AGENDA OF THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

FRIDAY, OCTOBER 19, 2018, 1:30 PM
CITY HALL, ROOM 604 - THE HARRY MAIER ROOM

A. Roll Call.

1. Members: Gary Delveaux, Chair; Matt Schueller, Vice-Chair; Ald. Barbara Dorff, James Blumreich, Deby Dehn, Kathy Hinkfuss, and Melanie Parma.
   Liaisons: Chelsea Kocken, Jeff Mirkes, and Leah Weycker.

B. Approval of the Agenda.

1. Approval of the agenda for the October 19, 2018, special meeting of the Redevelopment Authority.

C. Regular Business.

1. Consideration with possible action on Development Agreement 18-06 with Breakthrough Fuel, LLC for development project at the Shipyard, 239 Arndt St., 101 Bridge St., and 119 Bridge St. (Tax Parcels 3-551, 3-554-A, 3-556).

   The Council may convene in closed session pursuant to Sections 19.85(1)(e), Wis. Stats., for purposes of deliberating or negotiating the sale of public properties, investing of public funds or conducting other specified public business as necessary for competitive or bargaining reasons. The Council may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

D. Adjournment.

1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov
2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this Redevelopment Authority meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.

4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.

Report to the
Redevelopment Authority of the City of Green Bay

MEETING DATE	PREPARED BY
October 19, 2018	Kevin J. Vonck, CED Director

AGENDA ITEM # C.1.

Consideration with possible action on Development Agreement 18-06 with Breakthrough Fuel, LLC for development project at the Shipyard, 239 Arndt St., 101 Bridge St., and 119 Bridge St. (Tax Parcels 3-551, 3-554-A, 3-556).

The Council may convene in closed session pursuant to Sections 19.85(1)(e), Wis. Stats., for purposes of deliberating or negotiating the sale of public properties, investing of public funds or conducting other specified public business as necessary for competitive or bargaining reasons. The Council may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

BACKGROUND

Breakthrough Fuel (the Developer) intends to complete a Project, which involves constructing a modern, state-of-the-art office building of approximately forty thousand (40,000) square feet along with parking, landscaping, lighting, and other related improvements on the north side of the Shipyard.

The project aligns with our departmental vision of developing a community that is safe, healthy, connected, and loved, as it:

- builds new structures using the latest codes;
- reduces transportation hazards;
- remediates environmental contamination from the Property;
- enhances the physical landscape;
- includes high-performance design elements, mechanical systems, and interior finishes;
- encourages human-powered movement;
- interacts positively with adjacent properties, the neighborhood, and the community;
- strengthens and expands our pedestrian, bicycle transportation networks; and
- creates public spaces and amenities; creates employment opportunities

As of January 1, 2018, the Property has an aggregate assessed value of $0.00, which based on the assessed tax rates in effect as of January 1, 2018, the Property yields approximately:

- $0.00 in total real estate taxes annually (assessed mill rate of $22.79);
- $0.00 in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of $22.79); and
- $0.00 in real estate taxes to the City of Green Bay annually (assessed mill rate of $9.02).

Upon completion of Proposed Project, the City estimates the aggregate assessed property value of the Property to be eight million, three hundred thousand dollars ($8,300,000.00) which is anticipated to yield approximately:

- $189,157.00 in total real estate taxes annually (assessed mill rate of $22.79);
- $189,157.00 in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of $22.79); and
- $74,866.00 in real estate taxes to the City of Green Bay annually (assessed mill rate of $9.02).

The Project is not viable without public assistance. Pursuant to the provisions of §66.1105, Wis. Stats. (the "Tax Increment Law"), the City has included the Property within Tax Increment District Number Five ("TID 5" or the "TID"), which may provide part of the financing for certain costs of the Project. The Developer requests that the RDA and City ask the Joint Review Board (JRB) to create a new conservation and rehabilitation or blight Tax Increment District ("TID 22" therein replacing references to the "TID"), effective January 1, 2018, which includes the Property and adjacent property, and which will provide part of the financing for certain costs of the Project.

RECOMMENDATION

Approve Development Agreement 18-06 with Breakthrough Fuel, LLC for development project at the Shipyard, 239 Arndt St., 101 Bridge St., and 119 Bridge St. (Tax Parcels 3-551, 3-554-A, 3-556), subject to minor legal and technical changes.

FISCAL IMPACT

No general levy dollars will be used for this project. Staff is proposing a TIF Incentive that includes:

1. Property Transfer. The City and/or RDA shall convey the Property to the Developer through the process outlined in the Agreement. The City and/or RDA will retain ownership of the first fifty (50) feet of land along the waterway.
2. Public Improvements. The City and/or RDA shall complete Public Improvements as outlined in the Agreement. This includes improvements to Arndt Street, S. Pearl St., and parking spaces.
3. The City and/or RDA shall complete Property Improvements, or allow the Developer seek reimbursement, as outlined in the Agreement. This includes site fill, environmental remediation, and stormwater management.
4. Property Acquisition. Should the Developer propose a Future Project on the Property worth more than six million dollars ($6,000,000.00), the City and/or RDA shall acquire 345 S. Pearl St. (Tax Parcel 3-552) within twenty-four (24) months
5. Project Grant. The City shall provide one million dollars ($1,000,000.00) of TIF Incentive as a Project Grant upon Developer fulfilling all obligations identified in the Agreement regarding the proposed Project.
6. PAYGo. The City shall first use the TIF Increment to cover one hundred and ten percent (110%) of its annual debt service obligation for the Project Grant. Should the payment not consume all of the TIF Increment, the City shall make available sixty percent (60%) of the remaining TIF Increment to the Developer through 2036.
7. The Shipyard. Prior to June 1, 2020, the City and/or RDA shall construct a signature public recreation and entertainment facility at 100 W. Mason St. (Tax Parcel 2-78) and surrounding property, in accordance with all applicable codes and ordinances, as defined in the Agreement.

ATTACHMENTS

1. 8 - Breakthrough - 3-551 - 181016 - Development Agreement - RDA

DEVELOPMENT AGREEMENT 18-06

BREAKTHROUGH FUEL @ THE SHIPYARD

This Development Agreement is made this _________ day of __________________________, 2018, by and among THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"), THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"), and BREAKTHROUGH FUEL, LLC a Wisconsin limited liability company ("Developer").

RECITALS

A. Developer has proposed to acquire and develop certain real property, identified for real estate tax purposes and address as:

Tax Parcel	Address	Acres	Assessed Value
3-551	239 Arndt St.	4.67	$0.00
3-554-A	101 Bridge St.	0.29	$0.00
3-556	119 Bridge St.	0.70	$0.00

B. The parcels listed above shall be referred to as the "Property." The Property comprises approximately five and sixty-six hundredths acres (5.66) of land. A legal description of the Property is herein attached as EXHIBIT A. Should the boundaries of the Property change, the City and/or RDA and/or Developer shall cause a Certified Survey Map ("CSM") to be prepared, approved, and recorded with the Brown County Register of Deeds.

C. Developer intends to complete a Project, which involves constructing a modern, state-of-the-art office building of approximately forty thousand (40,000) square feet along with parking, landscaping, lighting, and other related improvements. The Proposed Project improvements are shown on a Preliminary Concept Plan, which is herein attached as EXHIBIT B.

D. As of January 1, 2018, the Property has an aggregate assessed value of $0.00, which based on the assessed tax rates in effect as of January 1, 2018, the Property yields approximately:

1. $0.00 in total real estate taxes annually (assessed mill rate of $22.79);

2. $0.00 in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of $22.79); and

3. $0.00 in real estate taxes to the City of Green Bay annually (assessed mill rate of $9.02).

E. Upon completion of Proposed Project, the City estimates the aggregate assessed property value of the Property to be eight million, three hundred thousand dollars ($8,300,000.00) which is anticipated to yield approximately:

1. $189,157.00 in total real estate taxes annually (assessed mill rate of $22.79);

2. $189,157.00 in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of $22.79); and

3. $74,866.00 in real estate taxes to the City of Green Bay annually (assessed mill rate of $9.02).

The City Assessor or his/her designee may not use this Term Sheet or any provisions herein as the sole basis to determine the value of the Project.

F. Pursuant to the provisions of §66.1105, Wis. Stats. (the "Tax Increment Law"), the City has included the Property within Tax Increment District Number Five ("TID 5" or the "TID"), which may provide part of the financing for certain costs of the Project. The Developer requests that the RDA and City ask the Joint Review Board (JRB) to create a new conservation and rehabilitation or blight Tax Increment District ("TID 22" therein replacing references to the "TID"), effective January 1, 2018, which includes the Property and adjacent property, and which will provide part of the financing for certain costs of the Project.

G. Developer has requested Tax Incremental Finance ("TIF") assistance from the City and RDA with regard to certain expenses, including, but not limited to environmental remediation; demolition, remodeling, repair or reconstruction of existing buildings; clearing of land; construction of new buildings; or the construction of public works infrastructure, which will constitute qualified expenditures for which TIF assistance may be afforded Developer.

H. The City and RDA desire to have Developer perform the Project in order to generate economic activity and tax base for the community consistent with the City Comprehensive Plan.

I. In order to induce Developer to undertake the Project, such that the project builds new structures using the latest codes; reduces transportation hazards; remediates environmental contamination from the Property; enhances the physical landscape; includes high-performance design elements, mechanical systems, and interior finishes; encourages human-powered movement; interacts positively with adjacent properties, the neighborhood, and the community; strengthens and expands our pedestrian, bicycle transportation networks; creates public spaces and amenities; creates employment opportunities; and the public will generally benefit, the City has agreed to provide assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement.

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

I. PURPOSE

A. <u>Incorporation of Proceedings, Exhibits, and Recitals</u>. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City or RDA, including but not limited to adopted or approved plans or specifications on file with the City or RDA, along with all of the Recitals set forth above, shall be incorporated into this Agreement by reference, upon attachment, or upon consent by amendment if necessary if not referenced or attached at the time of execution of this Agreement.

B. Implementation Schedule. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth and/or incorporated herein. Any material modification or deviation from an approved schedule described in this Agreement shall occur only upon approval of the City and RDA, with any such approvals required to be in writing as an amendment to this Agreement, and which approvals shall not be unreasonably withheld. City shall cooperate and act promptly with respect to any and all permits or approvals necessary for completion of the Project. Notwithstanding the above, this Agreement shall not limit the discretion of the City, or any of its duly appointed and authorized governing bodies, boards or entities, in approving or rejecting any aspect of the Project or improvements contemplated on or about the Property.

C. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitutes the entire Agreement between the parties hereto in respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement shall be deemed to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City or RDA, granting approvals or conditions attendant with such approval, the terms of this Agreement shall be deemed controlling and the City and RDA will take the necessary action to amend any conflicting approvals or conditions.

D. Purpose of the Agreement. In order to cause the Project to occur and to induce Developer to undertake the Project, to promote community development, industry and job creation and to expand and enhance the tax base within the City, the City intends to provide the TIF Incentives as set forth in this Agreement. The City intends to recover its costs through the Available Tax Increment generated by the Property. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed.

II. DEFINITIONS; EXHIBITS

Whenever in this Agreement a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand. As used in this Agreement, the following terms, when having an initial capital letter, shall have the following meanings:

A. "Agreement" means this Development Agreement among the City, RDA, and Developer, as amended and supplemented from time to time.

B. "Annual Assessed Value" means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.

C. "Available Tax Increment" means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the base value and attributable to development within a tax incremental finance district, during the twelve (12) month period preceding a payment date, that has not been previously used to make payment on bonds or other obligations as determined by the City. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.

D. "Base Value" means the aggregate assessed value of the Property when the TID was created, which shall be zero dollars ($0.00).

E. "City" means the City of Green Bay, Brown County, Wisconsin.

F. "Concept Plan" means the plan for the Project.

G. "Developer" means BREAKTHROUGH FUEL, LLC, a Wisconsin limited liability company, or any assignee of the same.

H. "Future Project" means any Private Improvements that will be constructed in the future not specifically detailed in this Agreement.

I. "Plans and Specifications" means the plans and specifications developed for the Project.

J. "Preliminary Concept Plan" means the initial Concept Plan, a copy of which is attached as EXHIBIT B and which is subject to such changes as Developer, the City or RDA may propose and the City and RDA may accept in its sole discretion.

K. "Private Improvements" means the improvements to be constructed on the Property that are not Public Improvements.

L. "Project" means the Project as defined in the Recitals.

M. "Public Improvements" means the infrastructure improvements in connection with the Project that will ultimately be dedicated for public service, including, without limitation:
   1. road, pedestrian, and bicycle improvements; and
   2. sanitary sewer, storm sewer, and potable water and wastewater mains and laterals, and storm water management facilities; and
   3. telephone, high-speed cable, and related technology infrastructure; and
   4. natural gas, electrical power, and other public utilities; and
   5. any related engineering, grading, erosion control, and landscaping; and
   6. any related land acquisitions and anticipated and intentional corrections to adjacent property affected by the public improvements, including grading.

N. "Qualified Expenditures" means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section III. B. 7.

O. "Special Assessment" means any special assessment levied against the Property by the City under §66.0701-0733, Wis. Stats., the City Code of Ordinances and this Agreement.

P. "Special Charge" means any special charge levied against the Property by the City under §66.0627, Wis. Stats., the City Code of Ordinances and this Agreement.

Q. "Tax Increment" means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable property within a TID in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year's equalized value of all taxable property in the TID.

R. "TID" means Tax Increment District Number Five ("TID 5" or the "TID"), which may provide part of the financing for certain costs of the Project. The Developer requests that the RDA and City ask the Joint Review Board (JRB) to create a new conservation and rehabilitation or blight Tax Increment District ("TID 21" therein replacing references to the "TID"), effective January 1, 2019, which includes the Property and adjacent property, and which will provide part of the financing for certain costs of the Project.

S. "TIF" means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.

T. "TIF Incentive" means the incentive as set forth in Section III of this Agreement including specifically the Tax Incentive Cap.

III. TAX INCREMENT FINANCING

A. Qualification for TIF. Developer shall demonstrate to the satisfaction of City and RDA a need for TIF, with such determination to be made according to the "but for" test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the satisfaction of the City and RDA the Developer's qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer.

B. Nature of TIF Incentive. The TIF Incentive available to Developer under this Agreement shall be defined as the following:

1. Property Transfer. The City and/or RDA shall convey the Property to the Developer through the following process:

    a) The City and/or RDA shall prepare and obtain approvals for a CSM, for which desired parcel boundaries are herein attached as EXHIBIT C, which shall include the following reservations for public use and access:

        (I) The creation of a new right-of-way and/or City and/or RDA-owned parcel that extends fifty (50) feet in width from the existing eastern Fox River shoreline of 101 Bridge Street, 119 Bridge Street, and 239 Arndt Street (Tax Parcels 3-554-A, 3-556, 3-551) and the existing southern Fox River shoreline of the 239 Arndt Street (Tax Parcel 3-551); and

        (II) The creation of a new right-of-way and/or City and/or RDA-owned parcel, south of the existing Arndt Street right-of-way, which extends fifty (50) feet from the western boundary of 239 Arndt Street (Tax Parcel 3-551) to the eastern terminus of the existing Arndt Street right of way.

    b) Upon recording of such CSM with the Brown County Register of Deeds, all references to Property shall include all such new parcels created through the actions of this Section III. B. 1.

    c) The City and/or RDA shall convey the Property, excluding all City and/or RDA parcels or right-of way, to Developer, free and clear of liens and encumbrances that materially prohibit development of the Property as herein proposed, via warranty deed, for the sum of one dollar ($1.00), and shall provide an owner's policy of title insurance at the time of conveyance.

2. Public Improvements. Prior to December 1, 2019, the City and/or RDA shall at their expense complete the following Public Improvements in accordance with all applicable codes and ordinances, with Developer review and comment prior to construction:

    a) Arndt Street. Appropriate paving, landscaping, lighting, controls, and other improvements required to ensure a safe, comfortable crossing of the CN railroad tracks for both motorized and non-motorized users, in compliance with current industry standards. The RDA and/or City shall take steps in accordance with all applicable codes and ordinances to rename the segment of Arndt Street east of Broadway to a new name agreeable to the parties.

b) S. Pearl Street. Appropriate paving, landscaping, lighting, and other improvements required to ensure safe, comfortable, and contiguous pedestrian accommodations on S. Pearl Street between Arndt Street and Walnut Street, in compliance with current industry standards.

c) Parking. Appropriate paving, landscaping, lighting, and other improvements required to provide one hundred and thirty (130) parking spaces as follows:

(I) Approximately sixty (60) parking spaces on the property located at 401 S. Broadway (Tax Parcel 3-568), for as long as such property remains undeveloped, which shall be made available to Developer on an exclusive basis during customary business hours.

(II) Parking spaces on the property located at S. Broadway (Tax Parcel 3-568-1), 505 S. Broadway (Tax Parcel 2-946), 511-513 S. Broadway (Tax Parcel 2-949-A), 515 S. Broadway (Tax Parcel 2-70), and 517 S. Broadway (Tax Parcel 2-71) for as long as such property remains undeveloped, which shall be made available to Developer on an as-available basis.

(III) Parking spaces on the property located at 402 S. Broadway (Tax Parcel 3-572), 420 S. Broadway (Tax Parcel 3-569), and 419 S. Maple Avenue (Tax Parcel 2-947), for as long as such property remains undeveloped, which shall be made available to Developer on an as-available basis.

(IV) Should the City and/or RDA be unable to provide one hundred and thirty (130) parking spaces through the manner described above, the parties shall agree, in writing, to an alternative that provides the minimum number of spaces.

3. Property Improvements. The City and/or RDA shall complete the following improvements to the Property prior to conveyance of the Property to Developer, in accordance with all applicable codes and ordinances, with Developer review and comment prior to construction. In the alternative, Developer and the City and/or RDA may enter into a separate Property Improvement agreement wherein Developer may construct the Property Improvements identified below and seek reimbursement from the City. All expenses shall be identified in the Property Improvement agreement and will be paid by Developer and reimbursed as Qualified Expenses pursuant to this Agreement. The City shall not be responsible for any costs other than those specifically identified in the Property Improvement agreement.

a) Site Fill. The City and/or RDA shall remove and dispose of all necessary earthen material unsuitable for construction purposes and shall import a sufficient amount of customary and typical earthen material from a source selected by the City and/or RDA, compacted in place, to raise the existing elevation of the property above the existing base flood level established by the Federal Emergency Management Agency (FEMA), which is approximately four (4) feet above the current elevation.

b) Environmental Remediation. The City and/or RDA shall amend the environmental closure report in accordance with requirements of the Wisconsin Department of

Natural Resources (herein "DNR") and take all such appropriate measures to implement such actions required to achieve compliance and procure Voluntary Party Liability Exemption certification from the DNR.

c) Stormwater Management. The City and/or RDA shall construct customary and typical storm water management facilities necessary to service the Project and potential Future Projects on the Property. The stormwater management facilities shall include an acceptable liner as determined by the Director of the City Department of Public Works.

4. Property Acquisition. Should the Developer propose a Future Project on the Property beyond the scope of the Project described herein, and the City estimates the assessed value of such Future Project to be no less than six million dollars ($6,000,000.00), the City and/or RDA shall, within twenty-four (24) months from the date Developer proposes such additional improvements:

a) Acquire the real property at 345 S. Pearl St. (Tax Parcel 3-552) (the "Future Project Site"); and

b) Prepare the Future Project Site for redevelopment in a manner similar to that described in Section III. B. 3.; and

c) Convey the Future Project Site to Developer, free and clear of liens and encumbrances that materially prohibit development of the Property as herein proposed, via warranty deed, for the sum of one dollar ($1.00).

d) Should the RDA and/or City acquire the Future Project Site in a manner that does not permit transfer of such parcel to Developer, the RDA and or/City shall construct parking spaces in a manner similar to that described in Section III B. 2. c., which shall be made available to Developer on an as-available basis.

5. Project Grant. The City shall provide one million dollars ($1,000,000.00) of TIF Incentive as a Project Grant upon Developer fulfilling all obligations identified in Sections IV. A., IV. B., IV. C., IV. E., IV. F., and IV. G. of this Agreement regarding the proposed Project.

a) Such Project Grant shall be for purposes of paying certain Qualified Expenditures as referenced below. Developer shall provide the RDA with written evidence that Developer has incurred any such Qualified Expenditures and within thirty (30) days of receipt of such aforementioned evidence, the City or the RDA shall disburse to Developer such portion of the Project Grant necessary to pay such Qualified Expenditures.

b) The City shall provide Developer a schedule of the annual costs of debt service associated with such Project Grant, which is herein attached as EXHIBIT C.

c) In order for the City to cover one hundred and ten percent (110%) of the costs of debt service associated with such Project Grant, Public Improvements, and Property Improvements, the Developer guarantees that the Property shall have a minimum aggregate assessed value of six million dollars ($6,000,000.00) by January 1, 2020.

6. PAYGo Reimbursement. The City shall provide an additional TIF Incentive as a pay-as-you-go (PAYGo) obligation of the City, which is further defined as follows:

a) Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient to the limits of the TID and this Agreement, Qualified Expenditures as identified in Section III not covered by the Project Grant TIF Incentive shall be reimbursed to Developer pursuant to this PAYGo TIF Incentive.

b) Commencing the first year after the first occupancy permit for the Project has been issued, the assessed value of the Property shall be determined on January 1 of each tax year and shall be compared to the Base Value. The difference between the foregoing shall be known as the Incremental Property Value.

c) Incremental Property Value multiplied by the assessed mill rate, less payments of real estate taxes to the State of Wisconsin, shall be known as the TIF Increment.

d) The City shall first use the TIF Increment to cover one hundred and ten percent (110%) of its annual debt service obligation for the Project Grant. Should the annual debt service payment not consume all of the TIF Increment, the City shall make available sixty percent (60%) of the remaining TIF Increment to the Developer.

e) PAYGo Reimbursement payments will be payable to Developer in the year following the year of the TIF Increment determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special charges against the Property for the previous year. For example, if the first occupancy permit is issued on September 1, 2019, the TIF Increment would be determined as of January 1, 2020 and the PAYGo reimbursement would first be payable in 2021.

7. Qualified Expenditures. Project Grant(s) shall be disbursed in the following priority, and only fund:

   a) Public Improvements, as defined in Section II. M., and environmental remediation, and asbestos abatement as required by State and Federal law; then

   b) Private improvements as required by local, State, and Federal law, including:

      (I) Environmental remediation; and

      (II) Stormwater management facilities and related improvements; and

      (III) Floodplain fill and related flood mitigation improvements; and

      (IV) Deep foundation work and related geotechnical improvements.

   c) Any other activity specifically approved by the City or RDA.

8. Assignment. Developer may assign any of its payment rights hereunder to any future purchaser or developer of any part of the Property upon approval of the RDA, provided however, that the City shall be obligated only to disburse TIF Incentives to the party with whom the City has an agreement. It shall be incumbent upon Developer to enter into a separate agreement with any third parties if it intends to assign its payment rights hereunder, or seek either reimbursement or allocation of any Incremental Property Value

and guaranteed aggregate assessed value generated by any third party purchaser and/or developer of any part of the Property.

9. The Shipyard. Prior to June 1, 2020, the City and/or RDA shall construct a signature public recreation and entertainment facility at 100 W. Mason St. (Tax Parcel 2-78) and surrounding property, in accordance with all applicable codes and ordinances, and with Developer review and comment prior to construction, which includes:

    a) A multi-purpose, multi-season Outdoor Events Center ("Stadium") with an artificial turf field (for soccer, football, rugby, lacrosse, and similar sports), scoreboard, lighting, grass berm seating, and related improvements, capable of holding approximately two thousand (2,000) persons for sporting events and eight thousand (8,000) persons for concerts, festivals, and community events; and

    b) A permanent structure for restrooms, lockers, and/or concessions; and

    c) Permanent and/or seasonal structures (e.g. shipping containers) for food, beverage, retail, and recreation; and

    d) A multi-modal public path and/or boardwalk along the entire waterfront boundaries of the slip, composed of a combination of concrete, pavers, asphalt, crushed limestone, wood or engineered decking, and/or similar hard surfaces; and

    e) An urban beach, children's playground, splash pad and/or similar amenities; and

    f) A floating dock for transient boaters and an accessible kayak launch.

C. Limitations. The TIF Incentive available to Developer for the Project is limited as follows:

1. Monetary Limitation. The PAYGo TIF Incentive in any year shall not exceed sixty percent (60%) of the Available Tax Increment for the Property.

2. Tax Receipts Limitation. Only the Available Tax Increment actually received by the City, and no other property, revenue, or asset of the City, shall be used to pay such amounts.

3. Temporal Limitation. Provided Developer qualifies for TIF Incentive and provides adequate proof to the City and RDA that Developer has incurred Qualified Expenditures, the PAYGo TIF Incentive payments shall be made within thirty (30) days after Developer has paid the real estate taxes and any Special Assessments and Special Charges in full for the previous tax year, provided, however, in no event shall the PAYGo TIF Incentive payments continue after the earlier of:

    a) Calendar year 2036;

    b) The termination date of the TID; or

    c) The termination of this Agreement if before the termination of the TID.

D. No General Obligation of City. The City's obligation to make TIF Incentive payments shall be a special and limited obligation only and shall not be considered a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of such amounts. The City shall take no action to dissolve the TID before payment of all TIF Incentive payments due to the Developer, subject to the provisions of this Agreement. In no circumstances shall amounts to be paid Developer hereunder be considered an indebtedness of the City, and the obligation of the City hereunder is limited to the Available Tax Increment appropriated and received by the City. Amounts due hereunder shall not count against the City's constitutional debt limitation, and no taxes will be levied for its payment or pledged to its payment other than from the Available Tax Increment.

E. Other Grants and Credits. The City and RDA, as appropriate and in its sole discretion, may also apply for such other grants and credits in regard to the Project as they shall deem appropriate for the benefit of the Project and as may be required to achieve necessary financing for the Project, provided, however, the City and RDA make no representations or warranties about the availability of such grants and credits or whether any such grants or credits that may be available will be awarded.

IV. OBLIGATIONS OF DEVELOPER

A. Concept Plan. Prior to commencement of construction, Developer shall submit a Concept Plan to RDA for approval, which shall be based on, but may differ in minor respects from the Preliminary Concept Plan presented in the Term Sheet. The Concept Plan shall clearly identify the new boundaries of the Property as described in Section III. B. 1.

B. Construction Documents. Prior to commencement of construction of any Phase of the Project, Developer shall submit site plans, building plans, and other drawings that fix and describe the size and character of the entire Project, along with architectural and general contracts, to RDA for approval. The Construction Documents shall include:

1. Plans and specifications for structural, mechanical and electrical systems, materials; and
2. Full-color elevations for all sides of all proposed structures; and
3. Descriptions and actual samples of all exterior building materials; and
4. Descriptions and photographic examples of interior finishes; and
5. Other such essential items as may be reasonably determined by the RDA to be appropriate.

C. Development Budget. Prior to commencement of construction, Developer shall submit a Development Budget, prepared in accordance with general principles for construction and development budgeting, to RDA for approval. The Development Budget shall include:

1. Not less than five million dollars ($5,000,000.00) in "hard" construction costs for the entire Project; and
2. A line item of not less than ten percent (10%) of total Project costs for cost overruns and change orders; and
3. Line items for each of the Qualified Expenditures for which the Developer is seeking a TIF Incentive, as identified in Section III. B. 7.

D. RDA Approvals. The RDA shall indicate its approval or further requirements in writing within thirty (30) days from the date of receipt of the Concept Plan, Construction Documents, or Development Budget, or any revisions; provided, however, that the RDA shall approve such revised Concept Plan, Construction Documents, or Development Budget unless it determines such revisions would impair the objectives of this Agreement, impose substantial financial burdens on the City or the RDA, or adversely affect the Concept Plan. The RDA will make all reasonable efforts to determine the acceptability of plans in less than thirty (30) days, including convening for special meetings to review and consider such plans. At any time during the implementation of the development contemplated by this Agreement, the RDA or Developer may propose modifications to the Preliminary Concept Plan and the approved Concept Plan subject to the agreement of the RDA and the Developer. At any time during the implementation of the development contemplated by this Agreement, Developer may submit to the RDA proposed revisions in the approved Concept Plan, Construction Documents, or Development Budget in order to enhance the achievement of the objectives of this Agreement and to improve and refine the approved Concept Plan.

E. Compliance with Planning; Zoning; Permits and Use. Developer will obtain from the City and all other appropriate governmental bodies (and all other councils, boards, and parties having a right to control, permit, approve, or consent to the development and use of the Property) all approvals and consents necessary to develop and use the Property as set forth above, including, but not limited to:

1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.

2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.

3. If required, Developer shall have obtained the approval of the City, RDA, and State of Wisconsin Department of Transportation to a traffic impact analysis regarding the Project.

F. Proof of Equity and Financing. By no later than commencement of construction, Developer shall have delivered proof satisfactory to the City and RDA of available equity and financing, which together will be sufficient in the determination of the City and RDA, to complete the Project according to the plans and specifications.

G. Termination or Relocation of Easements. Developer shall have agreements with all holders of easements or any other rights that may be affected by the Project, regarding the termination, modification or relocation of such easements and other rights in order to accommodate the Concept Plan.

H. Use of Funds. Developer may use TIF supported funds only to fund Qualified Expenses as set forth in the approved Development Budget.

I. Improvement of Property. Developer shall promptly design and complete the Project. Substantial work on the Project shall commence no later than ninety (90) days after the last to occur of approval by the City and RDA of the Preliminary Concept Plan, approval by RDA of the Development Budget and Development Plans, and/or issuance of a building permit and all other permits or licenses required to commence construction. Construction shall be completed no later than December 1, 2020. Developer shall file with the RDA copies of the detailed construction plans within ninety (90) days after completion of the Project.

J. Reports and Information. During the period before the commencement of construction, Developer shall from time to time provide to the RDA information having a bearing upon the interests of the City and the RDA in the Property or under this Agreement. Upon request of the RDA, Developer shall submit progress reports during the course of construction. Upon request of the RDA.

Developer shall submit a copy of annual, audited financial statements for Developer through termination of this Agreement.

K. Copies of Documents. All documents from Developer to the City or RDA shall be submitted in triplicate.

L. Maintenance and Repair. Developer shall at all times keep and maintain, or cause to be kept and maintained, the Property in good condition and repair, in a safe, clean, and attractive condition, and free of all trash, litter, refuse, and waste, subject only to demolition and construction activities contemplated by this Agreement.

M. Transfer or Sale of Project Property.

1. Notice of Intent to Transfer. If Developer intends to sell, transfer or convey the Property or any part thereof before termination of this Agreement, Developer shall provide to the City and RDA a written request for transfer thirty (30) days prior to the anticipated transfer. Prior to completion of the Project, the City or RDA may deny the request for any commercially reasonable reason; thereafter, such consent may not be unreasonably withheld. City and RDA consent shall not be required if Developer assigns its rights and obligations under this Agreement to an entity controlled and affiliated with Developer to own, manage and operate the Property. This Agreement inures to the benefit and becomes the obligation of the heirs, successors and assigns of Developer. This Agreement shall run with the land and shall be binding upon all current and future owners of the Property. Owner shall not be required to provide the City or RDA with written notice of its intent to transfer in connection with the granting of any mortgage or security agreement to finance or refinance loans for the purchase of the Property or payment of costs of the Project.

2. No Transfer to Exempt Entities. Prior to the closure of the TID, the Property shall not be sold, transferred or conveyed to, leased, or owned by any entity or used in any manner that would render any part of the Project Property exempt from taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement with the City and RDA in a form satisfactory to the City providing for acceptable payments to the City in lieu of taxes.

N. Easements. Developer shall grant to the City such easements as are reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other access necessary to effectuate this Agreement. Developer shall cause existing easements to be relocated or terminated to accommodate the Project.

O. Environmental.

1. Presence of Hazardous Materials and Compliance with Environmental Laws. Before commencement of the First Phase, Developer shall be satisfied, through such means as are commercially reasonable, that the Property is free of Hazardous Materials or that any Hazardous Materials on or within the Property are being stored and handled in strict compliance with all Environmental Laws. Developer shall provide the City and RDA with copies of all environmental reports pertaining to the Property no later than ten (10) days after receiving the same.

2. Developer's Environmental Indemnification. Developer shall indemnify, pay on behalf of, defend and hold the City, the RDA, and their respective agents, officials, employees, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability, or other charge or claim, and all costs (including, without

limitation, reasonable legal, accounting, consulting, engineering, and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity):

a) Arising from the treatment, deposit, release, storage, or disposal of any Hazardous Materials on, within or about the Property occurring after the date of conveyance of the Property to Developer, unless caused by City or the RDA;

b) Arising from the breach of any warranty, covenant or representation of Developer to the City or RDA, or any other obligation of Developer to the City or RDA regarding Hazardous Materials under this Agreement.

3. Hazardous Materials Defined. As used herein, the term "Hazardous Materials" means:

a) Hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants, "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1802; the Resource Conservation and Recovery Act, 42 U.S.C. 9601. et seq.; the Clean Water Act, 33 U.S.C. 1251; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters (collectively, "Environmental Laws"); and

b) Any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to: petroleum, refined petroleum products, waste oil, waste aviation or motor vehicle fuel, and asbestos containing materials.

4. Survival. The provisions of this Section shall survive the conveyance to Developer of any City and/or RDA Property.

P. Insurance. Before commencement of construction activities on the Property, Developer shall deliver to the City and RDA certificates of insurance, copies of endorsements, and other evidence of insurance requested by the City or RDA, which Developer is required to purchase and maintain, or cause to be purchased or obtained, in the types and amounts of coverage listed below, each of which shall name the City and RDA as additional insured parties:

1. Workers Compensation and Related Coverage. Coverage for state and federal workers compensation shall be defined by state and federal statute. The amounts of employer's liability coverage shall be in not less than the following limits:

a) Bodily Injury by Accident - $100,000.00 per accident;

b) Bodily Injury by Disease - $100,000.00 per employee; and

c) $500,000.00 policy limit.

2. Waiver of Workers Compensation Subrogation. The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, RDA, its officers, officials, employees, and volunteers for losses paid under the terms of the policy that arises from the work performed by the names insured for or on behalf of the City or RDA.

3. Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits:

   a) General Aggregate Limit - $2,000,000.00; Personal and Advertising Injury Limit (per person/organization) - $2,000,000.00;

   b) Bodily Injury and Property Damage - $2,000,000.00 per occurrence;

   c) Fire Legal Liability Damage Limit - $100,000.00 per occurrence; and

   d) Medical Expense Limit - $10,000.00 per person.

4. Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non-owned motor vehicles. The amounts of such insurance shall be not less than the following limits:

   a) Bodily Injury - $250,000.00 per person; and

   b) $1,000,000.00 per occurrence; and Property Damage - $250,000.00 per occurrence.

5. Umbrella Coverage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of $1,000,000.00 for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs IV. S. 1. to IV S. 3. above.

6. Builder's Risk Insurance. Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect and all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to relieve Developer of its obligation to perform under this Agreement and, in the event of loss, Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

7. Fire and Casualty Insurance. Developer shall obtain and keep in full force adequate fire and casualty insurance with coverage in an amount equal to the assessed value of such

improvements. In the event of loss the Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

Q. General Indemnity.

1. Protection Against Losses. Developer shall indemnify, defend and hold harmless the City, RDA, and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with:

   a) Any breach by Developer of the terms of this Agreement;

   b) Any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or

   c) Any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.

2. Indemnification Procedures. Developer shall promptly assume full and complete responsibility for the investigation, defense, compromise and settlement of any claim, suit or action arising out of or relating to the indemnified matters following written notice thereof from the City or RDA, which notice shall be given by the City or RDA within ten (10) days of their knowledge of such claim, suit or action. Failure to provide such timely notice shall not eliminate Developer's indemnification obligations to the City and RDA unless, and only to the extent to which, such failure has substantially prejudiced Developer. Notwithstanding the foregoing, in its sole discretion and at its expense, the City and RDA may participate in or defend or prosecute, through their own counsel(s), any claim suit or action for which either of them is entitled to indemnification by Developer; provided, however, that if the City or RDA is advised in writing by its legal counsel that there is a conflict between the positions of Developer and City or RDA, as appropriate, in conducting the defense of such action or that there are legal defenses available to the City or RDA different from or in addition to those available to Developer, then counsel for the City or RDA, at Developer's expense, shall be entitled to conduct the defense only to the extent necessary to protect the interests of the City or RDA. Developer shall not enter into any compromise or settlement without the prior written consent of the City or RDA, as appropriate, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against the City or RDA shall be reasonable grounds for the City or RDA to refuse to provide written consent to a compromise or settlement. If Developer does not assume the defense of such claim, suit or action, Developer shall reimburse the City and RDA for the reasonable fees and expenses of counsel(s) retained by the City and by RDA, and shall be bound by the results obtained by the City and RDA; provided, however, that no such claim, suit or action shall be settled without Developer's prior written consent, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

V. CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY AND RDA

The City's and RDA's obligations under this Agreement are conditioned upon the following:

A. Existence. Developer shall have provided City and/or RDA a certified copy of its organizational documents and a certificate from the Department of Financial Institutions for the State of Wisconsin indicating Developer's existence and good standing.

B. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions of the company, demonstrating Developer has been duly authorized to enter into this Agreement and authorizing the person signing this Agreement to execute and deliver it to the City and/or RDA, and to bind Developer to its terms.

C. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts subject to this Agreement or of any other agreement between Developer and the City and/or RDA.

D. Insurance. Developer shall have delivered to the City and/or RDA certificates of all insurance required under this Agreement.

E. TID District. The TID shall be in effect and in good standing certified by the Wisconsin Department of Revenue.

VI. CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER

The obligations of Developer under this Agreement are conditioned upon the following:

A. TID. The TID shall be in effect and in good standing certified by the Wisconsin Department of Revenue.

B. Due Authorization. The City Council shall consent to the City entering into this Agreement and shall authorize the person(s) signing this Agreement to execute and deliver it to Developer and to bind the City to its terms. All actions required to authorize RDA to enter into this Agreement shall have been taken and evidence of such actions, including authorization of the person signing this Agreement on behalf of RDA shall have been provided to Developer.

VII. REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer represents and warrants to the City and RDA as follows:

A. No Material Change in Documents. All contract documents and agreements have been furnished to the City and RDA, as the case may be, and are true and correct and there has been no material change in any of the same.

B. No Material Change in Developer Operations. There has been no material change in the business operations of Developer since the date the parties began negotiation to enter into this Agreement.

C. Compliance with Zoning. Upon completion of the Project, the Property will conform at all times and in all respects with applicable zoning and land division laws, rules, regulations and ordinances.

D. Payment. Developer shall pay for all work performed or materials furnished for the Project when and as the same become due and payable. Developer shall not suffer any construction or other involuntary lien to be imposed upon the Property, except for liens for claims to payment that are subject to a bona fide dispute, and, in that case, such liens shall be removed by Developer posting bond or other security, paying one hundred and twenty percent (120%) of the lien claimed into court, escrowing funds or promptly taking other steps to remove the lien of record. Developer shall pay all other obligations relating to the Project, including all creditors holding liens or mortgages against the Property when and as the same become due. Developer will pay all taxes and assessments levied against the Property when and as the same become due.

E. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City or RDA pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

F. Good Standing. Developer is a limited liability company organized and existing in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business.

G. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary company action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.

H. No Conflict. The execution, delivery, and performance of the obligations of Developer pursuant to this Agreement will not violate or conflict with the Articles of Organization or Operating Agreement of Developer or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of obligations of Developer pursuant to this Agreement violate or conflict with any law applicable to Developer.

I. No Litigation. There is no litigation or proceeding pending or threatened against or affecting Developer or the Property that would adversely affect the Project, Developer or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

J. No Default. No default, or event that with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.

K. Compliance with Laws and Codes. The Project, when completed, will conform and comply in all respects with all applicable laws, rules, regulations and ordinances, including without limitation, all building codes and ordinances of the City. Developer will comply with, and will cause the Project to be in compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all environmental laws, rules, regulations and ordinances.

L. Fees or Commissions. Neither the City nor RDA shall be liable for any broker fees or commissions incurred by Developer in connection with the Property or any transactions contemplated by this Agreement.

VIII. DEFAULT

A. Developer Default. Each of the following shall be an Event of Default by Developer:

1. Failure to Make Payment. Developer fails to make any payment required and such failure continues for a period of ten (10) days after notice;

2. Failure to Abide by Other Terms. Developer fails to perform any other of its obligations under this Agreement and such failure continues for a period of thirty (30) days from the date of notice from the City or RDA; provided, however, if such cure cannot reasonably be accomplished within such thirty (30) days and the delay in cure does not materially impair the financial interests of the City or RDA, and if Developer promptly commences cure within the initial thirty (30) days and thereafter reasonably and continuously takes action to complete such cure within a reasonable time period, then the failure to perform shall not be an Event of Default;

3. Misrepresentation. Any representation or warranty of Developer in this Agreement or any agreement contemplated by this Agreement is untrue in any material respect;

4. Fraud and Other Illicit Behavior. Developer or any of its members is convicted of, pleads no contest to, or enters into any other agreement other than a dismissal with no conditions as to any allegation of:

   a) Fraud; or

   b) Indecent or illicit behavior that in the determination of the City or RDA would threaten the reputation of Developer or its ability to complete the Project according to the requirements of this Agreement;

5. Insolvency. Developer or any guarantor of the obligations of Developer hereunder is insolvent or becomes the subject of a petition in bankruptcy, a receivership, a composition or any other proceeding designed for the benefit of creditors generally that is not dismissed within sixty (60) days of the date of filing;

6. Involuntary Liens. Any lien is imposed upon the Property involuntarily due to the acts or omissions of Developer and such lien is not removed within sixty (60) days of it being imposed upon the Property.

B. Remedies Upon Default. In the event of the occurrence of an Event of Default by Developer, the City may in its discretion:

1. Termination. Terminate this Agreement without further notice to Developer;

2. Offset and Recoupment. Offset or recoup against any amounts that may then or thereafter come due from the City or RDA to Developer, whether under this Agreement or otherwise, an amount of damages reasonably estimated by the City or RDA resulting from Developer's breach;

3. Specific Performance. Sue for specific performance;

4. Sue for Damages. Sue for all damages caused by the Event of Default;

5. Other Remedies. Pursue any other remedies available to the City or RDA at law or in equity;

6. Interest. Collect interest on all delinquent amounts at the rate of twelve percent (12%) per annum from the date such amount was due; and

7. Costs and Attorney Fees. Collect all costs and fees, including reasonable attorney fees incurred by the City and RDA, or either of them, by virtue of the Event of Default.

C. City or RDA Default. Developer shall have all rights and remedies available under law or equity with respect to any failure of the City and/or RDA to perform their obligations under this Agreement, but only after providing the City and RDA notice of such default and a failure by the City and/or RDA to commence attempts to cure such default within the thirty (30)-day notice period. If the City and/or RDA, as appropriate, commences cure within the thirty (30)-day notice period and thereafter reasonably and continuously takes action to complete such cure, then the failure to perform shall not be an Event of Default.

D. Limitation of Damages. The foregoing notwithstanding, none of the parties shall be liable to any other party for any incidental, consequential, indirect, punitive or exemplary damages. All claims and damages asserted against the City or RDA shall be subject to statutory protections of municipalities and their officials and employees, including the immunity and limitations set forth in §893.80 Wis. Stats.

E. No Waiver. Any delay in instituting or prosecuting any actions or proceedings or otherwise asserting the rights granted in this Agreement, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way, nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.

F. Remedies Cumulative. Except as expressly provided otherwise in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise of it, at the same or different times, of any other such remedies for any other default or breach by any other party.

IX. TERMINATION

A. Date of Termination. This Agreement shall terminate upon the earliest of the date:

1. All Qualified Expenditures have been repaid in full by Tax Increment;

2. The City closes and terminates the TID;

3. The Wisconsin Department of Revenue fails to certify or revokes certification of all or any portion of the TID or the Property;

4. This Agreement is terminated because of an Event of Default;

5. The parties agree in writing to terminate this Agreement.

B. Survival of Certain Provisions. Sections III.D, IV.E, IV.G, IV.H, IV.M.2, IV.N, IV.O.2, IV.Q, V.A, V.B, V.C, V.D, V.E, VII.C, VII.D, VII.E, VII.G, VII.K, VII.L, VIII.B, VIII.D, VIII.E, VIII.F, X.B, X.C, X.G, X.J, X.M, X.O, X.P, X.Q, and X.R. shall survive the termination of this Agreement.

X. MISCELLANEOUS PROVISIONS

A. Assignment. Developer may not assign its rights under this Agreement without the express prior written consent of the City and RDA, until the obligations of the Developer under Section III hereof are fully performed and satisfied. Thereafter, this Agreement may be assigned by Developer only upon the prior, written consent of the City and RDA, which shall not be unreasonably withheld.

B. Nondiscrimination. In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Property or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of the basis of race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender (including pregnancy), gender identity and/or expression, sexual orientation, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state or local law. Retaliation is also prohibited. The construction and operation of the Property shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

C. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or RDA have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.

D. No Personal Interest of Public Employee. No official or employee of the City or RDA shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities that are parties to this Agreement. No official or employee of the City or RDA shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or RDA, or for any amount that becomes due to the Developer or its successors under this Agreement.

E. Relationship of Parties. The City and the RDA are not partners or joint venturers with Developer in the Project or otherwise. Under no circumstances shall the City or RDA be liable for any of the obligations of Developer under this Agreement or otherwise. There are no third party beneficiaries of this Agreement.

F. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes herein above enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

G. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect until fulfilled and shall survive the closing.

H. Time. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth herein.

I. Notices. All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one (1) business day after deposit with a nationally recognized over-night commercial courier service, air bill pre-paid, or forty-eight (48) hours after deposit in the United States mail postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To the City:	City of Green Bay Attn: City Clerk 100 North Jefferson Street Green Bay, WI 54301
To RDA:	Redevelopment Authority of the City of Green Bay Attention: Executive Director 100 North Jefferson Street, Room 608 Green Bay, WI 54301
To the Developer:	DEVELOPER Attention: PRINCIPAL ADDRESS CITY, STATE, ZIP

The foregoing addresses shall be presumed to be correct until notice of a different address is given according to this paragraph.

J. Governing Law. The laws of the State of Wisconsin shall govern this Agreement.

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

L. Execution in Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature thereto and hereto were upon the same instrument.

M. Severability. If any provision of this Agreement shall be determined to be unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained unenforceable to any extent whatever.

N. Recording of Agreement. The City may record this Development Agreement or a Memorandum of this Agreement with the Register of Deeds for Brown County, Wisconsin. Upon request of the City, Developer shall execute and deliver to the City any such Memorandum or any other document in connection with such recording.

O. Priority Over Subsequent Liens. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. As such, the current and all future owners of the Property shall be subject to all of the obligations stated herein. Owner warrants and represents that there will not be any mortgage or any other lien against the Property at the time this Development Agreement is recorded other than mortgages for the purchase of the Property and to finance costs of constructing the Project. This Development Agreement shall have precedence and shall take priority over any mortgage, lien or other encumbrance that may be recorded against the Property (or any portion thereof) after the recording of this Development Agreement (or Memorandum thereof).

P. No Construction Against Drafter. This Agreement is a product of the negotiation and drafting of attorneys for the parties, and, as such, the rule of construing ambiguous contracts against the drafter shall not apply to this Agreement.

Q. Venue. The venue for any proceeding involving the negotiation, drafting, interpretation or enforcement of this Agreement shall be the circuit court for Brown County, Wisconsin, all other venues being inappropriate for any such proceeding.

R. Signatures and Counterparts. Electronic, facsimile and photocopy signatures shall have the same effect as original signatures.

S. Façade Enhancements. The RDA and/or City shall make a good faith effort to work with owners of real property adjacent to and in the vicinity of the Property to make aesthetic and artistic improvements to façades fronting the Property, Arndt Street, Bridge Street, and Pearl Street.

[Signature pages follow]

Signature page 1 of 3

IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be signed by duly authorized representatives of Developer, City and RDA as of the day and year first written above.

DEVELOPER:
BREAKTHROUGH FUEL

By: ______________________________________

____
Print Name and Title

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _________ day of _________________ 2018, the above named __________________________ , a member of BREAKTHROUGH FUEL, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

____
*____
Notary Public, _________________ County, Wisconsin
My Commission Expires __________________________

Signature page 2 of 3

THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY, and BREAKTHROUGH FUEL

THE CITY OF GREEN BAY

By: ______________________________
James Schmitt, Mayor

By: ______________________________
Kris A. Teske, Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _________ day of __________________ 2018, the above named ___________________________ and ___________________________ (attest), on behalf of the City of Green Bay, a Wisconsin municipal corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same.

____
*____
Notary Public, __________________ County, Wisconsin
My Commission Expires ___________________________

Signature page 3 of 3

THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY, and BREAKTHROUGH FUEL

REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

By: ____
Gary Delveaux, Chair

Attest: ____
Kevin J. Vonck, Executive Director

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _________ day of __________________ 2018, the above named ___________________________ and ___________________________ (attest), on behalf of the Redevelopment Authority of the City of Green Bay, a Wisconsin municipal corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same.

____
*____
Notary Public, __________________ County, Wisconsin
My Commission Expires ___________________________

EXHIBIT A
Legal Description

<u>239 Arndt Street – Tax Parcel 3-551</u>
Block 1, Arndt's Addition to Fort Howard, now part of the City of Green Bay and that part of the unsurveyed part of Private Claim No. 2, West side of Fox River, in the City of Green Bay, Brown County, Wisconsin, described as follows:
Commencing at a point where the Northerly line of the surveyed part of Private Claim No. 2 West intersects the Westerly line of Pearl Street extended which point is located 248.3 feet Southerly along said Westerly line of Pearl Street from the Southerly line of Arndt Street; thence North 24° 42' 39" East along the Westerly line of Pearl Street extended 248.3 feet to the Northeast corner of Block 5, Arndt's First Addition to Fort Howard; thence South 64° 6' 21" East along the Southerly line of Arndt Street 573.01 feet more or less to the West government dock line Fox River; thence South 12° 35' 14" West along said government dock line 255.1 feet to the Northerly line of the surveyed part of said Private Claim No. 2 West; thence North 64° 6' 21" West along said Northerly line of the surveyed part of Private Claim No. 2 West 627.34 feet to the point of beginning; EXCEPT that part thereof that lies West of the center line of Pearl Street produced Southerly.

Lots 1 and 2, including the East ½ of Water Street vacated, Block 2, Arndt's Addition to Fort Howard now a part of the City of Green Bay.

Lot 3, Block 2 Arndt's Addition to Fort Howard now a part of the City of Green Bay, except the part thereof described in Volume 241 Deeds, page 234.

The vacated portion of Arndt Street extending Easterly from the Easterly line of Water Street (vacated) to the Fox River.

EXCEPTING THEREFROM:
(a) The 20 foot main line right of way of the (former) C&NW RR Co., described at 4 Deeds 462.
(b) The side track easement of the (former) C&NW RR Co., described at 90 Deeds 167

<u>101 Bridge Street – Tax Parcel 3-554-A</u>
That part of Lot Five (5), Block Two (2), according to the recorded Plat of Arndt's First Addition to the City of Fort Howard, now a part of the City of Green Bay, West side of Fox River, Brown County, Wisconsin, bounded on the West by a line 280 feet Easterly from and parallel to the Easterly line of Pearl Street and bounded on the East by the channel bank of Fox River, on the North by the Southerly line of Bridge Street, and on the South by the Southerly line of said Lot 5, Block 2, Arndt's First Addition.

<u>119 Bridge Street – Tax Parcel 3-556</u>
Part of Lots 3, 4 and 5, Block 2, Arndt's First Addition to Fort Howard, in the City of Green Bay, Brown County, Wisconsin, described as follows:
All that part of Lot 3, Block 2, lying Westerly of the West line of the premises conveyed to Fort Howard Paper Company as described in Jacket 38 Image 34, also the East 5 feet of vacated Water Street lying between the North and South lines of said Lot 3, Block 2, extended Westerly.
All that part of Lot 4 Block 2, lying between the East line of vacated Water Street and the Channel Bank of Fox River.
The Westerly 120 feet of Lot 5, Block 2; the easterly 5 feet of vacated Water Street lying between the North line of the aforesaid Lot 5 and the South line of the aforesaid Lot 4, Block 2 extended westerly.

EXHIBIT B

Preliminary Concept Plan

EXHIBIT C

Annual Costs of Debt Service Associated with Project Grant