



## Special Meeting of the Brownfield Redevelopment Authority

Council Chambers, City Hall, 410 Ludington Street, Escanaba, MI 49829

Friday, September 1, 2023, 10:00 am EST

Thomas Warstler, Chairperson  
Charles Vader, Vice-Chairperson  
Richard Clark, Member  
Monte Morrison, Member  
Matthew Sviland, Member

James McNeil, Administrative Liaison  
Todd Flath, Council Liaison

CALL TO ORDER

ROLL CALL

APPROVAL/CORRECTIONS TO MINUTES – Special Meeting 06/20/2023

APPROVAL/ADJUSTMENTS TO AGENDA

CONFLICT OF INTEREST DECLARATION

PUBLIC HEARINGS – None

UNFINISHED BUSINESS – None

NEW BUSINESS

**1. Approval – 111 N 3<sup>rd</sup> Street (Jail Property) \$700,000 EGLE Grant**

**Explanation:** Administration is seeking Brownfield Authority approval of a grant in the amount to \$700,000 in eligible expenses to fund environmental response activities for 111 N 3<sup>rd</sup> Street, also known as the jail property.

PUBLIC COMMENT

MEMBER/STAFF COMMENTS AND ANNOUNCEMENTS

ADJOURNMENT

The City of Escanaba will provide all necessary, reasonable aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting to individuals with disabilities at the meeting/hearing upon five days' notice to the City of Escanaba. Individuals with disabilities requiring auxiliary aids or services should contact the City of Escanaba in writing or by calling (906) 786-9402.

**Mission Statement:**



Enhancing the enjoyment and livability of our community by providing quality municipal services.  
*The City of Escanaba is an equal opportunity employer and provider.*

**CITY OF ESCANABA  
BROWNFIELD REDEVELOPMENT AUTHORITY (CEBRA)**

**June 20, 2023**

A meeting of the Brownfield Redevelopment Authority was held June 20, 2023 at 9:00 a.m. in Room 401 of Escanaba City Hall, 410 Ludington Street, Escanaba, MI 49829.

**PRESENT: Chairperson Warstler, Vice Chairperson Vader, Members Sviland, and Clark**

**ABSENT: Member Morrison**

**ALSO PRESENT:** James McNeil, Assessor Crystal Martin, Assistant Assessor, Melissa Becotte, Controller and Kathy from Dial.

**ROLL CALL:** James McNeil conducted roll call at 9:00am.

**Approval/Correction of Special Meeting Minutes of October 13, 2022**

Warstler asked for approval and/or corrections to the Special Meeting Minutes of October 13<sup>th</sup> 2022.

**Motion by Vader, seconded by Clark, to approve the October 13, 2022 minutes for the Brownfield Redevelopment Authority.**

**Ayes were unanimous.**

**Approval/Adjustments to the Agenda**

Warstler asked for approval and/or adjustments to the agenda for special meeting June 20, 2023.

**Motion by Vader, seconded by Clark, to approve agenda.**

**Ayes were unanimous.**

**Conflict of Interest Declaration: None**

**Public Hearing – None**

1. **Unfinished Business** None
2. **New Business**

**A. Dial, Inc. Reimbursement- Administration is seeking Brownfield Authority approval of reimbursement of \$68,179 in eligible expenses for the brownfield plan for 301 N Lincoln Rd, also known as the mall.**

Sviland moved, seconded by Clark to approve the \$68,179 of eligible expenses for the brownfield plan.

**Ayes were unanimous.**

**General Public Comment**

Kathy from Dial said the owners would be in town Aug 1<sup>st</sup> and 2<sup>nd</sup> if they wanted to set up a meeting.

**Authority Member/Staff Comment and Announcements** – McNeil discussed Northshore.

**Adjournment:**

Motion by Clark, seconded by Vader, to adjourn at 9:24 a.m.

**Ayes were unanimous.**

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Brownfield Redevelopment Authority

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James McNeil, City Assessor



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
LANSING



PHILLIP D. ROOS  
DIRECTOR

July 31, 2023

VIA EMAIL

James McNeil, City Manager  
City of Escanaba Brownfield Redevelopment Authority  
410 Ludington Street  
Escanaba, Michigan 49829

Dear James McNeil:

I am pleased to inform you that the Michigan Department of Environment, Great Lakes, and Energy (EGLE) has completed its review of your June 2023 application for funding under the Brownfield Redevelopment Program. Your application for the 111 North 3<sup>rd</sup> Street Redevelopment Project was awarded \$700,000 in Brownfield Redevelopment Grant funds. The funding was approved by Chief Deputy Director Aaron B. Keatley on July 26, 2023. This award has also been approved by the State Administrative Board.

Your brownfield coordinator, Abbie Hanson, will forward grant agreement for your signature. The agreement describes the terms and conditions for the expenditure of funds. Abbie will work with you to initiate the project once the agreement is signed by you and EGLE.

If you have questions regarding your award, please contact Ryan Londrigan, Supervisor, Brownfield Redevelopment Unit, Remediation and Redevelopment Division, at 989-891-6072; LondriganR@Michigan.gov; or EGLE, P.O. Box 30426, Lansing, Michigan 48909-7926.

Sincerely,

Mike Neller, Director  
Remediation and Redevelopment Division  
517-512-5859

cc: Senator Edward McBroom  
Representative David Prestin  
Phillip D. Roos, Director, EGLE  
Aaron B. Keatley, Chief Deputy Director, EGLE  
Travis Boeskool, Deputy Director, EGLE  
Hugh C. McDiarmid Jr., Communications Manager, EGLE  
Carrie Geyer, EGLE  
Ryan Londrigan, EGLE  
Abbie Hanson, EGLE  
File #2023-2533

CITY OF ESCANABA BROWNFIELD REDEVELOPMENT AUTHORITY

**EGLE BROWNFIELD GRANT IMPLEMENTATION AGREEMENT**

This EGLE Brownfield Grant Implementation Agreement (the “**Agreement**”) is made on \_\_\_\_\_ between **TERRACE BAY ESCANABA, LLC** (the “**Developer**”) and the **CITY OF ESCANABA BROWNFIELD REDEVELOPMENT AUTHORITY** (the “**AUTHORITY**”), a public body corporate created pursuant to 1996 PA 381, as amended.

PREMISES

- A. The Developer is engaged in the redevelopment of the former Delta County Jail at 111 N. 3<sup>rd</sup> Street, Escanaba, Michigan for a hotel, (the “**Development**”), described on attached Exhibit A.
- B. The Authority has received a \$700,000 Michigan Department of Environment, Great Lakes and Energy (EGLE) Brownfield Grant (the “**EGLE Grant**”) to fund environmental response activities for the Development, in accordance with the EGLE Brownfield Grant Agreement (attached as Exhibit B).
- C. The purpose of this Agreement is to describe the terms and conditions for the use of the EGLE Brownfield Grant for the Development.

In consideration of the premises and the mutual covenants contained in this Agreement, the Developer and the Authority hereby enter into this Agreement and covenant and agree as follows:

**ARTICLE 1.**

**DEFINITIONS**

**Section 1.1 Definitions.** The following capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

a) “**Administrative Costs**” means those costs provided for in the EGLE Brownfield Grant Agreement, attached as Exhibit B to review work plans, reports and other documents prepared by the Developer or their Environmental Consultant, review invoices, write project status reports, and coordinate project activities and communications, not to exceed 3% of the total grant amount, as described in Exhibit B.

b) “**Agreement**” means this Implementation Agreement entered into between the Authority and the Developer.

c) “**Authority**” means the City of Escanaba Brownfield Redevelopment Authority

d) “**Authority Project Manager**” means the staff member designated by the City with responsibility for implementation of the Grant Agreement.

e) “**Contractor**” means any general or environmental contractor or subcontractor with whom the Developer contracts to complete work at the Eligible Property and/or Site.

f) “**City**” means the City of Escanaba.

- g) "Developer" means Terrace Bay Escanaba, LLC.
- h) "Development" means the site work, building construction, utilities, and equipment relating to the Eligible Property as described on attached Exhibit A.
- i) "EGLE Grant Coordinator" means the EGLE staff person assigned to manage the terms and conditions of the Grant Agreement.
- j) "Environmental Consultant" means any environmental consulting firm retained or hired by the Developer to fulfill all or part its obligations under this Agreement, including the Grant Eligible Activities set forth in the Grant Agreement and Brownfield Eligible Activities as set for the in the Brownfield Plan and the Act 381 Work Plan, as amended and supplemented.
- k) "Event of Default" means the failure of performance or breach by a party to carry out its obligations under this Agreement or, with respect to a party, if any representation or warranty of such party was materially not accurate when made, and such obligation has not been performed or such representation or warranty corrected within the cure period provide in Article 7 below after written notice thereof has been given by the other party. It also means any filing of bankruptcy or bankruptcy reorganization by the Developer.
- l) "Grant Agreement" means the EGLE Brownfield Grant Agreement executed between the EGLE and the Authority for the reimbursement of Grant Eligible Activities, a copy of which is attached hereto as Exhibit B.
- m) "Grant Eligible Activities" means those environmental response activities that are identified in the Grant Agreement.
- n) "Grant Work Plan" means a detailed work plan submitted to the EGLE for approval which includes a description of proposed Grant Eligible Activities, budget and schedule consistent with Appendix A of the Grant Agreement.
- o) "Indemnified Persons" means the City, the Authority, and their members, officers, agents and employees.
- p) "Maximum Cost of Grant Eligible Activities" means the Authority's maximum obligation to pay for the Eligible Activities and not to exceed the amounts set forth in the approved EGLE Brownfield Grant Agreement, as amended or supplemented.

**Section 1.2 Number and Gender.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms.

**ARTICLE 2.**

**COVENANTS OF THE DEVELOPER**

**Section 2.1 Construction of Development.** The Developer shall proceed with the development and the obligations under this Agreement in its discretion. If it decides to do so, Developer shall proceed with

due care and diligence and commence and complete the Grant Eligible Activities and the Development in accordance with this Agreement, and in accordance with any applicable law, regulation, code and ordinance.

**Section 2.2 Compliance with Grant Agreement.** The Developer shall comply with all terms and conditions of the Grant Agreement for which it has direct responsibility, including but not limited to preparing Work Plans, conducting Grant Eligible Activities, providing documentation of expenses, and general terms and conditions.

**Section 2.3 Completion of Eligible Activities.** The Developer will contract with a competent and qualified Environmental Consultant or Consultants and/or other competent and qualified Contractor or Contractors to manage and/or conduct and complete the Grant Eligible Activities approved by the EGLE set forth in this Agreement and the Grant Agreement, as amended or supplemented, and to meet any due care obligation under Sec. 20107a, NREPA, MCL 324.20107a, in accordance with any EGLE requirements and approval. The Developer shall have sole responsibility to pay the Developer's Environmental Consultant or Contractors for completion of such Eligible Activities.

**Section 2.4 Documentation and Reimbursement.** The Developer shall provide documentation, invoices and proof of payment as required by the Grant Agreement to receive reimbursement.

**Section 2.5 Covenant to Secure EGLE Brownfield Grant.** The Developer shall comply with all terms and conditions of the Grant Agreement.

If construction does not proceed and an occupancy permit cannot be secured within five years of the date of this Agreement, the Developer shall be obligated to repay the full amount of Grant Funds expended for Eligible Activities, if required by EGLE.

**Section 2.6 Indemnification of Indemnified Persons.**

- (a) The Developer shall defend, indemnify and hold the Indemnified Persons harmless from any loss, damages, costs, expense (including reasonable counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, demands or claims arising or resulting from the following:
  - (1) Any activity undertaken pursuant to this Agreement or from injuries to persons or property as a result of the construction, Developer ownership or operation, use or maintenance of the Development.
  - (2) Any material acts or omissions, negligent or otherwise, of the Environmental Consultant and/or Contractors or their employees or agents in the performance of the work specified in this Agreement.
  - (3) The failure of the Environmental Consultant and/or Contractors to comply with the provisions of this Agreement.
- (b) If any suit, action or proceeding is brought against any Indemnified Person, the Indemnified Person promptly shall give notice to the Developer and the Developer shall defend such Indemnified Person with counsel selected by the Developer, which counsel shall be reasonably satisfactory to the Indemnified Person. In any such proceeding, the Indemnified Person shall cooperate with the Developer and the Developer shall have the right to settle, compromise, pay

or defend against any such claim on behalf of such Indemnified Person, except that the Developer may not settle or compromise any claim if the effect of doing so would be to subject the Indemnified Person to criminal penalties, unless such Indemnified Person gives its consent. The Developer shall not be liable for payment or settlement of any such claim or proceeding made without its consent.

- (c) The Developer shall not be required to indemnify the Indemnified Persons against loss, damages, costs, expense or liability of any nature which arises solely from the gross negligence or willful misconduct of such Indemnified Persons or any of them.

**Section 2.7 Insurance.** The Developer shall assure that the Environmental Consultant or any Contractors performing any part of the Eligible Activities covered by this Agreement shall obtain and maintain the following policies of insurance:

- (a) Worker's Compensation Insurance in the amounts required under the laws of the State of Michigan.
- (b) Comprehensive General Liability and Automobile Insurance for bodily injury, death or loss or damage to property or third persons in the minimum amount of at least \$1 million per occurrence.
- (c) As to those Contractors engaging in environmental response activities, Pollution or Environmental Impairment Insurance in the amount of at least \$ 1 million per occurrence.
- (d) As to the Environmental Consultant only, Professional Liability Insurance in the minimum amount of \$1 million per occurrence.
- (e) The Developer shall furnish to Authority a certified copy of such policies of insurance within 30 days of the date of the commencement of the Eligible Activities by such Environmental Consultant or Contractor, and the period of coverage shall commence with the date of performance of the first Eligible Activity by such insured person or entity.

**Section 2.8 Regulatory Compliance.** While on the Site or Development, the Developer, the Environmental Consultant, and any Contractor shall impose work orders on its employees, agents and subcontractors which are designed to assure that they comply with all applicable federal, state and local laws and regulations (including occupational safety and environmental protection statutes and regulations) in performing services under this Agreement, and shall comply with any directions of governmental agencies relating to site safety, security, traffic or other like matters as it relates to those Eligible Activities performed by the Developer, Environmental Consultant or Contractor, as applicable.

**Section 2.9 Hazardous Waste Management.** In the event that samples or other materials contain substances classified as "hazardous waste" under applicable state or federal law, the Developer shall, under a manifest signed by the Developer or its agent, as the generator, have such samples transported for final disposal to a location selected by the Developer or its Environmental Consultant or Contractor. It is expressly understood that the Authority has no oversight or other control or authority over the Developer's obligation to properly dispose of Hazardous Waste under the terms of this Section.

**Section 2.10 Site Access.** The Developer shall grant to Authority, or its designated agents, access to the Site to exercise their respective rights related to the purposes and pursuant to the terms of this Agreement. Site access shall include the right to inspect the performance of any Grant Eligible Activities, as provided in Grant Agreement, in the Authority's discretion. The Authority shall give the Developer at



least 24 hours prior written notice of its intent to access the site. If notice cannot be given due to an emergency or any other similar unforeseen circumstance, the Authority shall give such prior notice as is reasonable and practicable under the circumstances. All such agents must comply with all Site safety standards while accessing the Site.

### **ARTICLE 3.**

#### **CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION**

**Section 3.1 Conditions Precedent to Developer's Obligations to Construct the Development.** The obligations of Developer to complete the Eligible Activities and construct the Development, as contemplated herein, are subject to the following conditions precedent which must be satisfied by the Authority as required herein, except as expressly provided in this Agreement or otherwise waived by the Developer:

- (a) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer or the Authority is a party, or threatened against the Developer or the Authority contesting the validity or binding effect of this Agreement or the validity of the Grant Agreement, which could result in an adverse decision which would have one or more of the following effects:
  - (1) A material adverse effect upon the ability of the Authority to access EGLE Brownfield Grant funds to repay its obligations under this Agreement.
  - (2) A material adverse effect on the Developer's or the Authority's ability to comply with the obligations and terms of this Agreement or the EGLE Brownfield Grant Agreement.
- (b) There shall have been no Event of Default by the Authority and no action or inaction by the Authority eventually which with the passage of time could become an Event of Default.
- (c) The Authority shall have performed all of the terms and conditions to be performed by it pursuant to this Agreement and the Grant Agreement.

### **ARTICLE 4.**

#### **COVENANTS OF THE AUTHORITY**

**Section 4.1 Execution of the EGLE Brownfield Grant Agreement.** The Authority shall execute the Grant Agreement which will provide for the reimbursement to the Developer of the Developer's Grant Eligible Activities expenses that have been conducted, completed and approved in accordance with the scope and terms of this Agreement and the Grant Agreement.

**Section 4.2 Reimbursement of Eligible Activities.** Upon the Developer's satisfactory completion of the Eligible Activities described in Exhibit B, as amended or supplemented, pursuant to this Agreement and the Grant Agreement, and approved by EGLE, the Authority shall reimburse the Developer subject to and in accordance with the terms set forth in this Agreement. The Developer shall have sole responsibility to pay the Developer's Environmental Consultant or Contractors for completion of such Eligible Activities and provide proof of payment. If the Developer incurs any expenses or costs for any activities other than the Eligible Activities or if the costs exceed the maximum cost of Grant Eligible Activities as set forth in the Grant Agreement, or approval of the EGLE or the Authority, the Developer shall bear such excess costs without any obligation on the part of Authority. If the costs of Eligible Activities set forth in Exhibit B, as

amended or supplemented, are less than such maximum cost, then the Developer shall have no further right of reimbursement beyond its actual costs.

The following is the process by which the Authority will reimburse Grant Eligible Activity expenses to the Developer:

- (a) The Developer shall prepare a draft Grant / Loan Work Plan which describes the scope of work, cost estimates, and schedule for each Grant Eligible Activities included in Appendix A of the Grant Agreement and submit the Grant / Loan Work Plan to the Authority.
- (b) The Authority Project Manager will review the Grant / Loan Work Plan, request any recommended revisions and authorize the submittal of the Grant / Loan Work Plan by the Developer to the EGLE.
- (c) The EGLE will review the Work Plan and approve the Grant / Loan Work Plan or request revisions, which will be made by the Developer and resubmitted to the EGLE for approval, with a copy to the Authority Project Manager.
- (d) Following EGLE approval of the Grant / Loan Work Plan, the Developer will proceed with the Eligible Activities. For contracts over \$20,000, except for professional services, the Developer will comply with the requirements of the Grant Agreement for bid solicitation.
- (e) The Developer will submit documentation to the Authority Project Manager of Grant Eligible Activity expenses, including approved invoices or contractor schedules of value and documentation of payment, including cancelled checks or electronic funds transfer (EFT) statements.
- (f) Immediately upon receipt of the same by the Authority Project Manager, the Authority Project Manager shall forward the documentation to the EGLE Grant Coordinator for review and preliminary approval.
- (g) The EGLE will review and provide preliminary approval or request additional information as may be required under the terms of the Grant Agreement, which will be provided by the Developer, as necessary.
- (h) Upon EGLE preliminary approval, the Authority Project Manager, the Developer and the EGLE will cooperate in the preparation of any additional documentation as may be required under the terms of the Grant Agreement for EGLE final approval of Grant payment.
- (i) Upon EGLE final approval, Grant funds will be transferred by EFT to the Authority.
- (j) Within 15 days of receipt of Grant funds by the Authority from the EGLE, the Authority will provide the Grant funds to the Developer either by check or EFT transfer, as agreed to by the Developer and the Authority.
- (k) Upon completion of Grant Eligible Activities, but no later than 60 days after the end date of the Grant Agreement, the Developer shall provide to the Authority Project Manager a final report in the format prescribed in the Grant Agreement.

It is anticipated that there will be sufficient EGLE Brownfield Grant funds to meet the obligations under this Agreement. However, if for any reason the EGLE Brownfield Grant does not provide sufficient funds

to satisfy such obligations, the Developer agrees and understands that it will have no claim or further recourse of any kind or nature against the Authority except from available EGLE Brownfield Grant funds, and if for any reason the EGLE Brownfield Grant funds are insufficient or there are none, then Developer assumes full responsibility for any such loss or cost. The parties acknowledge and agree that nothing in the preceding shall limit or restrict the Developer's ability to request an amendment to the EGLE Brownfield Grant or Grant Agreement, subject to Authority's review process and full discretion to approve, modify or deny any proposed amendment.

**Section 4.3 Authority or Contract Manager Oversight.** The Authority may, using funds provided in the Grant Agreement with the approval of the EGLE Grant Coordinator, retain the services of a qualified contract manager for purposes of assuring that the activities, invoices and accounting by the Developer are fair, reasonable, and constitute Grant Eligible Activities within the meaning and scope of this Agreement and the Grant Agreement. The Developer shall provide to the Authority Project Manager and the Authority's contract manager, if applicable, access to data, reports, sampling results, invoices, and related documents reasonably necessary to fulfill the exercise of such oversight. It is expressly understood that Authority has no right to control or to exercise any control over the actual services or performance by the Developer of the Eligible Activities, except as to assurance that the Developer has met the conditions and requirements of this Agreement and the Grant Agreement.

## ARTICLE 5.

### **CONDITIONS PRECEDENT TO Authority'S OBLIGATIONS**

**Section 5.1 Conditions Precedent to Authority's Reimbursement Obligation.** The obligations of the Authority to reimbursement of costs to the Developer for completion of Grant Eligible Activities expenses as contemplated herein shall be subject to the following conditions precedent which must be satisfied by the Developer as required herein, except as expressly provided in this Agreement or otherwise waived in writing by the Authority.

- (a) Approval by the EGLE of the Grant Work Plan for Grant Eligible Activities, as amended or supplemented.
- (b) The Developer shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement and the Grant Agreement, and all preconditions to the performance of the Developer shall have been satisfied.
- (c) Developer shall provide written proof of payment, including cancelled checks or waivers of liens by any Environmental Consultant or Contractor providing services as described in this Agreement.
- (d) Authority shall only be obligated to reimburse the Grant Eligible Activities that has been reviewed and approved by the EGLE. Approval of the application and subsequent approvals of the EGLE Brownfield Grant Work Plans, or any other determination of eligibility in no way guarantees or establishes a right to reimbursement of expenditures prior to review or approval of invoices. Expenditures must be documented to be reasonable and necessary for Grant Eligible Activities by submission of invoices and other appropriate documentation. Reimbursement shall only occur pursuant to the terms and conditions of this Agreement.
- (e) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer or the Authority is a party, or threatened against the Developer or the Authority contesting the validity or binding effect of this Agreement or the validity of the

Grant Agreement, or which could result in an adverse decision which would have one or more of the following effects:

- (1) A material adverse effect upon the ability of the Authority to receive Grant funds to reimburse Grant Eligible Activities.
  - (2) A material adverse effect upon the ability of the Developer to conduct Grant Eligible Activities.
  - (3) Any other material adverse effect on the Developer's or the Authority's ability to comply with the obligations and terms of this Agreement or Grant Agreement.
- (f) There shall have been no Event of Default by the Developer under the terms of this Agreement and no action or inaction by the Developer eventually which with the passage of time would likely become an Event of Default; provided, however, if reimbursement of the Developer is refused by reason of the Developer's action or inaction which with the passage of time would likely become an Event of Default, then if Developer cures such threatened Event of Default within the time period and according to the provisions of Article 7, this precondition shall be deemed fulfilled as of the time of such cure and, provided that all other preconditions to the Authority's reimbursement obligation have been met at the time of such cure, then the Developer shall then be entitled to reimbursement.
- (g) The Developer documents ownership or control of the Site and the Developer is not in default on any contract or other agreement relating to its ownership, development, or use of the Eligible Property, which default would have an adverse effect on the Developer's or the Authority's ability to comply with the obligations and terms of this Agreement or the Grant Agreement.
- (h) Proper approvals required under applicable federal and state laws or regulations, and local ordinances, codes or regulations for land uses and the Development have been secured.
- (i) The Developer has consent of any affected utility for relocation, burial or the activity to accomplish the Eligible Activities.
- (j) The Developer retains an Environmental Consultant or Contractor to advise, conduct, or complete the Eligible Activities related to the Developer-financed obligations as set forth in this Agreement.
- (k) There is no change in law which would have one or more of the effects described above.
- (l) Developer shall pay all real estate tax obligations before they become delinquent and subject to interest or penalties.

## **ARTICLE 6.**

### **REPRESENTATIONS AND WARRANTIES**

**Section 6.1** **Representations and Warranties of Authority.** Authority represents and warrants to the Developer that:

- (a) Authority is a public body corporate, with all necessary corporate powers to enter into and perform this Agreement.

- (b) The execution and delivery of this Agreement has been duly authorized by all requisite action on the part of the Authority, and this Agreement constitutes a valid and binding agreement of the Authority enforceable in accordance with its terms, except as enforce ability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or thereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

**Section 6.2 Representations and Warranties of the Developer.** The Developer represents and warrants to the Authority that:

- (a) The Developer is a Limited Liability Corporation, with power under the laws of the State of Michigan to carry on its business as now being conducted and has the power and authority to consummate the transactions contemplated under this agreement by the Developer.
- (b) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Developer, and this Agreement constitutes a valid and binding agreement of the Developer in accordance with its terms, except as enforce ability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity.
- (c) Except as part of the performance and completion of Eligible Activities under the terms of this Agreement, the Developer or its Contractors shall not use the Site for the storage, treatment or disposal of hazardous or toxic wastes of unaffiliated third parties and shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees and orders in connection with any use of the Site and shall obtain all necessary permits in connection therewith.
- (d) The Developer will comply with all obligations, covenants and conditions required of it or its agents or Contractors under the terms of this Agreement and the Grant Agreement.
- (f) The Developer has not made any misrepresentation of fact in the inducement or in the performance or administration of this Agreement.

## **ARTICLE 7.**

### **DEFAULT, REMEDIES, AND TERMINATION**

Upon the occurrence of an Event of Default, and failure to cure such Event of Default within 60 days of written notice of such Event of Default, the non-defaulting party may terminate this agreement by giving written notice to the defaulting party, provided, however, that if such Event of Default requires more than 60 days to cure, and if such defaulting party shall commence and diligently proceed to cure the Event of Default within such 60 days, then the defaulting party shall have an additional 60 days to cure the Event of Default. A monetary default shall be cured within 15 days. If the Event of Default is not cured within this time period, then the non-defaulting party shall have the right to terminate this Agreement or, at the election of such non-defaulting party, may obtain any form of relief permitted under this Agreement, and applicable law, including, without limitation, the right to seek and obtain a decree of specific performance from a court of competent jurisdiction. Any right or remedy provided by a specific provision of this Agreement shall be deemed cumulative to, and not conditioned on, any other remedies upon Event of

Default. The prevailing party in any action or proceeding brought to enforce the terms of this Agreement shall be entitled to an award of reasonable costs and attorney fees in addition to the relief obtained.

## ARTICLE 8.

### MISCELLANEOUS

**Section 8.1** Term. The term of this Agreement shall commence on the date first written above and shall expire upon the later to occur of (a) the close out of the EGLE Brownfield Grant or (b) the disbursement to Developer of all of the proceeds of the EGLE Brownfield Grant.

**Section 8.2** Sale or Transfer of Eligible Property or Site. Up until the Developer has satisfactorily completed its Grant Eligible Activities and performed its obligations under the terms of this Agreement, the Developer shall not sell, convey, or transfer ownership of any portion of the Eligible Property to another Developer to carry out the purposes and goals of the Grant Agreement, as described in this Agreement or the Grant Agreement without the written approval of the Authority, which will not be unreasonably withheld. The Authority, in its sole discretion, will determine whether an amendment to the Grant Agreement is necessary and will cooperate with the EGLE to amend the Grant Agreement. The proceeding does not prohibit the Developer from selling property or units within structures to third parties for the land uses as contemplated by the Development. This section shall not apply to: (a) assignments between governmental entities (b) assignments for financing required for the development; or (c) the establishment of another entity which shall operate the premises for the infrastructure purposes.

**Section 8.3** Assignment. Neither this Agreement nor any of the rights or obligations contained within it may be assigned or otherwise transferred by the Developer, nor shall the benefits of this Agreement inure to the benefit of any trustee in bankruptcy, receiver or creditor of the Developer, whether by operation of law or otherwise, without the prior written consent of the Authority which will not be unreasonably withheld, conditioned, or delayed. Any attempt by the Developer to assign or transfer this Agreement or any of its rights without such written consent shall be null and void and of no force or effect, and a breach of this Agreement.

**Section 8.4** Independent Contractor. The Developer, Environmental Consultant and Contractors shall each perform its services under this Agreement entirely as an independent contractor, and shall not be deemed an agent, employee or legal representative of the Authority. The Authority, Developer, Environmental Consultant, and Contractors shall each have and maintain complete control over all its respective employees, agents and operators. Facts or knowledge of which the Developer, Environmental Consultant or Contractor becomes aware shall not be imputed to Authority without communication to and receipt by managerial officials or employees of Authority. The Developer, Environmental Consultant or Contractor has no authority to assume or create, and will not assume or create, any commitment or obligation on behalf of the Authority in any respect whatsoever. Further, the Developer, Environmental Consultant or Contractor shall exercise its independent judgment for the services provided in this Agreement.

**Section 8.5** Notices. All notices, certificates or communications required or permitted by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

If to Authority:

James McNeil, City Manager  
City of Escanaba  
410 Ludington Street  
Escanaba, Michigan 49829

If to the Developer:

Jarred Drown, Principal  
Terrace Bay Escanaba, LLC  
7146 P. Road  
Gladstone, Michigan 49837

or to such other address as such party may specify by appropriate notice.

**Section 8.6 Amendment and Waiver.** No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

**Section 8.7 Entire Agreement.** This Agreement contains all Agreement between the parties. There are no other representations, warranties, promises, Agreement or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement.

**Section 8.8 Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

**Section 8.9 Captions.** The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

**Section 8.10 Applicable Law.** This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

**Section 8.11 Mutual Cooperation.** Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction regarding the purposes of this Agreement. Each party to this Agreement shall execute and deliver all documents necessary to accomplish the purposes and intent of this Agreement, including, but not limited to, such documents or Agreement as may be required by the Developer's lenders with respect to the Development to secure the Developer's financing from such lenders.

**Section 8.12 Binding Effect.** This Agreement shall be binding upon the parties hereto, and in the event of assignment under Section 8.3 upon their respective successors, transferees, and assigns. Developer shall provide written notice prior to transfer or assignment of Developer's interest to any subsequent purchaser and assign of the existence of this Agreement.

**Section 8.13 No Waiver.** No waiver by either party of any default by the other party in the performance of any portion of this Agreement shall operate or be construed as a waiver of any future default, whether like or different in character.

**Section 8.14 Survival of Covenants.** Except for the financial obligations, the covenants and provisions shall survive the term of this Agreement.

**Section 8.15 No Third-Party Beneficiaries.** This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise to the Environmental Consultant or Contractors, 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.

**Section 8.16 Disputes.** The parties acknowledge and agree that any disputes arising under this Agreement shall be resolved by a court of competent jurisdiction sitting in Chippewa County, Michigan.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]



IN WITNESS WHEREOF, the Authority and the Developer have caused this Agreement to be duly executed and delivered as of the date first written above.

**TERRACE BAY ESCANABA, LLC**

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By: Jarred Drown  
Its: Principal

**CITY OF ESCANABA BROWNFIELD REDEVELOPMENT AUTHORITY**

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By: Thomas Warstler  
Its: Chair

Approved as to Substance:

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By: James McNeil  
Its: City Manager / Liaison



**BROWNFIELD GRANT AGREEMENT**  
**BETWEEN THE**  
**MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY**  
**AND THE**  
**CITY OF ESCANABA 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 the **city of Escanaba 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: 111 North 3<sup>rd</sup> Street

Location Code: 6K34

Amount of grant: \$700,000

Tracking Code: 2023-2533

Start Date: **Date executed by the State**

End Date: **Three Years after Start Date**

**GRANTEE CONTACT INFORMATION:**

Name/Title: James McNeil, City Manager

Organization: City of Escanaba Brownfield Redevelopment Authority

Address: 410 Ludington Street

City, State, ZIP: Escanaba, Michigan 49829

Phone Number: 906-789-7322

E-Mail Address: [jmcneil@escanaba.org](mailto:jmcneil@escanaba.org)

Federal ID Number: [REDACTED]

Grantee DUNs/UEI Number: [REDACTED]

SIGMA Vendor Number: [REDACTED]

**STATE'S CONTACT INFORMATION:**

Name/Title: Abbie Hanson, Brownfield Coordinator  
Division/Bureau/Office: Remediation and Redevelopment Division  
Address: 525 West Allegan Street  
City, State, ZIP: Lansing, Michigan 48933  
Phone Number: 906-202-1285  
E-Mail Address: HansonA2@Michigan.gov

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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:**

_____	Thomas Warstler, City BRA Chair	_____
Signature	Name/Title	Date

**FOR THE STATE:**

_____	Mike Neller, Director	_____
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:

<b>Reporting Period</b>	<b>Due Date</b>
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. GRANTEE RESPONSIBILITIES**

(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](http://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) All subsurface work on contaminated properties including penetrating or disturbing the existing surfaces, work with subsurface infrastructure, monitoring wells or sewers, handling of existing soil, sediments or groundwater, or any other site activity with the reasonable potential for exposure must be conducted by personnel currently certified under HAZWOPER, MIOSHA-STD-1216 and 29 CFR 1910.120.

(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.

If you need this information in an alternate format, contact [EGLE-Accessibility@Michigan.gov](mailto:EGLE-Accessibility@Michigan.gov) or call 800-662-9278.

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and prohibits intimidation and retaliation, as required by applicable laws and regulations. Questions or concerns should be directed to the Nondiscrimination Compliance Coordinator at [EGLE-NondiscriminationCC@Michigan.gov](mailto:EGLE-NondiscriminationCC@Michigan.gov) or 517-249-0906.

This form and its contents are subject to the Freedom of Information Act and may be released to the public.

**APPENDIX A**

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# APPENDIX A

## for BROWNFIELD REDEVELOPMENT GRANT / LOAN AGREEMENT

Project Details			
Project Name and Address	111 North 3 <sup>rd</sup> Street Redevelopment 111 North 3 <sup>rd</sup> Street and 310 Ludington Street Escanaba, Michigan	Grantee / Borrower	City of Escanaba Brownfield Redevelopment Authority
Tracking Code	2023-2533	Location Code	6K34
Capital Investment	\$14,500,000	Jobs Created	35 full-time equivalent
Total Grant Funding	\$700,000	Total Loan Funding	\$0

**PROJECT DESCRIPTION:** The grant will be used to facilitate the redevelopment of a vacant former county jail and industrial site in the city of Escanaba. The property is impacted by metals, volatile organic compounds (VOCs), and semi-volatile organic compounds (SVOCs) in soil and groundwater. Eligible grant funded activities needed to safely reuse the site include due care investigation, the design and installation of a vapor mitigation system, and the transport and disposal of contaminated soil and groundwater. The existing former jail structure will be demolished and a four story, 49,000 square foot 80-room hotel will be constructed on site.

**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. Due care including, but not limited to due care investigation and planning, the transport and disposal of contaminated soils, the design and installation of a vapor mitigation system, and incremental cost of contaminated dewatering effluent disposal.
2. 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.
3. During the time of the grant funded activities, the Grantee is required to install a full color, 48" by 96" grommited 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.

4. Grant administration including, but not limited to grant management, tracking, and reporting activities by Grantee.
5. 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. Due Care	\$568,500
2. EGLE Grant Closeout Report	\$5,000
3. EGLE Sign	\$500
4. Grant Administration	\$21,000
5. Contingency	\$105,000
<b>Total</b>	<b>\$700,000</b>

In addition to the broad budget items above, the grant 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 \$1,000 per work plan for site assessment work and up to \$2,500 per work plan for all other activities. If development of a work plan is expected to cost more than the pre-approved budgets, 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.

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, closeout reporting, and documentation that the vapor mitigation system is fully commissioned and operating as designed.

**SCHEDULE:** The grant administration task 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	Due Care	Months 1-36
2	EGLE Grant Closeout Report	Month 36

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