



BRIGHTON URBAN RENEWAL AUTHORITY

**City Hall 500 South 4th Avenue
Brighton, CO 80601
BURA Regular Meeting
March 15th, 2023 | 4:30 p.m.**

A G E N D A

General Information:
Office: 303-655-2150
Aherrera@brightoncd.org

Authority Members

Chair

Candace Werth

Vice-Chair

Wayne Scott

Treasurer

Gary Wardle

Commissioners

Joan Cox

Mark Rawlings

Richard Gonzales

Daniel Doherty

City Council

Clint Blackhurst

Executive Director

Aaron Herrera

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **APPROVAL OF THE URA REGULAR MEETING AGENDA:**
Recommended motion "...to approve the March 15th, 2023, Regular Meeting Agenda."
5. **APPROVAL OF THE February 15th, 2023, BURA REGULAR MEETING MINUTES:**
Recommended motion "...to approve the February 15th, 2023, BURA Regular Meeting Minutes."
6. **PUBLIC COMMENT: Public Comment is reserved for comments on any issues or items pertaining to BURA business except those for which a formal public hearing is scheduled.**
7. **CEREMONIES:** Jan Hepp-Struck Appreciation Plaque
8. **ACTION ITEMS:**

A.) Dutch Bros Reimbursement Resolution No. 0315-23
9. **DISCUSSION ITEMS:**

A.) Downtown Update- Gary Montoya
B.) Façade Improvement Guidelines- Gary Montoya & Aaron Herrera
C.) brightonura.org email discussion- Aaron Herrera & Hilary Graham
10. **EXECUTIVE DIRECTOR REPORT:** Aaron Herrera
11. **COMMUNICATIONS FROM THE CHAIR AND/OR COMMISSIONERS:**
12. **NEXT BURA MEETING:** **April 19th, 2023-BURA REGULAR MEETING**
500 S 4th Avenue
Brighton, CO 80601 | 4:30 p.m.
13. **ADJOURNMENT:**



BRIGHTON URBAN RENEWAL AUTHORITY
500 South 4th Avenue Brighton CO 80601

Minutes from February 15, 2023 BURA Regular Meeting

1. **CALL TO ORDER:**

Chairperson Werth called the meeting to order at 4:30 p.m.

2. **PLEDGE OF ALLEGIANCE:**

3. **ROLL CALL:**

Commissioners Present: Candace Werth, Joan Cox, Wayne Scott, Daniel Doherty, Gary Wardle and Mark Rawlings

Commissioners Absent: Clint Blackhurst and Richard Gonzales

Staff Present: Aaron Herrera, Gary Montoya, Michael Martinez, Catrina Asher, Marv Falconburg, Noe Martinez, and BURA Legal Counsel, Hilary Graham

Media Present: None

4. **APPROVAL OF THE URA MEETING AGENDA:**

Commissioner Cox moved to approve the February 15th, 2023, regular meeting agenda with some flexibility for Vestas depending on their arrival time at the meeting. The motion was seconded by Commissioner Scott.

Voice vote: Motion carried unanimously

5. **APPROVAL OF THE November 16th, 2022 BURA REGULAR MEETING MINUTES:**

Commissioner Scott moved to approve the November 16th, 2022, BURA Regular Meeting minutes. The motion was seconded by Commissioner Doherty.

Voice vote: Motion carried unanimously

6. **PUBLIC COMMENT:**

None.

7. **CEREMONIES:** A plaque was presented to former BURA Commissioner, Jac Cuney.

8. **PRESENTATIONS:**

A.) Charlie Alexander & Jay Small discussed their Precision Building Systems project in the North Brighton Employment Area and showed a brief video about their manufacturing process.

B.) Greg Moran, Kelli Sparkman, and Mike Tollefson discussed the Dutch Bros project in the downtown urban renewal area.

8.5 David Ivan from Vestas was given an opportunity to update the board on Vestas' Brighton operation.

9. **ACTION ITEMS:**

A.) Election of Officers, Commissioner Rawlings moved to keep the officers the same as 2022. Commissioner Cox seconded.

Voice vote: Motion carried unanimously

B.) Open Meetings Resolution No.0215-23A Commissioner Wardle moved to approve resolution No. 0215-23A. Commissioner Doherty seconded.

Voice vote: Motion carried unanimously

C.) Brighton Hearts the Arts Resolution No. 0215-23B Commissioner Cox moved to approve resolution No. 0215-23B. Commissioner Scott seconded.

Voice vote: Motion carried unanimously

10. **DISCUSSION ITEMS:**

A.) Q4 2022 Financial Update- Catrina Asher- Catrina presented BURA's Q4 2022 financials. At the conclusion of Catrina's presentation, Commissioner Scott asked for financial projections for Core BURA through its sunset date in 2027.

B.) Downtown Update-Gary Montoya gave an update on events, downtown business activity and a preview of the shows he has booked for the Armory in 2023. He also mentioned that he's researching implementing a "First Friday" event. Finally, he said the armory rental fees will increase by \$10/hour in 2023.

C.) ULI TAP Grant- Aaron Herrera advised the board about the ULI TAP grant for the Adams Crossing area of Brighton.

D.) Brighton Investment Grant Program-Aaron Herrera reviewed the BIP Grant guidelines with the board. The commissioners advised him to proceed with a BURA Façade Improvement Grant program instead of a partnership with the Brighton EDC because of the differences in their respective missions.

E.) South Main Update-Aaron Herrera advised the board about Evergreen's intention to extend their March 1st deadline by 45-90 days.

11. **EXECUTIVE SESSION:**

An executive session was held under:

A.) C.R.S. Section 24-6-402(4)(e) to determine positions relative to matters that may be subject to negotiations, developing a strategy for negotiations, and instructing negotiators regarding a reimbursement agreement with Vestas Blades America, Inc. and Vestas Nacelles America, Inc., in the North Brighton employment area.

Commissioner Scott moved to enter the executive session at 7:06 p.m. The motion was seconded by Commissioner Wardle.

Voice vote: Motion carried unanimously.

The executive session concluded at 7:25 p.m. The regular meeting resumed at 7:27 p.m.

12. EXECUTIVE DIRECTOR REPORT:

Aaron Herrera advised the board that BURA's payment for the second phase of Founder's Plaza was made at the end of 2022. He also mentioned that both he and Gary Montoya visited with the Greeley DDA executive director. Next, he recognized Commissioner Wardle's recent Excellence in Arts award. Finally, he said there's a chance that BURA may be asked to create a new plan area to support a large economic development prospect in Brighton.

13. COMMUNICATIONS FROM THE CHAIR AND/OR COMMISSIONERS:

Commissioner Werth advised the board that she would be out of town for the March 15th meeting. Next, Commissioner Scott mentioned that Jan Hepp-Struck was recently recognized for her photography skills.

14. NEXT BURA MEETING:

**March 15, 2023, 4:30 p.m.
500 S. 4th Avenue
Brighton, CO 80601**

15. ADJOURNMENT

Chairperson Werth adjourned the meeting at 7:39 p.m.

BRIGHTON URBAN RENEWAL AUTHORITY

A RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT WITH DB NOCO, LLC, DOING BUSINESS AS DUTCH BROS.

RESOLUTION NO. 0315-23

WHEREAS, Dutch Bros. (the "Developer") is planning a commercial development and associated improvements in the Urban Renewal Plan area; and

WHEREAS, assisting the Developer by offering a partial reimbursement for the cost of public improvements needed for the commercial development is consistent with and in furtherance of the purposes of the Authority and the Urban Renewal Plan.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Brighton Urban Renewal Authority as follows:

Section 1. A Reimbursement Agreement with the Developer is approved in an amount not to exceed sixty thousand dollars (\$60,000). The Executive Director is authorized to finalize exhibits and other elements of the agreement, and, subject to final approval of the agreement by the Authority's attorney, the Chair is authorized to execute same behalf of BURA.

ADOPTED this ___ day of _____, 2023.

BRIGHTON URBAN RENEWAL AUTHORITY

Candace Werth, Chair

ATTEST:

Aaron Herrera, Executive Director

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (this "**Agreement**") dated as of _____, 2023, is made by and between BRIGHTON URBAN RENEWAL AUTHORITY, an urban renewal authority and a body corporate and politic of the State of Colorado, with the address of 22 S. 4th Avenue, Brighton, CO 80601 (the "**Authority**"), and **DB NOCO, LLC, doing business as Dutch Bros.**, a Colorado limited liability company with the address of 2026 Bear Mountain Drive, #101, Fort Collins, CO 80525 (the "**Developer**"). The Authority and Developer are sometimes collectively called the "**Parties**," and individually, a "**Party**."

RECITALS

All capitalized terms used, but not defined, in these Recitals, have the meanings ascribed to them in this Agreement. The Recitals are incorporated to this Agreement as though fully set forth in the body of this Agreement.

WHEREAS, the City of Brighton, Colorado (the "**City**") is a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to Article XX of the Constitution of the State of Colorado;

WHEREAS, the City Council of the City (the "**City Council**") established the Authority on or about April 13, 2001, by Brighton City Council Resolution No. 01-58;

WHEREAS, the City Council has adopted the Brighton Urban Renewal Authority Plan on or about April 16, 2002, by Brighton City Council Ordinance No. 1470 (the "**Urban Renewal Plan**" or the "**Plan**");

WHEREAS, the Developer is the owner of property within the Plan area as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Property**")

WHEREAS, Developer seeks to construct a drive-through business and associated access improvements (the "**Project**") to develop and improve the Property;

WHEREAS, the Authority has determined that assistance in reimbursing the Developer for a portion of the costs of the Project is consistent with and in furtherance of the purposes of the Authority and the Urban Renewal Plan;

WHEREAS, the Authority therefore seeks to reimburse the Developer for a portion of the cost of the Project up to a maximum aggregate amount not to exceed Sixty Thousand Dollars (\$60,000.00) (as further defined below, the "**Reimbursement Amount**") as set forth in this Agreement;

WHEREAS, pursuant to the Colorado Urban Renewal Law , C.R.S. § 31-25-101, *et seq.*, and the Urban Renewal Plan, the Authority may finance undertakings pursuant to the Plan by any method authorized under the Act or any other applicable law, including without limitation, issuance of notes, bonds and other obligations in an amount sufficient to finance all or part of the Plan;

borrowing of funds and creation of indebtedness; advancement of reimbursement agreements; agreements with public or private entities; and loans, advances and grants from any other available sources; and the Plan authorizes the Authority to pay the principal and interest on any such indebtedness from property tax increment, or any other funds, revenues, assets or properties legally available to the Authority; and

WHEREAS, the Parties have agreed to enter into this Agreement for the reimbursement of a portion of the Project costs in accordance with the Urban Renewal Plan and the Act.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties contained in this Agreement, and other valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the terms and conditions in this Agreement.

AGREEMENT

1. **DEFINITIONS.** In this Agreement, unless a different meaning clearly appears from the context, capitalized terms mean:

"**Act**" means the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31 of the Colorado Revised Statutes, as amended.

"**Agreement**" means this Reimbursement Agreement, as it may be amended or supplemented in writing. References to sections or exhibits are to this Agreement unless otherwise qualified. All exhibits attached to and referenced in this Agreement are hereby incorporated into this Agreement.

"**Authority**" means Brighton Urban Renewal Authority, an urban renewal authority and a body corporate and politic of the State of Colorado which has been duly created, organized, established and authorized by the City to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Act, and its successors and assigns.

"**Certificate Relating to Reimbursement Amount**" means the certification in substantially the form of Exhibit B, attached hereto relating to the satisfaction of the conditions precedent set forth in Section 3.1 relating to the payment of the Reimbursement Amount.

"**City**" means the City of Brighton, Colorado, a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to Article XX of the Constitution of the State of Colorado.

"**City Requirements**" means, collectively, the City of Brighton Land Use and Development Code, *Architectural and Site Design Manual*, *Streetscape Design Manual*, *International (Building) Codes and Site Drainage Requirements*, except as may be amended by mutual written agreement of the City and Developer through land use or building permit approvals or otherwise.

"**Commence Construction**" means the commencement by Developer of actual physical work on the Property, including without limitation deconstruction, demolition and/or site grading on the Property.

"**Default**" or "**Event of Default**" means any of the events described in Section 15; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of enforced delay provided for in this Agreement.

"**Developer**" means _____ and any successors and assigns approved in accordance with this Agreement.

"**Effective Date**" means the date of this Agreement.

"**Executive Director**" means the Executive Director of the Authority.

"**Exhibits**" The following Exhibits attached to this Agreement are hereby incorporated into and made a part of this Agreement:

Exhibit A: Legal Description of the Property

Exhibit B: Certificate Relating to Reimbursement Amount

Exhibit C: Description/Cost Estimate of Improvements Eligible for Reimbursement

"**Party**" or "**Parties**" means one or both of the parties to this Agreement.

"**Pledged Revenues**" means the total aggregate principal amount of the Reimbursement Amount as defined in this Agreement.

"**Project**" means the construction of those certain improvements on or related to access to the Property, as more particularly described in Exhibit C, attached hereto and incorporated herein by this reference.

"**Property**" means the real property described in Exhibit A attached hereto.

"**Reimbursement Amount**" means a maximum amount not to exceed a contribution by the Authority of Sixty Thousand Dollars (\$60,000.00), which is the maximum amount that will be paid to the Developer to reimburse the Developer for the Project.

"**Special Fund**" means the special fund of the Authority defined in C.R.S. § 31-25-107(9)(a)(II).

"**Urban Renewal Plan**" or "**Plan**" means the Urban Renewal Plan approved by Brighton City Council on or about April 16, 2002, by Ordinance No. 1470, and as may hereinafter be amended from time to time.

2. FINANCING AND CONSTRUCTION OF PROJECT.

2.1 Construction of Project. As set forth in Section 4, if Developer proceeds with the Project, then Developer shall be responsible for constructing and installing the Project, and shall be responsible for compliance in all respects with the City Requirements.

2.2 Financing the Project. Developer shall be responsible for initially financing the costs and expenses in connection with the construction and installation of the Project, including, without limitation, all design costs, engineering costs and other soft costs incurred in connection therewith.

3. CONDITIONS PRECEDENT TO PAYMENT OF REIMBURSEMENT AMOUNT.

3.1 Conditions Precedent. Unless waived in writing by the Executive Director, the following conditions precedent shall be satisfied prior to Developer receiving reimbursement for the Project pursuant to the terms and provisions of this Agreement:

(a) The Project has been completed.

(b) No Events of Default by Developer shall have occurred and be continuing under this Agreement.

4. DEVELOPER.

4.1 Construction and Installation of Project. This Agreement shall not obligate the Developer to proceed with the Project. If Developer proceeds with the Project, Developer shall be responsible for the financing, design, construction and installation of the Project. The design and construction of the Project shall comply in all material respects with all applicable codes and regulations of entities having jurisdiction, including the City Requirements.

The Parties agree that if the Developer has not Commenced Construction of the Project by , 2023, that this shall not constitute an Event of Default hereunder, but that the Authority shall have the right to terminate this Agreement as set forth in Section 17 prior to the date Developer has Commenced Construction.

4.2 Access to Property. Subject to the terms and restrictions of any leases and/or other documents encumbering the Property, Developer will permit representatives of the City and the Authority access to the Property and the Project at reasonable times during regular business hours and with prior notice as necessary for the purpose of carrying out or determining compliance with this Agreement, the Urban Renewal Plan, the City Requirements or any City code or ordinance, including, without limitation, inspection of any work being conducted. The City and the Authority shall not interfere with the operation or use of the Property in connection with any such access.

4.3 Appeal of Property Taxes. Developer shall provide written notice to the Authority of any requested reduction by Developer in any portion of the Property's real property tax assessed valuation or abatement of any portion of the Property's real property taxes.

4.4 Notification of Sale of Property. Developer shall provide written notice to the Authority of the sale of all or any portion of the Property by Developer during the term of this Agreement.

5. THE AUTHORITY.

5.1 Payment of Reimbursement Amount. Upon compliance with the conditions precedent set forth in Section 3.1 relating to the payment of the Reimbursement Amount, or the Executive Director's waiver of any such conditions precedent, the Authority agrees that it shall reimburse Developer for costs incurred in connection with the Project in an amount equal to the Reimbursement Amount. The Authority will have **thirty (30) days** after the Developer has submitted the Certificate Relating to the Reimbursement Amount to confirm whether or not such Certificate complies with the terms and provisions of this Agreement and whether the conditions precedent set forth in Section 3.1 have been satisfied or waived by the Executive Director. If the Authority does not provide written approval or disapproval **within such thirty (30) day period**, the Certificate shall be deemed approved by the Authority. If the Authority notifies Developer in writing within such **thirty (30) day period** that the Authority disputes that the conditions precedent set forth in Section 3.1 have been satisfied or waived, or that there is not sufficient documentation relating to all or any portion of the costs of the Project have been incurred by the Developer, and sets forth a detailed explanation why the conditions precedent have not been satisfied, waived or sufficiently documented, such portion of the Reimbursement Amount that is in dispute shall not become due and payable until Developer and Authority have resolved the dispute. The Parties agree to cooperate in good faith to resolve any dispute relating to the satisfaction of the conditions precedent set forth in Section 3.1 **within thirty (30) days** after either Party's written request therefor.

5.2 Special Fund. The Authority agrees that it has established the Special Fund in accordance with the provisions of the Act.

5.3 No Election Required. The Parties acknowledge that according to the decision of the Colorado Court of Appeals in *Olson v. City of Golden*, 53 P.3d 747 (2002), an urban renewal authority is not a local government and therefore is not subject to the provisions of Article X, Section 20 of the Colorado Constitution. Accordingly, the Authority may enter into this Agreement with Developer, and agree to remit the Reimbursement Amount to Developer to reimburse Developer for the Project in accordance with the provisions of this Agreement without electoral authorization, and such obligations are not subject to annual appropriation.

5.4 No Impairment. The Authority will not enter into any agreement or transaction that impairs the rights of the Parties.

6. PAYMENT OR REIMBURSEMENT OF COSTS OF PROJECT. Upon compliance with the conditions precedent set forth in Section 3.1, Developer shall be reimbursed by the Authority for a portion of the costs of the Project, in an amount not to exceed the Reimbursement Amount as follows:

6.1 The Authority shall reimburse up to Sixty Thousand Dollars (\$60,000.00) of the Project. Any costs in excess of the Reimbursement Amount shall be the sole responsibility of the Developer.

7. INSURANCE. On or prior to the Commencement of Construction, Developer will provide the City and the Authority with certificates of insurance showing that Developer is carrying, or causing prime contractors to carry, the following insurance: General Liability, with a general aggregate of Two Million Dollars (\$2,000,000); fire damage of One Hundred Thousand Dollars (\$100,000); medical expense of Five Thousand Dollars (\$5,000); products/completed operations

aggregate of Two Million Dollars (\$2,000,000); personal and advertising injury of One Million Dollars (\$1,000,000) with each occurrence up to One Million Dollars (\$1,000,000), with deductible of Twenty-five Hundred Dollars (\$2,500) per claim.

8. INDEMNIFICATION. From Commencement of Construction of the Project through Completion of Construction of the Project, and for any action arising during that time period, Developer agrees to indemnify, defend and hold harmless the City and the Authority, its officers, agents and employees, from and against all liability, claims, demands, and expenses, including fines imposed by any applicable state or federal regulatory agency, court costs and attorney fees, on account of any injury, loss, or damage to the extent arising out of any of the work to be performed by Developer, any subcontractor of Developer, or any officer, employee, agent, successor or assign of Developer under this Agreement, but only to the extent such injury, loss, or damage is caused by the negligent act or omission, error, professional error, mistake, accident, or other fault of Developer, any subcontractor of Developer, or any officer, employee, agent, successor or assign of Developer, but excluding any injuries, losses or damages which are due to the gross negligence, breach of contract or willful misconduct of the Authority.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Representations and Warranties by the Authority. The Authority represents and warrants as follows:

(a) The Authority is a body corporate and politic of the State of Colorado, duly organized under the Act, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations.

(b) The Authority knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Authority or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

(c) The execution and delivery of this Agreement and the documents required and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the Authority or to its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Authority is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Authority.

(d) This Agreement constitutes a valid and binding obligation of the Authority, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

9.2 Representations and Warranties by Developer. Developer represents and warrants as follows:

(a) Developer is a limited liability company in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

(b) The execution and delivery of this Agreement has been duly and validly authorized by all necessary action on its part to make this Agreement valid and binding upon Developer.

(c) The execution and delivery of this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to Developer or to Developer's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which Developer is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of Developer.

(d) Developer knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of Developer or any of its principals or officials with respect to this Agreement that has not been disclosed in writing to the Authority.

(e) This Agreement constitutes a valid and binding obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

10. TERM. The term of this Agreement is the period commencing on the Effective Date and terminating on the date that the Reimbursement Amount is paid in full by the Authority; provided, that the following provisions shall continue beyond the term of this Agreement: (A) any rights and remedies that a Party has for an Event of Default hereunder; (B) any rights that a Party has to inspect books and records as set forth herein for a period of four (4) years following termination of this Agreement; and (C) the indemnification provisions set forth in Section 8.

11. CONFLICTS OF INTEREST. None of the following will have any personal interest, direct or indirect, in this Agreement: a member of the governing body of the Authority or the City, an employee of the Authority or of the City who exercises responsibility concerning the Urban Renewal Plan, or an individual or firm retained by the City or the Authority who has performed consulting services to the Authority or the City in connection with the Urban Renewal Plan or this Agreement. None of the above persons or entities will participate in any decision relating to the Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

12. ANTI-DISCRIMINATION. Developer, for itself and its successors and assigns, agrees that in the construction of the Project and in the use and occupancy of the Property, Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, disability, marital status, ancestry, or national origin.

13. NOTICES. Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if delivered in person, by prepaid overnight express mail or overnight courier service, by certified mail or registered mail, postage prepaid return receipt requested, addressed to the Party to whom such notice is to be given (and such Party's additional persons to copy) at the address(es) first set forth above or at such other or additional addresses as may be furnished in writing to the other Parties. The Parties may also agree on a different means of providing written notice hereunder, including without limitation, notice via electronic mail.

Notice shall be deemed received: (i) if delivered in person, upon actual receipt (or refusal to accept delivery), (ii) if by prepaid overnight express mail or overnight courier service, on the first business day following sending of the notice, and (iii) if by certified mail or registered mail, postage prepaid return receipt requested, on the earlier of the date of the receipt or the third business day following sending of the notice.

14. DELAYS; FORCE MAJEURE. Subject to the following provisions, time is of the essence. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, earthquake, strikes, labor disputes, regulation or order of civil or military authorities, or other causes, similar or dissimilar, which are beyond the control of such Party.

15. EVENTS OF DEFAULT. The following events shall constitute an Event of Default under this Agreement:

(a) Any representation or warranty made by any Party in this Agreement proves to have been untrue or incomplete in any material respect when made and which untruth or incompleteness would have a material adverse effect upon the other Party.

(b) So long as the Reimbursement Amount has not been paid in full, the Authority fails to remit the Pledged Revenues on deposit with the Authority to Developer on or prior to February 15 of each year.

(c) Except as otherwise provided in this Agreement, any Party fails in the performance of any other covenant in this Agreement and such default continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party or Parties within such thirty (30)-day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such thirty (30)-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

16. REMEDIES. Upon the occurrence and continuation of an Event of Default, the non-defaulting Party's remedies will be limited to the right to enforce the defaulting Party's obligations by an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus, or by an action to collect and enforce payment of sums owing hereunder, and no other

remedy, and no Party will be entitled to or claim damages for an Event of Default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in such litigation or other proceeding shall receive, as part of its judgment or award, its reasonable attorneys' fees and costs.

17. TERMINATION. This Agreement may be terminated by the Developer at any time prior to the Commencement of Construction of the Project. In the event that Developer has not Commenced Construction of the Project on or prior to [same as 4.1], then the Authority shall have the option to terminate this Agreement. In order to terminate this Agreement, a Party shall provide written notice of such termination to the other Party. Such termination shall be effective thirty (30) days after the date of such notice, without any further action by the Parties, unless prior to such time, the Parties are able to negotiate in good faith to reach an agreement to avoid such termination. Upon such termination, this Agreement shall be null and void and of no effect, and no action, claim or demand may be based on any term or provision of this Agreement, except as otherwise expressly set forth herein. In addition, the Parties agree to execute a mutual release or other instruments reasonably required to effectuate and give notice of such termination.

18. PAYMENT OF FEES AND EXPENSES. Each Party agrees to pay for its own fees, costs and expenses incurred by such Party in connection with the execution and delivery of this Agreement and related agreements and documents.

19. NONLIABILITY OF OFFICIALS, AGENTS, MEMBERS, AND EMPLOYEES. Except for willful or wanton actions, no board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney or agent of any Party, nor any lender to any Party or to the Project, will be personally liable under the Agreement or in the event of any default or for any amount that may become due to any Party.

20. ASSIGNMENT. Except as hereinafter provided, this Agreement shall not be assigned in whole or in part by any Party without the prior written consent of the other Party; provided, however, Developer has the right to assign this Agreement to any party that acquires fee title to the Property without the prior written consent of any other Party.

21. SECTION CAPTIONS. The captions of the Sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

22. ADDITIONAL DOCUMENTS OR ACTION.

22.1 The Parties agree to execute any additional documents or take any additional action, including without limitation, estoppel documents requested or required by third parties, including without limitation, lenders, tenants or potential purchasers, that is necessary to carry out this Agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. Notwithstanding the foregoing, however, no Party shall be obligated to execute any additional document or take any additional action unless such document or action is reasonably acceptable to such Party.

22.2 If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

22.3 The Executive Director shall have the authority to act on behalf of the Authority under this Agreement.

23. AMENDMENT. This Agreement may be amended only by an instrument in writing signed and delivered by the Parties.

24. WAIVER OF BREACH. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

25. GOVERNING LAW. The laws of the State of Colorado govern this Agreement.

26. BINDING EFFECT. This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Section 20.

27. EXECUTION IN COUNTERPARTS. This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which will constitute but one and the same instrument.

28. LIMITED THIRD-PARTY BENEFICIARIES. Except as hereinafter provided, this Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party to this Agreement; provided, however, that the City shall be deemed to be a third-party beneficiary under this Agreement to the extent that Developer or Authority have agreed to undertake certain actions for the benefit of the City.

29. NO PRESUMPTION. The Parties and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement will be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

30. SEVERABILITY. If any provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be void or unenforceable, the same will in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole.

31. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal

holiday pursuant to Section 24-11-101(1), C.R.S., such day will be extended until the next day on which such banks and state offices are open for the transaction of business.

32. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

33. PARTIES NOT PARTNERS. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

34. NO WAIVER OF IMMUNITY. Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by the Authority under applicable state law.

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of _____, 2023.

BRIGHTON URBAN RENEWAL AUTHORITY

Candace Werth, Chairperson

ATTEST:

Aaron Herrera, Executive Director

DEVELOPER

By: _____

Name: _____

Title: _____

ATTEST/NOTARY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

FORM OF CERTIFICATE RELATING TO REIMBURSEMENT AMOUNT

Brighton Urban Renewal Authority
22 S. 4th Avenue
Brighton, Colorado 80601
Attention: Aaron Herrera, Executive Director

The undersigned representative of _____ (the "Developer") hereby makes the following certifications in accordance with the terms and provisions of section 3.1 of the Reimbursement Agreement dated as of _____, 2023 (the "Reimbursement Agreement"), between the Brighton Urban Renewal Authority and Developer. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Reimbursement Agreement.

The following conditions have been satisfied or waived in writing by the Executive Director:

1. The Project set forth in Section 3.1(a) of the Reimbursement Agreement has been completed.
2. No Events of Default by Developer have occurred and are continuing under the Redevelopment Agreement.

The total amount for which reimbursement is requested is _____. Attached to this Certificate is documentation related to the costs incurred by the Developer in connection with the financing, construction and installation of the Project for which such reimbursement is requested.

The foregoing certification shall constitute the Certificate Relating to Reimbursement Amount under the Reimbursement Agreement.

[Developer]

Date: _____

By: _____
Name:
Title:

Within thirty (30) days of receipt of this Certificate by the Authority, the Authority shall complete the applicable provision below and remit to Developer:

- The Authority hereby verifies that: (a) this Certificate Relating to the Reimbursement Amount complies with the terms and conditions of the Reimbursement Agreement and that the conditions precedent set forth in Section 3.1 of the Reimbursement Agreement have been satisfied or waived in writing by the Executive Director, and (b) the documentation submitted with this Certificate is sufficient to verify that the Reimbursement Amount requested pursuant to this Certificate has been allocated to the reimbursement of the costs of the Project in accordance with the Reimbursement Agreement.

- The Authority hereby notifies Developer that (a) the Authority disputes that the conditions precedent set forth in Section 3.1 of the Reimbursement Agreement have been satisfied or waived, and/or (b) that the documentation submitted with this Certificate is not sufficient to verify that the total Reimbursement Amount requested pursuant to this Certificate is for the reimbursement of costs incurred in connection with the Project. Set forth below is a detailed explanation of the reasons why the Authority disputes that these conditions precedent have been satisfied or waived or that such documentation is insufficient:

BRIGHTON URBAN RENEWAL AUTHORITY

Date: _____

By: _____

Name:

Title:

EXHIBIT C

DESCRIPTION/COST ESTIMATE OF IMPROVEMENTS ELIGIBLE FOR
REIMBURSEMENT



BURA Façade Improvement Grant)

The Brighton Urban Renewal Authority (BURA) Façade Improvement Grant Program (Grant Program) is a competitive grant program meant to encourage property owners and tenants of buildings within eligible portions of Brighton's core downtown plan area (shown on Appendix 1) to make building improvements that will revitalize the area and attract customers to shop, dine and do business in Brighton. These Grant Program Guidelines (Guidelines) are meant to assist applicants with going through the process of applying for a Façade Improvement Grant and outlining what improvements will be considered.

BURA reserves the right to amend these Guidelines at any time if it is determined necessary in order to provide more clarity, flexibility or restrictions to the Grant Program.

Eligibility

The Grant Program is eligible to commercial and residential buildings within the Building Renovation Grant Program Area (Grant Area) identified by the attached map at Appendix 1. An owner or tenant of a building within the Grant Area may apply for grant funding. Tenants must provide written approval from the owner of the building to submit a Building Renovation Grant Program Application (Application). Only one Application may be submitted by an applicant per grant cycle. An applicant that has an outstanding grant award that has not been completed pursuant to the Application Process described in these Guidelines is ineligible for a new grant award until all outstanding work on any previous grant is complete.

Grant Funding Available

The applicant must provide a minimum 50% match for any amount awarded. The BURA Board will make a determination annually on the amount of grant funding available each year. Reimbursements will be made to the applicant provided that the work performed is as approved by BURA. If changes are necessary, the applicant may provide an explanation of any changes in person at a regular meeting of the BURA Board. If BURA approves the changes, then the award amount will continue to be dispersed. Grant disbursements will be as follows:

1. Upon completion of work as awarded through the Grant Program, Applicant shall provide receipts of project expenses throughout the project, as well as proof of payment of said receipts. BURA will reimburse those receipts up to 80% amount of the grant award amount.
2. Upon completion of the project, BURA will provide the remaining balance of the grant award to the applicant. If the applicant did not request previous disbursements, the entire grant will be awarded upon completion of the project. Completion will be determined based upon the procedures set forth under the Application Process section below.

Eligible and Ineligible Improvements

With respect to exterior façade improvements that qualify under the Grant Program, only improvements made to façades visible to the public from the street or sidewalk are eligible. Appendix 2



details what is considered a façade and some elements of a façade that may qualify for a Façade Improvement Grant.

Prior to submitting an Application for improvements to a building that is over fifty years old, the applicant is encouraged to review the Secretary of the Interior's Standards for the Treatment of Historic Properties (the "Standards") located at <https://www.nps.gov/tps/standards/treatment-guidelines2017.pdf>. Work that substantially conforms to the Standards, where applicable, may be viewed more favorably by the BURA Board. The design guidelines provided at Appendix 3 provide a visual representation of recommended improvements. However, alterations that are complementary to the Grant Area, and particularly attractive, will also be considered.

Eligible improvements include:

- Restoration and cleaning of masonry, including brick, stone and concrete. Power washing is discouraged as a method to clean brick on any building receiving grant funding.
- Repair or replacement of windows. If windows are the original, historic windows, repair is preferred. Where repair is not possible, replacement windows of the same material, size and shape are encouraged.
- Lighting attached to the building that accentuates signage or other significant architectural details of the building. All lighting will be reviewed on a case-by-case basis to ensure it complements the building façade.
- Restoration and repair of original architectural details of the building, such as the cornice and window details.
- Removal of inappropriate façade materials. • Installation or repair of awnings.
- Repair of doors or replacement of doors where it is found the proposed door complements the building façade.
- Painting. The color should take into consideration the surrounding buildings and character of the Grant Area. Painting over brick is discouraged.
- Signage. All signage will be reviewed to ensure that it complements the building and the character of the Grant Area. Eligible signage may include projecting signs, storefront signs or restoration of original architectural signs. Generally, signage should not cover distinct architectural features of a building. Initial written approval of the sign from the City must be provided with the grant application.
- Architectural design assistance for an applicant to enlist an architect to provide recommendations on appropriate improvements to the building.

Ineligible improvements include, but are not limited to, improvements that:

- Were started or completed prior to applying for the Grant Program.
- Exterior improvements that are not made directly to a façade, such as benches, planters, parking, etc.



- Improvements that are not visible from the street or sidewalk, unless they are required under the International Building Code and/or International Fire Code, as adopted and enforced by the City of Brighton.
- Are not found to be complementary to surrounding buildings and neighborhood character or the original character of the building.
- Are made to a historically designated building that have not been issued a report of acceptability by the Brighton Historic Preservation Board. In addition, building permit fees and other administrative fees that may be required by the City are not eligible for grant funding.

Application Process

A pre-application conference with BURA/city staff is required prior to submitting an Application to discuss the proposed project and any requirements. This conference must be completed at least two weeks prior to the application deadline. To schedule a pre-application conference, contact BURA staff at 303.655.2150. Brighton Historic Preservation Board prior to submitting their Application. For more information on meeting with the Historic Preservation Board, please contact City staff at 303.655.2051 or visit <https://www.brightonco.gov/193/Historic-Preservation-Commission>.

All Building Renovation Program Applications must be submitted by no later than June 1, 2023 at 5:00 PM. Applications may be submitted electronically or in hard-copy format by any one of the following delivery methods:

1. Hand-Delivery. Hand-delivery of Applications (either electronic or hard-copy) must be delivered during business hours (Monday – Friday from 8:00 AM – 5:00 PM, excluding holidays) to City Hall at 500 S. 4th Avenue, Brighton, Colorado so they are received by the deadline date of June 1, 2023 at 5:00 PM. Hand-delivered Applications should be labeled to the attention of the Brighton Urban Renewal Authority.
2. Email. Applications may be emailed to aherrera@brightonedc.org by no later than June 1, 2022 at 5:00 PM. Please enter “Façade Improvement Grant Program Application” in the subject line of the email.
3. U.S. Mail. Façade Improvement Grant Program Applications may be mailed to:

**Brighton Urban Renewal Authority
500 S. Fourth Avenue
Brighton, CO 80601**

Mailed Applications must be postmarked on or before June 1, 2023. It is the applicant’s responsibility to confirm with BURA staff that the Application was received.

The applicant shall submit a fully-completed application, along with the following attachments:

- Proof that a pre-application conference was held with BURA staff to discuss the project prior to submitting the Application. This conference must be take place at least two weeks prior to the application deadline. Contact BURA staff at 303.655.2150 to schedule this meeting.



- Architectural renderings, site plans and/or other visual representations of the proposed improvements. For paint, a paint sample of the proposed color should be provided.
- Photos of the building. For exterior façade improvements, provide photos for all sides of the building that improvements are being requested for. For International Building Code and/or International Fire Code improvements, a photo of the front elevation of the building, as well as the interior portion of the building where renovations are being requested for should be submitted.
- Two estimates from contractors, except that applications for painting a façade do not require a contractor estimate.
- For an application for signage, initial approval from the City of Brighton Building Department must be provided.
- The property owner shall submit proof of ownership of the building.
- For historically designated buildings, a report of acceptability stating the work is approved by the Brighton Historic Preservation Board. Note that the process to receive a report of acceptability can take a month or longer, so you should begin this process as soon as possible.

BURA staff will review all applications to ensure that it is complete and all required attachments are included. If there are any items missing and the application has been submitted at least one week in advance of the application deadline, staff will inform the applicant of any missing information so they can supplement their application prior to the deadline. If it is determined the Application is not complete at the time of the application deadline, or there are attachments missing, the Application will not be accepted. The applicant may resubmit a completed application during the next grant cycle.

The FLURA Board will then review all eligible applications at the regular FLURA meeting immediately following the application deadline and will consider projects based on grant award criteria, as further defined below. FLURA will compare the amount of grant funds requested to the amount of available funds, as determined annually by the FLURA Board. Grants will be awarded to the projects at the sole discretion of the FLURA Board. The number of grants awarded will be based upon the funding available.

Note that because applicants are only permitted to submit one Application during each grant cycle, that applicants may choose to phase larger projects into smaller, more manageable projects. However, approval of an Application does not guarantee that subsequent applications will automatically be awarded.

Final approval is contingent upon the applicant entering into a Building Renovation Grant Program Agreement (Agreement) with FLURA, which outlines the terms of the Grant Program and criteria for receiving a Building Renovation Grant. The Agreement must be finalized by no later than 30 days following approval of a grant award by FLURA. If it is not finalized within this time, then the grant award will become null and void.

The project must be completed by no later than 180 days after finalizing the Agreement. An extension may be requested if a written request is submitted by the applicant prior to the next BURA meeting that immediately follows project completion deadline. At the BURA Board's sole discretion the extension



may or not be granted. If the extension is granted, BURA will continue to reimburse the applicant for work performed on the project as agreed upon in the Agreement.

At the completion of a project, applicant must schedule a final inspection with designated BURA staff, and for work requiring a building permit, the City Building Inspector. BURA staff will provide written confirmation to the BURA Board that the work has been completed as agreed upon in the Agreement. The Applicant should also submit an invoice to BURA showing the final project costs. Upon review of these documents, BURA will issue the final remaining grant award to the applicant after making a determination that the work was indeed completed as agreed, and upon receiving proof that the applicant has paid for said work.

Grant Award Criteria

- Preference will be given to projects that have a high visible impact on public streets and for projects that seek to restore architecturally significant features of a building or have a significant likelihood to increase visitors, employees and/or businesses to the Grant Area. The following criteria will specifically be taken into account by BURA when reviewing a Building Renovation Program Application:
- Instances where an immediate renovation would stop serious deterioration of the building's façade, or where architecturally significant features contributing to the building's character are in danger of being lost.
- Projects that would restore the historic features of a building; where historic features are being removed or altered, whether the improvements have a high degree of aesthetic appeal and are complementary to the surrounding Grant Area.
- Projects that demonstrate the ability to attract people to the Grant Area.
- Projects that would result in significant new investment and the creation of jobs in the Grant Area.
- Projects involving buildings with vacant or underutilized spaces where the overall marketability of the building would be improved.
- Applications that demonstrate the applicant's capacity to complete the project.

Additional Grant Requirements

The applicant shall comply with all applicable provisions of the Brighton Municipal Code and the International Building Codes enforced by the City. By submitting an Application, the applicant agrees to allow the City to inspect the building for Code compliance. Applicants shall obtain all required building permits prior to starting work on the project.

Municipal Code violations discovered after the project acceptance will not result in disqualification from the Grant Program, but corrections of such violations shall be incorporated into the project. BURA retains the right to withhold reimbursements from the applicant until such violations are corrected to the satisfaction of City staff.