



Meeting Agenda – Audit and Finance Committee

Genesee Gateway Local Development Corp

Tuesday, August 1, 2023 – 8:30 a.m.

Location: 99 MedTech Drive, Innovation Zone

Page #	Topic	Discussion Leader	Desired Outcome
	1. Call To Order – Enter Public Session	D. Cunningham	
	2. Chairman’s Report & Activities	D. Cunningham	
2-5	2a. Agenda Additions / Other Business		
	2b. Minutes: June 27, 2023		
	3. Discussions / Official Recommendations to the Board:		
6-11	3a. June 2023 Financial Statements	L. Farrell	Disc / Vote
12-14	3b. Strategic Investments Analysis	L. Farrell	Discussion
15-24	3c. Appraisal for MedTech Centre	M. Masse	Disc / Vote
	4. Adjournment	D. Cunningham	

GGLDC Audit & Finance Committee Meeting

Tuesday, June 27, 2023

Location – 99 MedTech Drive, Innovation Zone

8:30 a.m.

MINUTES

ATTENDANCE

Committee Members: D. Cunningham, T. Bender, P. Battaglia, J. Tretter
Staff: L. Farrell, M. Masse, L. Casey, J. Krencik, C. Suozzi, S. Hyde, P. Kennett
Guests: M. Gray (GCEDC Board Member), M. Brooks (GGLDC Board Member)
Absent:

1. CALL TO ORDER / ENTER PUBLIC SESSION

D. Cunningham called the meeting to order at 9:15 a.m. in the Innovation Zone.

2. CHAIRMAN'S REPORT & ACTIVITIES

2a. Agenda Additions / Other Business – Nothing at this time.

2b. Minutes: May 30, 2023

T. Bender made a motion to recommend approval of May 30, 2023 minutes; the motion was seconded by P. Battaglia. Roll call resulted as follows:

J. Tretter - Yes
P. Battaglia - Yes
T. Bender - Yes
D. Cunningham - Yes

The item was approved as presented.

3. DISCUSSIONS / OFFICIAL RECOMMENDATIONS TO THE BOARD:

3a. May 2023 Financial Statements- L. Farrell reviewed with the Committee the significant items of the May 2023 long form financial statements.

- There are not many changes on the balance sheet.
- Accounts payable increased for the monthly accrual amounts for the MedTech Centre Property Management Fee and Economic Development Support Grant that is paid to the EDC quarterly.
- Regular monthly activity for MedTech Centre, which is on budget as expected.
 - o This excludes brokerage fees on line 17 at 128% of budget. These fees are paid for the Adecco and Oakgrove Construction leases that were secured through brokerage firms.

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P. Battaglia made a motion to recommend to the full Board the approval of the May 2023 Financial Statements as presented; the motion was seconded by J. Tretter. Roll call resulted as follows:

- J. Tretter - Yes
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Yes

The item was approved as presented.

3b. Assessment of the Effectiveness of Internal Controls – Public Authorities Law requires all Public Authorities to complete an annual assessment of the effectiveness of their internal control structures and procedures.

The 2023 Assessment of the Effectiveness of Internal Controls identifies and summarizes the controls in place for major business functions. There are no changes to the detailed control narrative since approved last year. A list of vendors that the Committee has authorized staff to pay online is included as part of the narrative.

The Committee is asked to review and approve the Assessment of the Effectiveness of Internal Controls annually (this is not brought to the full Board for approval).

J. Tretter made a motion to approve the Assessment of the Effectiveness of Internal Controls as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

- J. Tretter - Yes
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Yes

The item was approved as presented.

3c. Cyber Insurance - There was a presentation given by Lawley on Cyber Insurance at the beginning of the meeting. The Cyber Liability coverage option presented is through Travelers. Travelers offered a quote of \$6,365 for the 23-24 term, which is a significant decrease in premium total over last year. For the 22-23 term, the premium totaled \$10,289.17. Travelers maintained the \$1M limit, Cyber Crime sublimit, and \$10K retention that is included with our current policy, which expires 6/30.

The cost of this policy is \$6,365 and will be split evenly between the GCEDC (\$3,182.50) and the GGLDC (\$3,182.50).

J. Tretter made a motion to recommend to the full Board the approval of Cyber Insurance with Travelers, not to exceed \$3,182.50 as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

- J. Tretter - Yes
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Yes

The item was approved as presented.

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3d. Mowing Bids for MedTech Centre - The GGLDC asked four companies for bids to mow the MedTech Centre. We currently have an employee who does that, but our tractor is in the shop and our employee needs to take a leave of absence. The results of the bids are as follows based on a per mow basis. For approval purposes we are estimating approximately 16 mows for the rest of the year.

1. Declined to bid – Scalia's Landscaping
2. \$250.00 – Fava Brothers Lawn Care
3. \$260.00 – Bubba's Landscaping
4. \$585.00 – Mother Nature's Enterprises, LLC

This cost per mow is almost what we would pay the employee to mow it based on their time and hourly rate. If the housing project moves forward, we may decide to hire out the mowing services for MedTech and not purchase a new tractor.

Fund Commitment: \$4,000 (assume 16 mows).

Board Action Request: Approval of mowing contract for MedTech Centre to Fava Brothers not to exceed \$4,000.

P. Battaglia made a motion to recommend to the full Board the approval of the mowing contract at MedTech Centre to Fava Brothers Lawn Care not to exceed \$4,000 as presented; the motion was seconded by T. Bender. Roll call resulted as follows:

- J. Tretter - Yes
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Yes

The item was approved as presented.

3e. Turnbull Heating / Triton Mechanical –The GGLDC has an agreement with Turnbull Heating and Air Conditioning to perform bi-annual maintenance on the HVAC system (check the A/C in the spring and the heat in the fall). At the June 1st GGLDC Board meeting, the Board approved the HVAC Maintenance Contract with Turnbull as well as service calls and maintenance not to exceed \$15,000.

Turnbull has been recently acquired and it has come to staff's attention that "Turnbull" is primarily responsible for residential service, while "Triton Mechanical" is primarily responsible for commercial service.

The staff is requesting that the service calls and maintenance performed by Turnbull and/or Triton Mechanical are acceptable expenditures to be included in the not to exceed amount of \$15,000 that was previously approved on June 1, 2023.

P. Battaglia made a motion to recommend to the full Board that service calls and maintenance performed by Turnbull and/or Triton Mechanical are acceptable expenditures to be included in the not to exceed amount of \$15,000 that was previously approved on June 1, 2023; the motion was seconded by T. Bender. Roll call resulted as follows:

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- J. Tretter - Yes
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham – Yes

The item was approved as presented.

M. Masse commended L. Farrell and her team for their excellent work in administering the NYS CDBG grants related to Upstate Niagara and HP Hood. OCR completed their monitoring of the two grant awards and had no comments or recommendations.

4. ADJOURNMENT

P. Battaglia made a motion to adjourn at 9:24 a.m., seconded by J. Tretter and passed unanimously.

Genesee Gateway Local Development Corp.
June 2023 Dashboard
Balance Sheet - Accrual Basis

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	<u>6/30/23</u>	<u>5/31/23</u>	[Per Audit] <u>12/31/22</u>
ASSETS:			
Cash - Unrestricted	\$ 699,221	\$ 670,681	628,057
Cash - Restricted (A) (1)	1,592,053	1,585,408	681,869
Cash - Reserved (B) (2)	1,392,596	1,662,849	1,652,599
Cash - Subtotal	3,683,870	3,918,938	2,962,525
Grants Receivable	1,268	8,055	34,325
Accounts Receivable	6,204	6,261	9,043
Lease Receivable GASB - Current Portion	509,788	509,788	509,788
Loans Receivable - Current Portion	410,347	407,146	426,864
Other Current Assets (3)	29,868	34,653	4,088
Total Current Assets	4,641,345	4,884,841	3,946,633
Land Held for Dev. & Resale	2,182,234	2,182,234	2,182,234
Buildings & Improvements	7,202,120	7,202,120	7,202,120
Furniture, Fixtures & Equipment	46,599	46,599	46,599
Total Property, Plant & Equip.	9,430,953	9,430,953	9,430,953
Less Accumulated Depreciation	(2,445,213)	(2,429,038)	(2,348,163)
Net Property, Plant & Equip.	6,985,740	7,001,915	7,082,790
Lease Receivable GASB - Noncurrent Portion	2,453,344	2,453,344	2,453,344
Loans Receivable - Noncurrent Portion (Net of \$176,545 Allow for Bad Debt at 12/31/22 and \$170,238 at 6/30/23 & 5/31/23) (4)	1,110,220	932,315	1,156,666
Equity Investment in Genesee Agri-Business, LLC (5)	2,562,240	2,562,240	2,562,240
Other Assets	6,125,804	5,947,899	6,172,250
Total Assets	17,752,889	17,834,655	17,201,673
LIABILITIES:			
Accounts Payable (6)	98,054	73,963	45,963
Unearned Revenue (7)	42,783	41,376	40,934
Security Deposits	109,944	109,944	109,944
Loans Payable - Current Portion	88,261	87,968	86,516
Bonds Payable - Current Portion	155,568	155,390	152,945
Total Current Liabilities	494,610	468,641	436,302
Loans Payable - Noncurrent Portion	2,047,368	2,054,858	2,091,939
Bonds Payable - Noncurrent Portion	2,265,598	2,279,832	2,351,872
Total Noncurrent Liabilities	4,312,966	4,334,690	4,443,811
Total Liabilities	4,807,576	4,803,331	4,880,113
DEFERRED INFLOW OF RESOURCES			
Deferred Inflow - Leases	2,914,240	2,914,240	2,914,240
Total Deferred Inflow of Resources	2,914,240	2,914,240	2,914,240
EQUITY	\$ 10,031,073	\$ 10,117,084	9,407,320

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Significant Events:

1. Cash Restricted - YTD increase due to receipt of first payment under the Plug Power Host Community Investment Agreement (\$900K).
2. Cash Reserved - Decrease due to \$200K loan to J&R Fancher disbursed in June.
3. Other Current Assets - Prepaid D&O, Cyber, General Liability and Umbrella insurance.
4. Loans Receivable - Noncurrent - Increased due to \$200K loan to J&R Fancher disbursed in June.
5. Equity Investment in Genesee Agri-Business, LLC - Ties to corresponding GAB,LLC financial statements.
6. Accounts Payable - H. Sichertman 2022 expenses, grant for continuing Economic Development Program Support and MedTech Centre Property Management.
7. Unearned Revenue - MedTech Centre rent and interest received in advance.

(A) Restricted = DL Community Benefit Agreement (CBA) Funds, Plug Power Host Community Investment Funds, Security Deposits, USDA Debt Sinking Fund.

(B) Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Micropolitan Area Redevelopment Loan Funds, Grant Funds.

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**Genesee Gateway Local Development Corp.
June 2023 Dashboard
Profit & Loss - Accrual Basis**

	Month to Date		YTD		2023	2023
	6/30/23	6/30/22	2023	2022	Board Approved	YTD %
					<u>Budget</u>	<u>of Budget</u>
Operating Revenues:						
Grants (1)	\$ 169,104	\$ 43,400	\$ 1,329,715	\$ 829,806	\$ 922,648	144%
Interest Income on Loans	2,472	1,777	14,272	10,543	15,992	89%
Rent	62,119	62,618	376,554	371,503	751,578	50%
Common Area Fees - Parks	-	-	500	500	500	100%
Fees	4,000	-	4,250	9,980	-	N/A
Other Revenue	10	84	279	1,144	-	N/A
Land Sale Proceeds	-	304,101	-	304,101	-	N/A
Total Operating Revenues	237,705	411,980	1,725,570	1,527,577	1,690,718	
Operating Expenses:						
Operations & Maintenance	9,170	10,909	98,627	71,332	238,200	41%
Professional Services	5,046	8,429	59,432	65,800	136,146	44%
Econ. Dev. Prog. Support Grant	25,000	25,000	150,000	150,000	300,000	50%
Site Development Expense	-	-	-	-	474,156	0%
Cost of Sales	-	383,004	-	383,004	-	N/A
Grant Expense (2)	271,480	-	644,487	367,000	869,648	74%
Real Estate Dev. (Capitalized)	-	-	-	-	15,000	0%
Buildings/Furniture/Equip. (Capitalized)	-	-	-	-	120,000	0%
Balance Sheet Absorption	-	-	-	-	(135,000)	0%
Depreciation	16,175	16,434	97,050	98,601	194,235	50%
Total Operating Expenses	326,871	443,776	1,049,596	1,135,737	2,212,385	
Operating Revenue (Expense)	(89,166)	(31,796)	675,974	391,840	(521,667)	
Non-Operating Revenues (Expenses):						
Other Interest Income	15,787	210	24,611	1,180	1,380	1783%
Interest Expense	(12,632)	(14,011)	(76,832)	(81,666)	(152,619)	50%
Total Non-Operating Exp.	3,155	(13,801)	(52,221)	(80,486)	(151,239)	
Change in Net Assets	(86,011)	(45,597)	623,753	311,354	\$ (672,906)	
Net Assets - Beginning	10,117,084	9,074,400	9,407,320	8,717,449		
Net Assets - Ending	\$ 10,031,073	\$ 9,028,803	\$ 10,031,073	\$ 9,028,803		

Significant Events:

- Grant Revenue - YTD includes first payment received under Plug Power Host Investment Agreement (\$900K), OCR Grant/Genesee CARES (\$404K) and Batavia Solar/YSG Workforce Dev/Ec Dev Program Support Grant (\$25K).
- Grant Expense - Includes OCR Grant/Genesee CARES funds received and disbursed; Transfers to the STAMP Sewer Works and STAMP Water Works entities to cover start-up costs and legal expenses.

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Genesee Gateway Local Development Corp.
June 2023 Dashboard
Statement of Cash Flows

	<u>June 2023</u>	<u>YTD</u>
CASH PROVIDED (USED) BY OPERATING ACTIVITIES:		
Grant Income	\$ 175,891	\$ 1,362,772
Interest Income on Loans	3,879	16,927
Rental Income	62,182	378,623
Common Area Fees - Parks	-	500
Fees	4,000	4,250
Other Revenue	10	451
Operations & Maintenance	(5,775)	(127,459)
Professional Services	(4,571)	(79,497)
Economic Development Program Support Grant	-	(75,000)
Grant Expense	(271,480)	(644,487)
Issuance of Loans	(200,000)	(200,000)
Repayment of Loans	18,894	262,963
Net Cash Provided (Used) By Operating Activities	<u>(216,970)</u>	<u>900,043</u>
CASH FLOWS USED BY CAPITAL & RELATED FINANCING ACTIVITIES:		
Principal Payments on Bonds & Loans	(21,253)	(126,477)
Interest Paid on Bonds & Loans	(12,632)	(76,832)
Net Cash Used By Capital & Related Financing Activities	<u>(33,885)</u>	<u>(203,309)</u>
CASH FLOWS PROVIDED BY INVESTING ACTIVITIES:		
Interest Income	15,787	24,611
Net Cash Provided By Investing Activities	<u>15,787</u>	<u>24,611</u>
Net Change in Cash	(235,068)	721,345
Cash - Beginning of Period	3,918,938	2,962,525
Cash - End of Period	<u>\$ 3,683,870</u>	<u>\$ 3,683,870</u>
RECONCILIATION OF OPERATING REVENUE (EXPENSE) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES:		
Operating Revenue (Expense)	\$ (89,166)	\$ 675,974
Adjustments:		
Depreciation Expense	16,175	97,050
Decrease in Grants/Accounts Receivable	6,844	35,896
(Increase) Decrease in Other Current Assets	4,785	(25,780)
(Increase) Decrease in Loans Receivable	(181,106)	62,963
Increase in Operating Accounts Payable	24,091	52,091
Increase in Unearned Revenue	1,407	1,849
Total Adjustments	<u>(127,804)</u>	<u>224,069</u>
Net Cash Provided (Used) By Operating Activities	<u>\$ (216,970)</u>	<u>\$ 900,043</u>

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Genesee Gateway Local Development Corp.
June 2023 Dashboard
Balance Sheet - Accrual Basis

	GGLDC		GABLLC		COMBINED	
	6/30/23		6/30/23		6/30/23	Per Audit 12/31/2022
ASSETS:						
Cash - Unrestricted	\$ 699,221	\$	-	\$	\$ 699,221	\$ 628,057
Cash - Restricted (A)	1,592,053		-		1,592,053	681,869
Cash - Reserved (B)	1,392,596		2,613,148		4,005,744	4,231,256
Cash - Subtotal	3,683,870		2,613,148		6,297,018	5,541,182
Grants Receivable	1,268		-		1,268	34,325
Accts Receivable - Current	6,204		-		6,204	9,043
Lease Receivable GASB - Current	509,788		13,445		523,233	523,233
Loans Receivable - Current	410,347		-		410,347	426,864
Other Current Assets	29,868		-		29,868	4,088
Total Current Assets	4,641,345		2,626,593		7,267,938	6,538,735
Land & Improvements	2,182,234		1,339,730		3,521,964	3,521,964
Buildings & Improvements	7,202,120		-		7,202,120	7,202,120
Furniture, Fixtures & Equipment	46,599		-		46,599	46,599
Total Property, Plant & Equip.	9,430,953		1,339,730		10,770,683	10,770,683
Less Accumulated Depreciation	(2,445,213)		-		(2,445,213)	(2,348,163)
Net Property, Plant & Equip.	6,985,740		1,339,730		8,325,470	8,422,520
Lease Receivable GASB - Noncurrent	2,453,344		108,914		2,562,258	2,562,258
Loans Receivable - Noncurrent	1,110,220		-		1,110,220	1,156,666
Equity Investment in GAB, LLC	2,562,240		-	(2,562,240)	-	-
Other Assets	6,125,804		108,914	(2,562,240)	3,672,478	3,718,924
TOTAL ASSETS	17,752,889		4,075,237	(2,562,240)	19,265,886	18,680,179
LIABILITIES:						
Accounts Payable	98,054		-		98,054	45,963
Unearned Revenue	42,783		25		42,808	40,934
Customer Deposit (1)	-		20,000		20,000	20,000
Security Deposits	109,944		-		109,944	109,944
Loans Payable - Current Portion	88,261		-		88,261	86,516
Bonds Payable - Noncurrent Portion	155,568		-		155,568	152,945
Total Current Liabilities	494,610		20,025		514,635	456,302
Loans Payable - Noncurrent Portion	2,047,368		-		2,047,368	2,091,939
Bonds Payable - Noncurrent Portion	2,265,598		-		2,265,598	2,351,872
Total Noncurrent Liabilities	4,312,966		-		4,312,966	4,443,811
TOTAL LIABILITIES	4,807,576		20,025		4,827,601	4,900,113
DEFERRED INFLOW OF RESOURCES						
Deferred Inflow - Leases	2,914,240		122,359		3,036,599	3,036,599
Total Deferred Inflow of Resources	2,914,240		122,359		3,036,599	3,036,599
EQUITY	\$ 10,031,073	\$	3,932,853	\$ (2,562,240)	\$ 11,401,686	\$ 10,743,467

Significant Events:

- Customer Deposit GABLLC - CH4Biogas.

(A) Restricted = DL Community Benefit Agreement (CBA) Funds, Plug Power Host Community Investment Funds, Security Deposits, USDA Debt Sinking Fund.
(B) Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Metropolitan Area Redevelopment Loan Funds, Grant Funds.

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Genesee Gateway Local Development Corp.
June 2023 Dashboard
Profit & Loss - Accrual Basis

	GGLDC	GABLLC		COMBINED	
	<u>6/30/23</u>	<u>6/30/23</u>	<u>Eliminations</u>	<u>6/30/23</u>	<u>Combined YTD</u>
<u>Operating Revenues:</u>					
Grants	\$ 169,104	\$ -	\$ -	\$ 169,104	\$ 1,329,715
Interest Income on Loans	2,472	-	-	2,472	14,272
Rent	62,119	2,522	-	64,641	385,367
Common Area Fees - Parks	-	-	-	-	6,858
Fees	4,000	-	-	4,000	4,250
Other Revenue	10	-	-	10	20,279
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Total Operating Revenues	237,705	2,522	-	240,227	1,760,741
<u>Operating Expenses:</u>					
Operations & Maintenance	9,170	-	-	9,170	103,227
Professional Services	5,046	-	-	5,046	59,432
Econ. Dev. Program Support Grant	25,000	-	-	25,000	150,000
Grant Expense	271,480	-	-	271,480	644,487
Depreciation	16,175	-	-	16,175	97,050
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Total Operating Expenses	326,871	-	-	326,871	1,054,196
Operating Revenue	(89,166)	2,522	-	(86,644)	706,545
<u>Non-Operating Revenues (Expenses):</u>					
Other Interest Income	15,787	1,453	-	17,240	28,506
Interest Expense	(12,632)	-	-	(12,632)	(76,832)
Total Non-Operating Rev (Exp)	3,155	1,453	-	4,608	(48,326)
Change in Net Assets	(86,011)	3,975	-	(82,036)	658,219
Net Assets - Beginning	10,117,084	3,928,878	(2,562,240)	11,483,722	10,743,467
Net Assets - Ending	\$ 10,031,073	\$ 3,932,853	\$ (2,562,240)	\$ 11,401,686	\$ 11,401,686

Updated through 6.30.23 [7.13.23]

Genesee Gateway Local Development Corp. (GGLDC)

Strategic Investments - SUMMARY

Fiscal Years 2023 - 2027

	2023	2024	2025	2026	2027	5 Yr Totals:	Comments	
Sources of Funds: Available for GGLDC Project Investments & Operations Support								
Opening GGLDC "Reserved for Strategic Investments" Cash Balances	3,529,601	3,056,627	2,953,830	2,723,488	2,493,146	3,529,601		
NYS Homes & Community Renewal Loan Repayments	294,020	274,345	146,800	146,800	146,800	1,008,765	Includes loan repayments from: HP Hood \$500K loan (March 2019); Freightliner \$234K loan (July 2019); HP Hood \$367K loan (Feb 2022); Upstate Niagara \$367K loan (Sept 2022) Reduced by due to/from activity (230K Gross Proceeds)	
Fancher 2022 Land Sale - Net Proceeds						-		
La Fermiere 2023 Land Sale - Deposit						-		
Other:						-		
Solar Projects - Funding for Workforce Development & Econ. Dev. Program Support	25,000					25,000	Solar projects agree to pay \$25K each at the completion of their projects to support Workforce Development Initiatives, along with the overall ED Program. Ten community solar projects have closed to date. [Funding from YSG Solar received in 2023.]	
Workforce Development Institute Grant						-	Supported Cornell in High School Initiative	
Genesee County Chamber of Commerce CDBG Loan Repayments						-	Represents actual collections only - opportunity for future loan payments to be received. One loan remaining. [Principal balance @ 6.30.23 - Kanaley \$9,260 (in collections)]	
Total Sources of Funds	3,848,621	3,330,972	3,100,630	2,870,288	2,639,946	4,563,366		
Uses: Strategic and Operational Investments:								
Real-Estate Development / Shovel-Ready Site Development Related:							5 Yr Totals:	Comments
Other Reserved Funds: Batavia Micropolitan Area Community Redevelopment Fund - Actual						-	\$500,000 Housing Directional investment repurposed to a committed investment for the purpose of establishing the Batavia Micropolitan Area Redevelopment Fund [\$100K loaned in 2014/\$150K loaned in 2017/\$120K loaned in May 2020/\$200K loaned in 2023]. [Amount reserved includes cash remaining from original \$500K commitment, plus interest earned on reserved funds.]	
Other Reserved Funds: Batavia Micropolitan Area Community Redevelopment Fund - Reserved						-		
Other Reserved Funds: Ag Park Improvements						-		Engineering, bidding, construction inspection for drainage solution at the Ag Park.
Other Reserved Funds: Water Works Corp and Sewer Works Corp - Start-up Costs	(100,000)					(100,000)		
Other Reserved Funds: Sewer Works Corp - Legal Exps Related to Force Main Easements	(90,000)					(90,000)		
Subtotal Real-Estate Development / Shovel-Ready Site Development	(190,000)	-	-	-	-	(190,000)		
Economic Development Program Support:								
Economic Development Program Grant (GGLDC to GCEDC)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(1,500,000)	Approvals necessary for 2024 forward.	

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Genesee Gateway Local Development Corp. (GGLDC)

Strategic Investments - SUMMARY

Fiscal Years 2023 - 2027

	2023	2024	2025	2026	2027	5 Yr Totals:	Comments
LDC Operations Costs & Site Infrastructure Maint. (excluding MTC)	(85,000)	(85,000)	(85,000)	(85,000)	(85,000)	(425,000)	Memo Only - Funds insurance, mowing, Fire District fees/property taxes, GGLDC audit fee, legal fees and other misc operating expenses (unreimbursable H. Sicherman services, GABLLC operating expenses, etc).
Subtotal Investments in Economic Development Program	(385,000)	(385,000)	(385,000)	(385,000)	(385,000)	(1,925,000)	
Strategy, Workforce Development & Entrepreneurship:							
Edge Factor Membership Support / Mechatronics / STEM Activities Support / Other WFD Initiatives							The Board authorized commitment of 50% of the Pearl Solar funding toward Workforce Development Initiatives [\$25K committed in 2019].
BOCES - Purchase of Training Equipment & Working Capital	(25,855)					(25,855)	WFD Agreement with BOCES approved 3.25.21
Training - HP Hood & Upstate Niagara	(50,000)					(50,000)	WFD Agreements with HP Hood and Upstate Niagara approved 3.25.21
Workforce Development Reserve	(105,894)					(105,894)	Reserve of Cash on Hand from Solar Project funding; Eight community solar projects have closed to date. Funding from two was previously spent/committed. Includes training for Seneca Nation members. Placeholder for continued efforts for workforce development consultant as critical pillar to GCEDC/GGLDC Tech Based Economic Development Model. 2023 services are being contracted by the GCEDC, utilizing dedicated funds from Genesee County.
Workforce Development Consultant		(30,000)	(30,000)	(30,000)	(30,000)	(120,000)	
GLOW YMCA - Health Living Project	(100,000)					(100,000)	
Subtotal Workforce Development & Entrepreneurship Investments	\$ (281,749)	\$ (30,000)	\$ (30,000)	\$ (30,000)	\$ (30,000)	(401,749)	
Other Cash Activity:							
Common Area Charges - GVAB & BETP	\$ 6,858	\$ 6,858	\$ 6,858	\$ 6,858	\$ 6,858	34,290	
CH4BioGas - Right of First Refusal	\$ 20,000					20,000	
Land Lease Payments	\$ 31,000	\$ 31,000	\$ 31,000	\$ 31,000	\$ 31,000	155,000	
Internal (Borrowings) Repayments - thru date of worksheet	\$ -					-	
Interest Income	\$ 6,897					6,897	
Subtotal - Other	\$ 64,755	\$ 37,858	\$ 37,858	\$ 37,858	\$ 37,858	\$ 216,187	
Total Uses of Funds	(791,994)	(377,142)	(377,142)	(377,142)	(377,142)	(2,300,562)	
Cumulative Year-End Cash Balances	3,056,627	2,953,830	2,723,488	2,493,146	2,262,804	2,262,804	

Updated through 6.30.23 [7.13.23]

Genesee Gateway Local Development Corp. (GGLDC)

Strategic Investments - SUMMARY

Fiscal Years 2023 - 2027

	2023	2024	2025	2026	2027	5 Yr Totals:	Comments
Opportunities:							
Genesee County Chamber of Commerce CDBG Loan Portfolio - Additional Repayments [Principal balance @12.31.22 - Kanaley \$9,260 (in collections)]							
Additional Solar Projects w/ \$25K each committed to Workforce Development & Ec. Dev. Program Support [8 add'l projects approved by Board]							
Land Sales:							
- MTP - Housing Project (potential seed funding for Batavia Home Fund)							
- GVAB - CH4Biogas - 20 acres (\$1M)							
- BETP - Fancher - 15 acres							
Note - Plug Power Community Investment Agreement - \$900K/Year for 20 years - First payment received January 2023 [to be tracked separately]							

Approval of appraisal contract for MedTech Centre

Discussion: The GGLDC asked three companies for bids to appraise the MedTech Center.

1. \$3,900.00 – KIW Appraisal Group, Inc.
2. \$5,500.00 – Colliers International Valuation & Advisory Services, LLC
3. Declined to bid - ENPM

Fund Commitment: \$3,900.

Board Action Request: Approval of appraisal contract for MedTech Center to KIW Appraisal Group, Inc. not to exceed \$3,900.

KLW Appraisal Group, Inc.

Real Estate Appraisers and Consultants



July 27, 2023

Mark Masse CPA
Senior VP Operations
Genesee County Economic Development Center
99 MedTech Drive, suite 106
Batavia, New York 14020

Email: mmasse@gcedc.com

**Re: Real Estate Appraisal Proposal
Upstate MedTech Centre
99 MedTech Drive
Town of Batavia, Genesee County NY**

KLW Federal ID 16-1475726

Dear Mr. Masse:

I have undertaken a preliminary review of the property captioned above to assess the scope of services necessary to provide an opinion of market value in accord with the scope of services outlined below.

The property is identified on the town tax roll as Section Block and Lot 9.-1-216.12. This property consists of a 4.5 acre site developed with a 43,000 SF multi-tenant professional building constructed in 2010.

I am proposing to prepare an *appraisal report* as defined in USPAP (2020-23 edition). The report will be in narrative fashion and will be self contained regarding the pertinent aspects of the property and market information, sufficient to produce a credible estimate of market value.

The scope of the real estate assignment is intended to encompass the investigations, research and analysis necessary to prepare the appraisal and report in accord with (1) intended use of the report and (2) The Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, including the competency provision.

The intended use of the report is provide an estimate of the market value of the leased fee interest.

247 Cayuga Road • Buffalo, New York • 14225
Phone (716) 632-2100 • Fax (716) 632-1062
E-Mail klwgroup@klwgroup.com

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The intended users are to include the Genese County Economic Development Centre and USDA. The appraisal will employ all methods necessary to produce a reliable and credible real estate appraisal.

The market value estimate will be subject to the general limiting conditions and assumptions attached. The appraisal may be subject to further extraordinary limiting conditions and assumptions; however, these are generally not apparent until the assignment is underway. Additional special conditions, if they arise, will be brought to your attention as soon as possible.

In order to facilitate the appraisal I am requesting the following documents and historical property information, if available:

- Current legal descriptions, if available.
- Survey and site plan of the property.
- Copies of all leases, if any.
- P&L statements for 2020, 2021 & 2022.
- Engineering reports regarding any physical and environmental concerns.
- Details on existing utility services

My total fee for undertaking this assignment will be **\$3,900.00**.

I can commit to completion of the assignment within 25 business days of your authorization to proceed.

To avoid any misunderstanding and in order to meet this timetable, we do require receipt of the necessary documentation as soon as possible and written authorization to proceed.

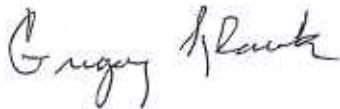
After reviewing this proposal, if you have any questions, please do not hesitate to contact me at your convenience.

This proposal shall remain valid for 120 days.

I sincerely thank you for considering us for this assignment, and we look forward to hearing from you in the near future.

Sincerely,

KLW Appraisal Group, Inc.



Gregory C. Klauk
President

GCK/pc
Bid/Job/Greg/23-GCEDC MedTek Centre

247 Cayuga Road • Buffalo, New York • 14225
Phone (716) 632-2100 • Fax (716) 632-1062
E-Mail klwgroup@klwgroup.com

GENERAL LIMITING CONDITIONS AND ASSUMPTIONS:

1. That the date of value to which the opinions expressed in the report will apply will be the date of inspection unless otherwise agreed to. The appraiser assumes no responsibility for economic or physical factors occurring at some later date which may affect the opinions herein stated.
2. That no opinion is intended to be expressed for legal matters or that would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers, although such matters may be discussed in the report.
3. That no opinion as to title will be rendered. Data on ownership and the legal description will be obtained from sources generally considered reliable. Title is assumed to be marketable; free and clear of all liens, encumbrances, easements and restrictions except those specifically discussed in the report. The property will be appraised assuming it to be under responsible ownership and competent management and available for its highest and best use.
4. That no engineering survey will be made by the appraiser. Except as specifically stated, data relative to size and area were taken from sources considered reliable, and no encroachment of real property improvements is assumed to exist.
5. Any maps, plats, and exhibits included in the appraisal are for illustration only, as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose.
6. That the projections included in the report are intended to assist in the valuation process and are based on current market conditions, anticipated short term supply and demand factors, and a continued stable economy. Therefore, the projections are subject to changes in future conditions that cannot be accurately predicted by the appraiser and could affect the future income or value projections.
7. That testimony or attendance in court or at any other hearing is not required by reason of rendering this appraisal unless such arrangements are made a reasonable time in advance.
8. That since a title report is not expected to be made available, no responsibility is assumed for such items of record not disclosed by normal investigation.
9. That no consideration will be given to personal property located on the premises, unless otherwise noted.
10. Unless otherwise stated in the report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, or other environmental conditions, were not called to the attention of nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated.

GENERAL LIMITING CONDITIONS AND ASSUMPTIONS: (Cont'd.)

11. Furthermore, the appraiser is not qualified to test for such substances or conditions. The presence of such substances (e.g. asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions) may affect the marketability and/or value of the property. The opinions rendered in the report are predicated on the assumption there are no such conditions on or in the property or in such proximity thereto that would cause a loss in marketability and/or value. No responsibility is assumed for any such conditions, nor for any expertise or engineering knowledge required to discover them.
12. Regarding improved property, the Americans with Disabilities Act (ADA) became effective January 26, 1992. We have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since we have no direct evidence relating to this issue, we do not consider possible non-compliance with the requirements of the ADA in estimating the value of the property.
13. The reader should note that if you are contemplating obtaining mortgage financing from a federally regulated institution and using this property as collateral, the lender or its agent is required to directly engage the appraiser.
14. The information within the report will be presented with the understanding that appraisals and reporting formats vary greatly, depending upon the client's individual needs, time constraints, the size and complexity of the property, and the intended use of the data. It should be clearly understood the appraisal proposed will be prepared subject to certain limitations as detailed in the scope of work detailed in the report.
15. The possession of the report shall not carry with it the right of publication or copying in whole or in part, and there is no accountability or obligation expressed or implied to anyone other than the "intended user(s)". If the report is placed in the hands of anyone other than the intended user, it is at your risk and obligation to make such party aware of all of the limiting conditions and assumptions of this assignment, and any of the related discussions. Furthermore, this appraisal report is to be used only in its entirety and may not be used for any purpose other than its intended use.

Professional Service Agreement



100 E Seneca St
Suite 200
Manlius, NY 13104
www.colliers.com/valuationadvisory

July 20, 2023

Susan Baldwin
Managing Director | Syracuse
Direct +1 315 579 3160
Susan.baldwin@colliers.com

Mark A Masse, CPA
Senior Vice President of Operations
Genesee County Economic Development Center
99 Med Tech Drive, Suite 106
Batavia, NY 14020
+1 585 343 2166
mmasse@gcedc.com

RE: Appraisal of Genesee Gateway Local Development

Dear Mr. Masse:

Thank you for considering Colliers International Valuation & Advisory Services, LLC for the assignment identified in the below-stated Professional Service Agreement. Please sign one copy of the agreement and return it to me, thereby indicating your authorization for us to proceed with this assignment and your acceptance of the attached Terms and Conditions.

PROFESSIONAL SERVICE AGREEMENT ("Agreement")

Project	Genesee Gateway Local Development ("Property")
Location	Genesee Gateway Local Development, Town of Batavia, Genesee County, NY
Project Description	Tax parcel 9.-1-216.11 is in the process of having a 1.5 mW solar farm constructed on it. Parcel 9.-1-216.12 is the parcel where the Upstate MedTech Centre is located. It is a 43,000 sq ft facility that houses GCC's School of Nursing (entire second floor), Rochester Regional Health's physical and occupational therapy facility, the GCEDC's offices and Innovation Zone/conference room, a small manufacturing company and class A office space. The building was constructed in 2010 when initial occupancy took place.
Parties	Colliers International Valuation & Advisory Services, LLC ("CIVAS") and Genesee County Economic Development Center (herein at times referred to as "Client")
Intended User	The appraisal will be prepared for Genesee County Economic Development Center. Intended users include the Client. No other users are intended. It should be noted that if this engagement is directly with the owner of the Property, the Appraisal will not be accepted by federally insured lenders due to FIRREA Compliance, limiting the use of this report. Should this potentially impact your source of lenders, we recommend engagement be directed by a Federally Insured Lender.
Intended Use	The report to be performed under this Agreement ("Appraisal") is intended only for use in Internal Documentation. The report is not intended for any other use.
Purpose	Market Value
Type of Appraisal	CIVAS will produce an Appraisal Report in which the appraiser's analysis and conclusions will be summarized within this document.
Rights Appraised	Fee Simple

Accelerating success.

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Professional Service Agreement

Continued

Date of Value	Date of inspection (or other date defined by appraiser)
Scope of Work	<p>CIVAS and/or its designated affiliate will provide the Appraisal in accordance with USPAP and the Code of Ethics and Certifications Standards of the Appraisal Institute and State Licensing Laws. CIVAS will research relevant market data and perform analysis to the extent necessary to produce credible appraisal results.</p> <p>Based on our discussions with the Client, the Client has requested the following valuation scenarios:</p> <ul style="list-style-type: none">› As Is <p>CIVAS anticipates developing the following valuation approaches:</p> <ul style="list-style-type: none">› Sales Comparison Approach› Income Capitalization Approach (including Direct Capitalization) <p>An observation of the subject property will be performed.</p> <p>Please note if it's a requirement per the client's underwriting guidelines to analyze and report all approaches to value, this will be performed although some approaches may be limited in application.</p> <p>The scope of work will be included in the Appraisal. A copy of the Assumptions and Limiting Conditions, which appear in the Appraisal, is available upon request.</p>
Delivery	<p>Draft Appraisal: Delivered thirty-five (35) business days from the date of authorization and receipt of property specific information.</p> <p>Final Appraisal: Delivered three (3) days after completion of client review and authorization to deliver final report(s).</p>
Professional Fee	\$5,500 (excludes valuation of the solar farm)
Expenses	Fees do include all associated expenses,
No. of Reports	<p>One (1) Electronic Draft Appraisal and One (1) Electronic Final Appraisal.</p> <p>No printed copies will be delivered to the client.</p>
Retainer	<p>A retainer of 50% of the fee is required prior to our proceeding.</p> <p><u>To Pay By Check:</u> Please remit all payments to Colliers International Valuation & Advisory Services 26791 Network Place Chicago, IL 60673-1267 **Please include the property name or address on the memo line**</p> <p><u>Wire Instructions:</u> JP Morgan Chase Bank, NA Chicago, IL 70-2322/719 Account Name: Colliers International Valuation & Advisory Services, LLC Account No. 899559074 ABA No. 021000021 ACH Payment Transit Routing Number: 071000013 Swift code for International Wires ONLY: CHASUS33 **Please include the property name or address in addenda/memo payment information**</p> <p>Please send notification to CIVASAccounting@colliers.com when payment has been sent.</p>
Payment Terms	<p>CIVAS will invoice Client for the Appraisal in its entirety (Less Retainer) at the delivery of the draft report. When a full retainer has been paid, invoice and amount due are \$0.</p> <p>Final payment is due and payable within five (5) business days upon delivery of the electronic copy of the final report or within thirty (30) days of your receipt of the draft report, whichever is sooner. If a draft report is requested, the fee is considered earned upon delivery of the draft report. If for any reason the client cancels the work before work was completed or for reasons beyond Colliers' control, then the client would pay for an agreed amount for work completed.</p>
Acceptance Date	These specifications are subject to modification if this Agreement is not accepted within five (5) business days from the date of this letter.

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Professional Service Agreement

Continued

Terms and Conditions

The attached Terms and Conditions and Specific Property Data Request are deemed a part of this Agreement as though set forth in full herein. The following is a list of information needed to begin and complete our analysis. The Client signing this Agreement or the party sending the specific property data certifies that all the information provided is accurate and complete as of the date of this request, and that any updates, revisions or additional relevant information that comes into control or possession of the Client prior to the date on which the Appraisal is delivered shall be provided to CIVAS immediately. Please forward with the Agreement or as soon as possible.

- › Survey with Legal Description & Site Size
- › Title Report
- › Wetland Delineation Map (if applicable)
- › Engineering studies, soil tests or environmental assessments
- › Ground lease (if applicable)
- › Existing Building or Improvement Plans
- › Individual Floor or Unit Plans
- › Current County Property Tax Bill
- › Details on any Sale, Contract, or listing of the property in the past 3 years
- › Construction Cost/Budget (within past 3 years)
- › Detailed list of personal property items
- › Property Condition Report
- › Details regarding the historical and future replacement schedule (i.e., carpets, appliances, cabinetry, laundry facilities, HVAC, etc.)
- › Capital improvements history (2 years) & budget
- › Three year & YTD Income & Expenses
- › Solar leases
- › Detailed occupancy report for the past 3 years and YTD
- › Detailed current certified rent roll indicating any vacant units and in-place rents
- › Details regarding any pending changes to the rent roll including any negotiated side deals to delay or forgo rent payments
- › Aged Accounts/Delinquency Report
- › Details regarding any concessions currently being offered for new and existing tenants
- › Marketing plan and/or local competitive study, if available
- › Copy of recent Appraisals or Market Studies
- › Name and telephone number of property contact for physical inspection and additional information needed during the appraisal process
- › Property Contact _____

In addition to the items requested above, please forward any additional materials you would consider relevant in the analysis of the subject property.

Reliance Language

The Appraisal is for the sole use of the Client; however, Client may provide only complete, final copies of the Appraisal report in its entirety (but not component parts) to third parties who shall review such reports in connection with the stated Intended Use. CIVAS is not required to explain or testify as to appraisal results other than to respond to the Client for routine and customary questions. Please note that our consent to allow the Appraisal prepared by CIVAS or portions of such Appraisal, to become part of or be referenced in any public offering, the granting of such consent will be at our sole and absolute discretion and, if given, will be on condition that CIVAS will be provided with an Indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to CIVAS, by a party satisfactory to CIVAS. CIVAS hereby expressly grants to client the right to copy the Appraisal and distribute it to employees of client and to your accountants/auditors in its entirety (but not component parts) without the need to provide CIVAS with an Indemnification Agreement and/or Non-Reliance letter.

If you have questions regarding the enclosed, please feel free to contact me. CIVAS appreciates this opportunity to be of service to you on this assignment and looks forward to serving you. If you have additional questions, please contact us.

I, **Mark A Masse, CPA/Genesee County Economic Development Center**, agree to the above stated terms and authorize Colliers International Valuation & Advisory Services, LLC to prepare the above referenced appraisal.

_____ Date: _____

Mark A Masse, CPA
Senior Vice President of Operations
Genesee County Economic Development Center

Respectfully,

Colliers International Valuation & Advisory Services, LLC

Susan D. Baldwin, MAI, AI-GRS
Managing Director | Syracuse
Direct +1 315 579 3160
Susan.baldwin@colliers.com

Professional Service Agreement

Continued

Terms and Conditions

"T&C"

- 1) The Appraisal will be subject to Colliers International Valuation & Advisory Services, LLC's ("CIVAS") Assumptions and Limiting Conditions that are incorporated into each appraisal, and any Extraordinary Assumptions and Hypothetical Conditions that may be incorporated into each appraisal.
- 2) Any capitalized, non-defined words shall have the same meaning as defined in the Agreement to which these T&Cs are attached.
- 3) Client is defined as the party signing the Agreement and shall be responsible for payment of the fees stipulated in the Agreement. Payment of the fee for the Appraisal is not contingent on the appraised value(s) or the outcome of the report(s). Additional fees will be charged on an hourly basis for any work that may exceed the scope of this proposal, including performing additional valuation scenarios, additional research, and conference calls, meetings, deposition preparation, deposition, trial testimony or travel that may exceed the time allotted by CIVAS for an assignment of this nature. If CIVAS is requested to cease working on the Appraisal for any reason prior to the completion of the appraisal(s), CIVAS will be entitled to bill the Client for the time spent to date at CIVAS' hourly rates for the personnel involved. The Client will be billed a minimum \$500 or at a rate of \$250 per hour for associate time, \$300 per hour for valuation services director, \$400 per hour for managing director, and \$450 per hour for executive managing director. If the Client delays completion of the assignment beyond ninety (90) days, the fee may be renegotiated. This may result in the total fee exceeding the original agreed fee agreed upon cost.
- 4) Client agrees to pay all fees and expenses, including attorney's fees, incurred by CIVAS in connection with the collection or attempted collection of the fees and expenses. In the event Client fails to make payments when due and payable, the amount due shall bear interest at 1.5% per month or the maximum rate permitted in the state in which the CIVAS office executing the Agreement is located, whichever is lesser.
- 5) The fee is due upon delivery of the final report or within thirty (30) days of your receipt of the draft report, whichever is sooner. If a draft is requested, the fee is considered earned upon delivery of our draft report.
- 6) In the event that either party commences any legal action relating to the provisions of the Agreement, including collection, the prevailing party shall be entitled to its actual attorneys' fees and costs. The Agreement shall be governed by and construed in accordance with the laws of the state where the CIVAS office executing the Agreement is located. The venue of any action arising out of the Agreement shall be the county where the CIVAS office executing the Agreement is located. Client will have up to thirty (30) days from receipt of the Draft Appraisal to review and communicate its review to CIVAS. CIVAS reserves the right to bill Client for additional appraisal efforts that may arise from the Client not responding within with this time period.
- 7) CIVAS does not make any representation or warranty, express or implied, as to the accuracy or completeness of the information or the state of affairs of the Property furnished to CIVAS by Client. In the event that any such information is inaccurate, misleading or incomplete, CIVAS shall have no responsibility or liability for any matters relating thereto (whether to the Client or to any third party).
- 8) CIVAS shall have no responsibility for legal matters, questions of survey or title, soil or subsoil conditions, engineering, or other similar technical matters. The Appraisal will not constitute a survey of the Property analyzed.
- 9) Client shall provide CIVAS with such materials with respect to the Appraisal as requested by CIVAS and which are in the possession or under the control of Client. Client shall provide CIVAS with sufficient access to the Property to be analyzed and hereby grants permission for entry, unless discussed in advance to the contrary.
- 10) The data gathered in the course of the Appraisal (except data furnished by Client) and the Appraisal prepared pursuant to the Agreement are, and will remain, the property of CIVAS. With respect to data provided by Client, such data shall be confidential, and CIVAS shall not disclose any information identified as confidential furnished to CIVAS. Notwithstanding the foregoing, CIVAS is authorized by Client to disclose all or any portion of the Appraisal and the related data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable CIVAS to comply with the Bylaws and Regulations of such Institute as now or hereafter in effect.
- 11) Unless specifically noted, CIVAS does not assume any duty to analyze or examine the Property or adjacent property for the possible presence of toxic and/or hazardous substances or materials (including but not exclusive to asbestos, PCB transformers, or other toxic, hazardous, or contaminated substances and/or underground storage tanks (hazardous material), or the cost of encapsulation or removal thereof) and accepts no liability regarding the issue. If such materials exist, CIVAS defers to the expertise of professionals specifically trained in analyzing the cost to remediate, which will not be a part of the appraisal fee proposal. The Appraisal will contain a comprehensive disclaimer to this effect.
- 12) CIVAS understands that there is no major or significant deferred maintenance in the Property which would require the expertise of a professional cost estimator or contractor. If such repairs are needed, the estimates are to be prepared by others, and are not a part of the fee contemplated in the Agreement.
- 13) Client acknowledges that CIVAS is being retained hereunder as an independent contractor to perform the services described herein and nothing in the Agreement shall be deemed to create any other relationship between Client and CIVAS. The Agreement shall be deemed concluded and the services hereunder completed upon delivery to Client of the Appraisal discussed herein.
- 14) Client agrees that its only remedy for losses or damages relating to the Agreement shall be limited to the amount of the appraisal fee paid by the Client and in no circumstances shall CIVAS be liable for any losses or damages in excess of this amount. Should the Client, or any other entitled party, make a claim against CIVAS, its directors, officers, employees and other affiliates and shareholders, relating to this engagement or the appraisal(s), the maximum damages recoverable from CIVAS, its directors, officers, employees and other affiliates and shareholders, shall be the amount of funds actually collected by CIVAS under the Agreement, and no claim shall be made for any consequential or punitive damages.

Professional Service Agreement

Continued

- 15) If CIVAS or any of its employees receives a subpoena or other judicial notification to produce documents or provide testimony involving the Appraisal in connection with a lawsuit or related proceeding, CIVAS will notify the Client of receipt of the subpoena or notification. However, if CIVAS is not part of the lawsuit or proceedings, Client agrees to compensate CIVAS for the professional time required and to reimburse CIVAS for the expenses incurred in responding to any such subpoena or judicial notification, including any attorneys' fees, as they are incurred. CIVAS is to be compensated at the prevailing hourly rates of the personnel responding to the subpoena or command for testimony.
- 16) If expert witness testimony is required in connection with the Appraisal, the following hourly rates will apply. The Client will be billed at the rate of \$250 per hour for associate time, \$350 per hour for valuation services director, \$400 per hour for managing director, and \$450 per hour for executive managing director. The hourly billings pertain to court preparation, waiting and travel time, document review and preparation (excludes appraisal report) and all meetings related to court testimony.
- 17) Client shall indemnify and hold CIVAS, its parent, subsidiaries, affiliates, its officers, directors, employees and agents ("CIVAS Indemnities"), fully harmless against all losses, damages, claims, and expenses of any kind whatsoever (including costs and reasonable attorneys' fees), sustained or incurred by a third party as a result of the negligence or intentional acts or omissions of Client (including any failure to perform any duty imposed by law), any misrepresentation, distortion or if Client fails to provide complete and accurate information to CIVAS, for which recovery is sought against the CIVAS Indemnities; however, such obligation to defend and indemnify shall not apply to the extent caused by the negligent act or willful misconduct of CIVAS. Client shall indemnify and hold CIVAS Indemnities harmless from any claims, expenses, judgments or other items or costs arising as a result of the Client's failure or the failure of any of the Client's agents to provide a complete copy of the Appraisal to any third party.
LIMITATION OF LIABILITY. EXCEPT FOR THE INDEMNIFICATION PROVISION ABOVE, ANYTHING IN THE AGREEMENT TO THE CONTRARY NOTWITHSTANDING, UNDER NO CIRCUMSTANCES WHATSOEVER SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER.
- 18) CIVAS agrees to maintain Professional Liability Insurance in the amount of \$1,000,000 and General Liability insurance in the amount of \$2,000,000, as well as Workers Compensation per local regulatory requirements. CIVAS will endeavor to provide Client with written notice regarding any cancellation of any such insurance. CIVAS will provide Client with certificates of insurance naming Client as an additional insured on the General Liability policy upon request.
- 19) The Appraisal and the name Colliers International Valuation & Advisory Services may not be used in any marketing or investment material or offering memoranda without CIVAS' prior written consent. CIVAS, its employees and appraisers have no liability to any recipients of any prepared material and disclaim all liability to any party other than the Client.
- 20) Unless CIVAS consents in writing, the Appraisal cannot be used by any party or for any purpose other than the Client for the purposes specified in the Agreement. Should the Client provide a copy of this Appraisal to any person or entity not authorized by CIVAS in writing, Client hereby agrees to hold CIVAS, its directors, officers, employees and other affiliates and shareholders, harmless from all damages, expenses, claims and costs, including any attorney's fees. The Client acknowledges that any opinions and conclusions expressed by the professionals of CIVAS pursuant to the Agreement are made as employees and not as individuals. CIVAS' responsibility is limited to the Client, and the use of the Appraisal or related product by third parties shall be solely at the risk of the Client and/or third parties.
- 21) The use of this appraisal shall be used only for the purpose as set forth in the Intended Use section of the Agreement. In the event that the client wishes to use this report or portions of this report for any other purpose such as, to become part of or be referenced in, any offering or other material intended for the review of others, or to be submitted to others, will be at the Client's sole and absolute discretion and, if given, will be on condition that CIVAS will be provided with an Indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to CIVAS and the Client, by a party satisfactory to CIVAS and the Client. CIVAS does consent to Client submission of the complete Appraisal to rating agencies, loan participants or your accountants/auditors without the need to provide us with an Indemnification Agreement and/or Non-Reliance letter.
- 22) Client and its affiliates, rating agencies and a limited number of investors involved in the securitization, may use and rely upon CIVAS report in connection with a planned loan securitization involving the Property including, without limitation, utilizing selected information in the Appraisal in the offering documents relating to the securitization and CIVAS agrees to cooperate in answering reasonable questions by any of the above parties in connection with the securitization.

Client agrees that it will not file, use, or permit or cause to be used in any offering documents or any other document any portion or extract of the Appraisal, or any reference to the Appraisal, without first (i) having provided the portion or portions of an offering document or other document to CIVAS for review and (ii) having obtained the prior written consent of CIVAS to any such filing, use, amendment or modification, which consent shall not be unreasonably withheld. CIVAS shall have the right to require Client to include in any offering document or other document disclosure concerning the conditions, qualifications and assumptions of the appraisal and such other disclosure concerning the Appraisal as CIVAS shall reasonably require.

Client can use the appraised value without attribution to the Appraisal, and selected information in the Appraisal, provided Client agrees that it has complied and at all times will comply, and will use Client's best efforts to cause any underwriters to comply, with all applicable Federal and state securities laws in connection with any offering, and offering document and any use of the Appraisal. Client further agrees that neither any offering document nor any other document used in connection with any offering will contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading regarding the Appraisal, or any portion or extract thereof, or any reference to the Appraisal.