136433

Remittance Address: 200 Ottawa Ave., Suite 900, Grand Rapids, MI 49503

Financial Contact Name: Jessica Wood Financial Contact Phone Number: 616-336-1054

Financial Contact Email Address: jwood@dickinson-wright.com

I hereby state that I have read, understand, and agree to be bound by all terms of the original contract and this bid for contract extension.

SIGNED:  NAME: Jessica Wood
(Type or Print)

TITLE: Member DATE: February 3, 2025

FIRM NAME: Dickinson Wright PLLC

ADDRESS: (If any) 200 Ottawa Ave., Suite 900, Grand Rapids, MI 49503
(Street address) (City) (State) (Zip)

PHONE: 616-336-1054 FAX: 844-670-6009

EMAIL ADDRESS: jwood@dickinson-wright.com

AWARD (FOR CITY USE ONLY)