

BROWNFIELD GRANT AGREEMENT

This Agreement is by and between the CITY OF COLUMBUS, Department of Development, 50 West Gay Street, First Floor, Columbus, Ohio 43215, (the "City") as Grantor and Wagenbrenner Development ("Grantee"), in conjunction with a Brownfield Redevelopment Grant from the Green Columbus Fund for the purposes described in Grantee's Brownfield Redevelopment Grant Application ("Application"), which is attached hereto and hereby made a part of this Agreement, to be performed at the Grandview Place project located at 990 Dublin Road, Columbus, OH ("Project Property").

WITNESSETH:

WHEREAS, Grantee submitted an application to the City to receive funding from the City's Green Columbus Fund Program for costs related to the acquisition and/or environmental assessment of the Project Site, which Application has been approved by the Director of the Department of Development; and

WHEREAS, this Agreement is authorized by Ordinance No. _____-2011, passed by Columbus City Council on _____, 2011;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

In consideration of the mutual promises set forth herein and subject to the following conditions, the parties agree as follows:

I. Grant of Funds:

Subject to the terms of this Agreement and to the availability of appropriated funds, the City hereby grants funds to Grantee in an amount not to exceed \$199,910, or the actual cost of the Project, whichever is less ("Funds"), for the sole and express purpose of undertaking and completing the Project. Grantee shall undertake and complete the Project as set forth in the Application. All Funds shall be spent only on the Project and shall be restricted to work related to areas of the Project Property that are within the corporate limits of the City of Columbus, as delineated in Exhibit A, attached hereto. Grantee shall receive the Funds granted herein on a reimbursement basis upon submission to and approval by the City of a request for reimbursement with proper documentation detailing costs for Eligible Activities incurred by Grantee as further set forth in Section VI of this Agreement.

II. Grant Administration and Notices:

- A. This Agreement shall be administered on behalf of the City by its Department of Development.
- B. All notices required by the parties pursuant to this Agreement shall be in writing and shall be deemed duly given if delivered in person, or by a recognized courier service, or sent by United States mail first-class certified, postage prepaid and return receipt requested.
- C. All notices to the City, including reports, documents, correspondence, reimbursement requests, and actions required of Grantee pursuant to this Agreement shall be submitted to:

David Hull, Assistant Director
Department of Development
109 North Front Street, First Floor
Columbus, Ohio 43215
dkhull@columbus.gov

D. All notices to Grantee shall be submitted to

Eric Wagenbrenner, Treasurer & Secretary
Wagenbrenner Development
575 W. 1st Avenue
Columbus, OH 43215
ewags@wagco.com

III. Definitions

- A. "Agreement" means this grant agreement and all of the terms, provisions, and conditions set forth herein, the Application, and any other attachments hereto.
- B. "Application" means the Brownfield Redevelopment Grant Application submitted by Grantee to the City to receive funding from the Green Columbus Fund Program including all subsequent changes and additions made to the Application up to the Effective Date of this Agreement.
- C. "Effective Date" means the date on which this Agreement has been signed by both parties.
- D. "Eligible Activities" means those activities required to directly accomplish completion of the Project as it relates to areas of the Project Property within the corporate limits of the City of Columbus.
- E. "Ineligible Expenses." The following expenses are not eligible for reimbursement:
 - 1. Administrative costs, including but not limited to the following:
 - a. Application preparation;
 - b. Preparation of reimbursement requests;
 - c. Legal fees, audit and construction management fees related to the Application and/or Project implementation.
- F. "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, to the Grantee, any Grantee employee, contractor, contractor employee, subcontractor at any tier, or employee of subcontractor at any tier, for the purpose of improperly obtaining or rewarding favorable treatment in connection with this Project or in connection with a subcontract at any tier relating to this Project.
- G. "Project" means the work identified in the Application.

- H. "Project Completion Date" means the date the documentation required in Section VII(A)(6) or VI(A)(7), as applicable, is received and verified by the City or 120 days after the Effective Date, whichever is earlier.

IV. Securing Consultants or Contractors

- A. The Grantee agrees to secure the services of environmental assessment contractors who are properly certified, licensed and insured.
- B. Where performance of Eligible Activities is carried out by a consultant or contractor of Grantee, Grantee shall make the provisions of this Agreement binding on such consultant or contractor. However, Grantee has the ultimate legal responsibility for compliance with the requirements of this Agreement.

V. Reports

- A. Grantee shall submit to the City the Phase I and/or Phase II Site Assessment Report, as applicable, within the time period specified in Section VIII of this Agreement. The Site Assessment Report shall be prepared in accordance with All Appropriate Inquiry Standard, American Society for Testing and Materials (ASTM) E19030-97 Standard or with Ohio EPA Voluntary Action Program standards as applicable.
- B. Grantee shall supply the City with any additional reports containing such information as the City may from time to time reasonably require ("Progress Reports"). All Costs incurred by Grantee in complying with the reporting requirements contained in this Agreement shall be borne by Grantee and shall not be an allowable expense of the Funds.
- C. The Grantee agrees that the City has unlimited rights to utilize the Phase I and/or Phase II reports and any other reports submitted pursuant to this Agreement and to share such reports with any third party for the purpose of encouraging beneficial redevelopment of the property.
- D. An authorized representative of Grantee shall certify as accurate the information contained in Progress Reports and the Property Assessment Report and sign a statement to such effect.
- E. If the last date on which a report is due falls on a Saturday, Sunday, or a legal holiday, as defined by O.R.C. §1.14, then the report must be received on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

VI. Reimbursement

- A. Payment to Grantee will be on a reimbursement basis. Upon completion of the Project, Grantee shall submit the documentation required in Section VII(6) and/or VII(7), as applicable. Grantee shall also submit a reimbursement request for payment of Eligible Activities. The reimbursement request shall include any and all invoices, vouchers, paid receipts, pay stubs, signed time sheets, or other supporting documentation. If the City determines that an invoice is inadequate or

insufficient, or determines that further documentation or clarification is required for a particular invoice, the burden of providing the required information or documentation is on Grantee. Costs incurred by Grantee that are associated with providing the required additional information or documentation and costs that are related to defending an inadequate or insufficient invoice shall not be charged to the City and shall not be considered an allowable expense under this Agreement. Failure to comply with this section shall delay payment to Grantee under this Agreement.

B. The reimbursement request will be processed subject to, but not limited by, the following requirements:

1. Costs were incurred as a result of Eligible Activities;
2. Costs were included in the Application;
3. Costs were incurred during the term of this Agreement; and
4. Costs were incurred pursuant to a valid contract or subcontract for this Project.
5. Ineligible Expenses will not be reimbursed.

C. The reimbursement request shall be reviewed by the City and such review shall include, among other things, a determination of the eligibility of the expenses included in each request pursuant to the reimbursement criteria and other requirements set forth above. Based upon its review of a request for reimbursement, the City may deny the request, in whole or in part, for failure to meet the reimbursement criteria or other requirements set forth herein. In the event of a complete or partial denial of a reimbursement request, the City shall notify Grantee in writing, including a statement of specific reasons for such complete or partial denial. In the event that the City denies a reimbursement request, Grantee may resubmit said reimbursement request with additional information for the City's consideration. Resubmitted reimbursement requests must be received by the City within 14 days of the date of the City's denial.

VII. Grantee Deliverables

A. Grantee shall provide or cause to be provided to the City all of the following:

1. Copy of declarations page or certificate of insurance showing comprehensive general liability insurance coverage, as described in Section IX(A) of this Agreement.
2. State of Ohio Industrial Commission and Bureau of Worker's Compensation Certificate of Premium Payment (or applicable self-insurance equivalent).
3. Declaration Regarding Material Assistance/NonAssistance to a Terrorist Organization.
4. Properly filled in Internal Revenue Service W-9 Form.

5. Any additional documentation required to be submitted under section V.
6. If Project includes performance of Phase I or Phase II environmental assessment, the Site Assessment Report prepared in accordance with All Appropriate Inquiry Standard, American Society for Testing and Materials (ASTM) E19030-97 Standard or with Ohio EPA Voluntary Action Program standards.
7. If Project includes property acquisition, the deed of sale or other documentation acceptable to the City showing acquisition of the subject property and the amount paid therefor.

B. Grantee must submit items 1 through 4 of Section VII(A) upon execution of this Agreement.

VIII. Term of Agreement

- A. The term of this Agreement (“Term”) shall be from the Effective Date to the Project Completion Date. The Project Completion Date may be extended upon written approval of the City.
- B. If it is anticipated that Grantee will not have completed the Project by the Project Completion Date, Grantee must request an extension of time for the Project Completion Date within 30 days before the Project Completion Date, unless otherwise agreed upon by the City. It will be within the sole discretion of the City to grant such extension of time.

IX. Other Grantee Requirements

- A. Liability Insurance. Grantee or its contractor shall obtain and maintain comprehensive general liability insurance with a minimum of one million dollars (\$1,000,000) combined single limit, for claims that may arise from their operations under this Agreement, whether such operations are performed by Grantee, or by Grantee’s contractor(s), or by anyone directly or indirectly employed by them. Such insurance policy shall name the city as an additional insured and shall remain in full force and effect during the life of the contract. The evidence of insurance shall contain a clause that the coverage may not be changed or canceled unless the City is notified in writing not less than thirty days prior to such change or cancellation. If any part of the contract is subcontracted, the Grantee is responsible for the subcontracted part being adequately covered by insurance hereinabove described. Cancellation or lapse of insurance coverage during the life of this contract shall be considered a default by the Grantee sufficient to relieve the City of its obligations under this contract.
- B. Accounting of Funds. The Funds and any and all interest therefrom shall be deposited and maintained in a separate account upon books and records of Grantee (the “Account”). Grantee shall keep all records of the Account in a manner consistent with generally accepted accounting principles. All disbursements from the Account shall be for obligations incurred in the performance of this Agreement and shall be supported by contracts, invoices, vouchers, paid receipts, pay stubs, signed time sheets, and other data, as appropriate, evidencing the necessity of

such expenditure. Failure to comply with this requirement shall allow the City to withhold payment allocation requests until such compliance is demonstrated.

- C. The City shall not be liable for any costs or damages arising out of disputes between Grantee, Grantee's agents, subcontractors and/or Grantee's clients. Grantee shall assume the defense of, indemnify and hold City harmless from any and all costs, liens, damages, or losses of any nature whatsoever resulting from such disputes, including without limitation any additional costs necessary to complete the Project, and reasonable attorneys' fees. Grantee shall also assume the defense of, indemnify and hold harmless City from liability for any costs associated with Grantee's misuse of the Funds or for any liability associated with damage or loss to any person, including wrongful death, property, real or personal, related to the Project unless arising out of the negligence or the intentional misconduct of City.

X. Falsification of Information

Grantee affirmatively covenants that it has not knowingly and intentionally made any false statements to the City in the process of obtaining this grant of Funds. If Grantee has knowingly and intentionally made a false statement to the City to obtain this grant of Funds, Grantee shall be required to return all funds immediately and shall be ineligible to receive any future grants from the City.

XI. Continuing Affirmations

A. Outstanding Liabilities

1. To the best of its knowledge and belief, Grantee affirmatively covenants that it does not owe: (1) any delinquent taxes or moneys due to the State of Ohio, any agency of the State of Ohio, or any political subdivision of the State of Ohio; (2) any moneys to the State of Ohio or any agency of the State of Ohio for the administration or enforcement of the environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, any agency of the State of Ohio, or any political subdivision of the State of Ohio that are past due, whether the amounts owed are being contested in a court of law or not.
2. If Grantee owes any outstanding liability, liabilities, or findings for recovery as described above in Section XI(A) at any point during the term of this Agreement, Grantee shall immediately disclose to the City such liability, liabilities, or findings for recovery.
3. The City shall not terminate this Agreement based solely on any outstanding liability or liabilities disclosed in accordance with Section XI(A)(1) or (2) above unless such liability or liabilities has or have a material impact on Grantee's ability to perform any or all of Grantee's duties or obligations under this Agreement.
4. This Section is not intended to require a Grantee to waive any rights it may have to contest a claimed obligation or to pay, under protest or otherwise, a claimed obligation which is contested until the validity of the claimed obligation has been finally determined.

- B. Conflicts of Interest. Neither Grantee nor any of Grantee's personnel, subcontractors or subcontractor's personnel, who exercise any functions or responsibilities in connection with the review or approval of the work completed under this Agreement shall, prior to the completion of said work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any such person who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his interest to the City in writing. Thereafter, he shall not participate in any action affecting the work under this Agreement unless the City determines that, in light of the personal interest disclosed, his participation in any such action would not be contrary to the public interest.
- C. Kickbacks. Grantee affirmatively covenants that it has not provided, attempted to provide, offered to provide, solicited, accepted, or attempted to accept any Kickback nor will it provide, attempt to provide, offer to provide, solicit, accept, or attempt to accept any Kickbacks during the Term of this Agreement; and has not included, directly or indirectly, the amount of any Kickback in the estimated cost of this Project nor will it include, directly or indirectly, the amount of any Kickback into any request for reimbursement. Grantee will incorporate the requirements of this paragraph in all of its respective contracts or agreements with contractor(s) and subcontractor(s), and Grantee will require contractor(s) and subcontractor(s) to incorporate such requirements in all subcontracts for work performed in furtherance of this Agreement.
- D. Adherence to Federal, State, and Local Laws, Regulations.

Grantee agrees to comply with all applicable federal, state, and local laws related to Grantee's performance of the obligations of this Agreement. Grantee accepts full responsibility for payments of all unemployment compensation, insurance premiums, workers compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee on the performance of the work authorized by this Agreement.

Grantee agrees to adhere to all applicable codes, zoning decisions and other requirements of the City of Columbus, as well as any guidelines or requirements promulgated by the Columbus Development Department in connection with the Green Columbus Fund Program.

E. Equal Opportunity Clause.

1. The Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment up-grading, demotion, or termination; rates of pay or other forms of compensation; and selection for training. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.

2. The Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.
 3. It is the policy of the city of Columbus that business concerns owned and operated by minority and female persons shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the city.
 4. The Grantee shall permit access to any relevant and pertinent reports and documents by the Executive Director for the sole purpose of verifying compliance with this Article, and with the regulations of the Contract Compliance Office. All such materials provided to the Executive Director by the contractor shall be considered confidential.
 5. The Grantee will not obstruct or hinder the Executive Director or his deputies, staff and assistants in the fulfillment of the duties and responsibilities imposed by Article I, Title 39.
 6. The Grantee and each subcontractor will include a summary of this Equal Opportunity Clause in every subcontract. The Grantee will take such action with respect to any subcontractor as is necessary as a means of enforcing the provisions of the Equal Opportunity Clause.
 7. The Grantee agrees to refrain from subcontracting any part of this contract or contract modification thereto to a contractor not holding a valid certification number as provided for in Article I, Title 39.
 8. Failure or refusal of the Grantee or subcontractor to comply with the provisions of Article I, Title 39, may result in cancellation of this contract.
- F. Prevailing Wage. In accordance with O.R.C. 4115, construction projects involving use of public funds shall require the recipient to pay prevailing wage rates for workers involved in any construction activity on the Project. It shall be the responsibility of Grantee to comply with all prevailing wage requirements. Grantee agrees to indemnify and hold harmless the City in the event Grantee fails to comply with the applicable prevailing wage requirements.
- G. City Income Taxes. Grantee agrees to withhold all City Income Taxes due or payable under the provisions of Chapter 361, Columbus City Code, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such City Income Taxes due under said Chapter for services performed under this Agreement. If it has been determined by the Columbus Income Tax Division that Grantee, or any of its subcontractors, owes city income taxes, Grantee agrees that the City may withhold the amount due to the City from any reimbursement notwithstanding paragraph V of this Agreement.
- H. Records, Access, and Maintenance.
1. Grantee shall establish and maintain for at least five years from the Project Completion Date or termination of this Agreement such records as are required by the City, including but not limited to, financial reports, supporting documentation for reimbursement requests, and all other relevant information.

2. Grantee shall make available for inspection by the City the personnel records or corporate financial statements of Grantee, including tax records and other similar information not open to the public for inspection.
 3. The parties further agree that, notwithstanding any other provision of this Agreement, records required by the City with respect to questioned costs, audit disallowances, litigation or dispute between the City and Grantee shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement, or if for any other reason the City shall require a review of the records related to the Project, Grantee shall, at its own cost and expense, segregate all such records related to the Project from its other records of operation.
- I. Audits and Inspections. At any time during normal business hours upon written notice and as often as the City may deem necessary, Grantee shall make available to the City, for examination, and to other appropriate agencies or officials, access to the Project Property, and all of its records with respect to matters covered by this Agreement, including but not limited to, records of personnel and conditions of employment and shall permit the City to audit, examine and make excerpts or transcripts from such records.
- J. Declaration of Material Assistance/Non-assistance to a Terrorist Organization. If applicable, Grantee must certify compliance with O.R.C. §2909.33.

XII. Termination

- A. If, as determined by the City, Grantee has failed to perform satisfactorily any requirements of this Agreement, or if Grantee is in violation of any provision of this Agreement, or any provisions of any other agreement entered into by and between the City and/or the City of Columbus and Grantee, or upon just cause, the City may:
1. Terminate the Agreement after providing Grantee with written notice, in accordance with the notice provisions of Section II of this Agreement, of its failure to perform satisfactorily any requirement of this Agreement. The notice shall provide Grantee with a 30 day period to cure any and all defaults under this Agreement unless Grantee has already been afforded 30 days to cure the stated issue. During the 30 day cure period, Grantee shall incur only those obligations or expenditures pre-approved by the City, which are necessary to enable Grantee to continue its operation and achieve compliance as set forth in the notice; or
 2. Immediately terminate the Agreement.
- B. If the City terminates this Agreement, then Grantee shall pay to the City, for repayment to the Green Columbus Fund, all Funds provided to Grantee unless the City directs otherwise. Grantee shall pay this amount to the City no later than 30 days after written notification by the City to Grantee.

XIII. Forbearance Not a Waiver.

No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the City of any of its rights hereunder.

XIV. Certification of Funds.

Reimbursements are subject to the approval and appropriation of such funds by Columbus City Council and the certification by the City Auditor of the availability of funds for such purposes.

XV. Miscellaneous.

- A. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Ohio, without regard to principles of conflict of laws, and any dispute between the parties hereunder shall be resolved in the Court of Common Pleas of Franklin County, Ohio.
- B. Entire Agreement. This Agreement and its attachments and any documents referred to herein, including the Application, set forth the entire agreement between the parties with respect to the subject matter hereof. Any representations, discussions, agreements, or understandings, either oral or written, not contained in this Contract, or as written amendment hereto, shall not be binding on either party.
- C. Authority to Bind. The signatories to this Agreement represent that they have the authority to bind themselves and their respective organizations to this Agreement.
- D. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any term or condition or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions for the Agreement are declared severable.
- E. Modifications. No modification, amendment, alteration, addition or waiver of any section or condition of this Agreement shall be effective or binding unless it is in writing and signed by an authorized representative of the City and the Grantee and approved by the appropriate City authorities. No modification increasing the funds available shall be effective unless and until the same is approved and the funds required thereunder have been authorized by City Council, the availability of such funds have been certified by the City Auditor and the form thereof has been approved by the City Attorney.
- E. Assignment. Neither this Agreement nor any rights, duties, or obligations described herein may be assigned or otherwise transferred to others by the Grantee without the prior written consent of the City. If this Agreement is so assigned, it shall inure to the benefit of and be binding upon any

respective successors and assigns (including successive, as well as immediate, successors and assignees) of the Grantee.

F. Headings. Section headings contained in this Agreement are inserted only as a matter of convenience and for reference. They do not in any way define, extend, or describe the scope of this Agreement or the intent or meaning of any provision contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be subscribed this _____, 2011.

CITY OF COLUMBUS

By: _____
Boyce Safford III
Director of Development

Date

WAGENBRENNER DEVELOPMENT
736 Cherry Street
Columbus, OH 43215

By: _____
Eric Wagenbrenner, Treasurer & Secretary

Date

APPROVED AS TO FORM:

Richard C. Pfeiffer, Jr., City Attorney

EXHIBIT A