

WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY
LOCAL BROWNFIELD REVOLVING FUND GRANT AGREEMENT

This Local Brownfield Revolving Fund Grant Agreement (the “Agreement”) dated October 13, 2019 is entered between the WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY (the “Authority”), an authority established pursuant to Act 381 of 1996, as amended (“Act 381”), whose address is 220 N. Main Street, P.O. Box 8645, Ann Arbor, Michigan 48107-8645 and the City of Ann Arbor (the “Grantee”), a municipal corporation, whose address is 301 E. Huron Street, Ann Arbor, MI, 48104.

RECITALS

- A. Pursuant to Act 381, as amended, the Authority has established a Local Brownfield Revolving Fund (the “Fund”) for the purpose of facilitating brownfield redevelopment in the region.
- B. The Authority adopted a policy for awarding loans and grants from the Fund to support eligible activities on eligible brownfield properties.
- C. The Authority awarded the Grantee a \$250,000 grant of LBRF funds at the August 15, 2019 meeting, and increased the grant award to \$535,438 at the October 3, 2019 meeting.
- D. The Eligible Property is known as 1831 Traver Road, Leslie Science and Nature Center, Ann Arbor, MI 48105, Parcel ID 09-09-21-107-007, and a small portion of the adjacent parcel to the north identified as Black Pond Wood, Parcel ID 09-09-16-400-008. The Authority and Grantee have developed a Brownfield Plan, which is anticipated to be approved by Ann Arbor City Council on November 4, 2019, and adopted by the Washtenaw County Board of Commissioners in November 2019. The Brownfield Plan will establish the properties as eligible. The Plan includes all Eligible Activities that will be undertaken on the property.
- E. The Grantee wishes to utilize LBRF grant funds to conduct eligible activities within the eligible properties, and the Authority is willing to grant said funds on the Terms and Conditions herein contained.

TERMS AND CONDITIONS

Pursuant to the Recitals of this Agreement, the parties agree with each other as follows:

1. Grant – The Authority hereby agrees to grant to the City of Ann Arbor up to \$535,438 to conduct eligible brownfield activities, as described in the Brownfield Plan dated October 4, 2019. The eligible activities are described in Appendix A of the Brownfield Plan, which is attached as Exhibit A to this Agreement.

2. Grant Budget – The Grantee submitted a list of Eligible Activities, included in the Brownfield Plan, totaling \$535,438 in total activities.
3. Repayment – The funds granted shall not be required to be repaid to the Authority, provided the Grantee complies with all applicable Terms and Conditions.
4. Procurement of Eligible Activities – The Authority is bound to be good stewards of the public funds within the LBRF Fund. Therefore, the Authority will ensure the grant funds are utilized in the most efficient and effective manner. Grantee shall ensure the work to be funded with LBRF funds are procured in a manner that is competitive, and ensures the most qualified contractor with the lowest price is selected to complete the activities. In addition, the Grantee shall provide to the Authority, through its designated staff, for review and approval 1) any bid specifications prepared to be included in any Request for Proposals in seeking competitive bids from qualified contractors to perform any of the Eligible Activities to be covered by this Grant, and 2) all bids received from applicable contractors. The Authority, through its designated staff, after full review of all bids in collaboration with the Grantee, shall be consulted on the decision to award of the Grant-funded work to the preferred contractor.
5. Disbursement – The Grant funds will be disbursed to the Grantee as Eligible Activities are or have been completed, upon submittal by Grantee of a statement of costs of such activities paid or incurred from time to time, but not more frequently than monthly. Such a statement shall include a description of Eligible Activities performed, and a copy of invoices for the work described in such statement. Within forty (40) days of a receipt of a complete statement and supporting invoices, the Authority shall review the statement, confirm that the Eligible Activities are consistent with the Grant Budget, and disburse to Grantee the amount set forth in the statement, up to a cumulative disbursement not to exceed \$535,438.
6. Surplus Grant Funds – Should any grant funds remain after all Eligible Activities are completed, the surplus funds will be returned to the LBRF fund, or the Grantee may request use of the remaining funds for other Eligible Activities, up to \$535,438, provided those activities are included in the Brownfield Plan, and with prior approval by the Authority.
7. Compliance with Applicable Environmental Regulations – It shall be the responsibility of the Grantee to comply with all applicable local, state and federal environmental regulations, as it applies to any and all Eligible Activities funded by the LBRF Grant.
8. Grant Expiration – All Eligible Activities shall be completed within eighteen (18) months of this Agreement, unless the Authority grants an extension.
9. Insurance – The Grantee shall purchase and maintain insurance coverages as indicated, at limits not less than those set forth below. The Grantee shall also require each and every contractor(s) and/or subcontractor(s) engaged by the Grantee to perform services pursuant to this Agreement to purchase and maintain insurance coverages at the limits set forth below. Grantee and its

contractor(s) and/or subcontractor(s) shall name Washtenaw County and Washtenaw County Brownfield Redevelopment Authority as an additional insureds under all coverages listed below except Worker's Compensation. The Grantee shall maintain other insurance as it deems appropriate for its own protection.

- a. Worker's Disability Compensation and Occupational Disease Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.
- b. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit. Coverage shall include the following:
 - i. Contractual Liability
 - ii. Products and Completed Operations
 - iii. Independent Contractors Coverage
 - iv. Broad Form General Liability Endorsement or Equivalent
- c. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
- d. Grantee shall ensure that Environmental Impairment Liability Insurance is provided by Contractors, sub-contractors and site work contractors engaging in environmental and/or demolition activities, covering any sudden and non-sudden pollution or environmental impairment, including clean up costs and defense, with limits of liability of not less than \$1,000,000 per occurrence.
- e. Grantee shall ensure that Professional Liability coverage with a minimum of \$1,000,000 each occurrence is provided by Contractors, sub-contractors and site work contractors engaging in environmental and/or demolition activities.
- f. All insurance coverages described above shall remain in effect at all times until completion of all Eligible Activities. The Grantee shall deliver copies of certificates of insurance for each of the policies mentioned above to the Authority. If so requested, certified copies of all policies will be provided. It is understood and agreed that thirty (30) days advanced written notice of cancellation, non-renewal, reduction and/or material change in any coverage shall be sent to the Authority.

10. Indemnification – The Grantee shall indemnify, defend, and hold harmless, the Authority, Washtenaw County, and their officers, board members, commissioners, employees and agents from all claims, damages, lawsuits, costs and expenses, including reasonable attorney fees, incurred as a result of any acts, omissions, negligence, or gross negligence of the Grantee or its employees,

agents, consultants, contractors or subcontractors related to the grant-funded activities or its performance under this Agreement. This indemnification includes any damages, costs, and expenses in excess of those covered by any insurance of the Grantee. The Grantee shall indemnify the Authority, Washtenaw County, and any of the listed entities officers, board members, commissioners, employees and agents from all reasonable costs and expenses, including reasonable attorney fees, incurred in the enforcement of any obligation or claim against the Grantee under this Agreement. These indemnification provisions will survive the termination of this Agreement. By entering this Agreement, neither party waives any immunities provided under state or federal law.

11. Freedom of Information Act – Grantee understands that all communications, information, and/or documentation submitted by Grantee may be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being Sections 15.23 to 15.24 of the Michigan Compiled Laws and no claim of trade secrets or any other privilege or exception to the Freedom of Information Act will be claimed by Petitioners as it relates to this Agreement.
12. Notices – All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown above. Either party may change the address by written notice sent by registered or certified mail to the other party.
13. Assignment – The interest of any party under this Agreement shall not be assignable without the other parties' written consent.
14. 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.
15. Non-Waiver – No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
16. Headings – Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
17. Governing Law – This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.
18. Compliance with Applicable Law – Grantee agrees to comply all applicable federal, state, and local laws, statutes, rules, regulations, ordinances, and other legal obligations of a similar effect.
19. Counterparts – This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
20. No Third Party Beneficiaries – This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in the Consultant, Contractors, Subcontractors, or any third parties.

This Agreement shall not be construed to create any third party beneficiary contract or claim, and the parties intend there to be no third party beneficiaries.

21. Binding Effect – The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, legal representatives, successors, and assigns.

The parties have executed this Agreement on the dates set forth below.

WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY

BY: _____
Jeremy McCallion, Chairman

Date: _____

Attested to:

By: _____
Lawrence Kestenbaum, County Clerk/Register

Date: _____

Approved As to Form:

By: _____
Curtis Hedger, Corporation Counsel

City of Ann Arbor, Grantee

BY: _____

PRINT NAME: _____

ITS: _____

Date: _____

Exhibits

Exhibit A – Appendix A, from the October 4, 2019 Brownfield Plan

EXHIBIT A – Appendix A, from the October 4, 2019 Brownfield Plan

Appendix A Summary of Eligible Costs Leslie Science and Nature Center Brownfield Plan

Department Specific Eligible Activities
First and Second Field Investigation - \$104,469
Two drilling investigations (49 soil borings, soil samples); waste characterization, data evaluation
Vapor Pin installation, sampling for subslab, indoor air and ambient air
Phase II ESA preparation and Brownfield Plan preparation
Third Field Investigation - \$28,928
Drilling investigation (7 borings at 50 feet, Soil samples and water samples if encountered)
Includes GPS and reimbursables for soil sampling and temporary well installation
Vapor Intrusion System Installation - DTE Energy Nature House - \$35,753
Vapor pin installation for monitoring
Sealing of all conduits to basement of DTE Energy Nature House
Sealing of basement north wall due to past flooding issues
Installation of air intake vents
Installation of vapor mitigation system
Collection of sub-slab soil gas and indoor air samples (4 events)
Excavation of Depression and Pit - \$79,359
Vegetation clearing and excavation of upper 3 feet of soil in depression area
Removal of concrete structure/pit, limited source material removal, transportation and disposal of impacted soils
Waste sampling, profile coordination with landfill, transportation of soil to appropriate disposal facility in accordance with state and federal regulations
Collection of verification samples from bottom of excavation
Backfill depression with clean material
Relative Arsenic Bioavailability Study - \$29,131
Plan creation and coordination with EGLE personnel
Laboratory analysis of the relative arsenic bioavailability for surficial soil samples
Statistical analyses of laboratory analytical results completed by Industrial Hygienist
Completion of report for negotiation with EGLE for state approval

Determine proposed playscape and programming areas for remediation
Excavation of Proposed Playscape / Programming Areas - \$247,336
Vegetation clearing and excavation of 2 feet of soil within proposed playscape boundaries
Excavation of upper 10 feet of soil in the willow tunnel/slide feature
Waste profile and soils transported to non-hazardous landfill
Excavation, transportation and disposal of impacted soils
Sampling of soil at the bottom of the excavation extents
Survey of excavation extents, sample locations and demarcation line
Data Evaluation and Letter Report - \$10,464
Completion of report for third investigation and excavation information
City and Stakeholder communication

EXHIBIT B – Demolition Plan, White State Henry Apartments