CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Approval to execute a Development Agreement between Bryken, LLC, Martin's Flag Company, LLC, Quill & Nib LLC and the City of West Des Moines

DATE: November 4, 2019

RESOLUTION: Approval of Development Agreement

FINANCIAL IMPACT: Based on the Historic West Des Moines Urban Renewal Plan, and the attached development agreement between the City, Bryken, LLC, Martin's Flag Company, LLC and Quill 7 Nib LLC, the City anticipates providing incentives in the form of a 1:1 matching grant for regulatory compliance projects not to exceed $7,476.24. The final amount will be dependent upon receipts submitted to the City for review and approval.

BACKGROUND: On February 6, 2017, the City Council adopted a resolution creating the Regulatory Compliance Fund (RCF) Pilot Program to assist property owners with costs of compliance with government regulations within the Historic West Des Moines Urban Renewal Area. The program is structured as a 1:1 matching grant, based on a reimbursement basis. The program also requires the creation/retention of a minimum of two (2) full-time equivalent (FTE) jobs.

On June 12, 2017, the RCF Pilot Program was amended to add the provision of progress payments to the recipient based on completed projects within the full renovation project.

At the December 10, 2018 City Council meeting, the Council approved the recommendations for applications for assistance from the PIF and RCF for the Historic West Des Moines area and approved the award recipients to apply for building permits and to begin construction upon issuance of those permits.

This project experienced a delay in construction following the initial approval from City Council.

On July 17, 2019, the Finance and Administration City Council Subcommittee reviewed this item at a public meeting due to a delay in construction following initial approval of the project funds. The Subcommittee recommended this item to full City Council for consideration.

In this particular case, the Developer, Bryken, LLC is undertaking an improvement project located at the development property, 131, 133, and 135 5th St., with an estimated value of $17,000. The Tenants are also committing to create/retain three (3) FTEs within the proposed development agreement.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt the resolution approving the Development Agreement and authorizing the Mayor to sign the Agreement on behalf of the City.

Lead Staff Member: Katie Hernandez, Business Development Coordinator, Community and Economic Development

STAFF REVIEWS

Department Director	Clyde Evans, Community and Economic Development Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Date(s) Published	October 25, 2019
Letter sent to surrounding property owners	N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance and Administration		
Date Reviewed	July 17, 2019		
Recommendation	Yes ☒	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Development Agreement
Exhibit II - Resolution

REGULATORY COMPLIANCE FUND
AGREEMENT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the ____ day of _____, 20__, by and between the CITY OF WEST DES MOINES, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa of the State of Iowa and acting under the authorization of Chapter 15A of the Code of Iowa, 2019, and BRYKEN, LLC, an Iowa limited liability company (the "Developer"), and MARTIN'S FLAG COMPANY, LLC AND QUILL & NIB LLC, Iowa limited liability companies, respectively (the "Tenants").

BACKGROUND

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and is engaged in carrying out urban renewal project activities in an area known as the Historic West Des Moines Urban Renewal Area (the "Area"), which is described in the Urban Renewal Plan ("Plan") approved for such area by Resolution No. 17-04-03-14 on April 3, 2017; and

WHEREAS, the City has also approved Resolution No.17-02-06-20 on February 6, 2017, establishing the Property Improvement Fund ("PIF") Program, and the program was later amended by Resolution No. 17-05-30-16 on May 30, 2017, which is an economic incentive policy to provide assistance to property owners in the Area for renovation and upgrade of older commercial, office, industrial, and mixed use properties; and

WHEREAS, the City has also approved Resolution No. 17-02-06-21 on February 6, 2017, and the program was later amended by Resolution No. 17-06-12-11 on June 12, 2017, establishing the Regulatory Compliance Fund ("RCF") Program, which is an economic incentive policy to assist property owners in the Area with costs of compliance with government regulations; and

WHEREAS, the PIF Program and the RCF Program are both identified as urban renewal projects in the Plan; and

WHEREAS, the Developer has submitted an application to receive funding through one or both of the above programs for certain construction activities as described on the attached Exhibit B (hereinafter the "Project") that the Developer seeks to undertake on the property legally described on the attached Exhibit A (the "Development Property"), which is located within the Area; and

WHEREAS, Tenants shall operate their business at the Development Property and commit to hire and retain employees thereon; and

WHEREAS, the City has conditionally approved the Developer to receive economic development incentive funding as specified in Article II of this Agreement (the "Development Incentives") in return for the Developer's completion of the Project, provided that the Developer and Tenants agree to and remain in compliance with the terms of this Agreement; and

WHEREAS, the City Council has found the Project to be consistent with the objectives of the Plan for the Area, the PIF and RCF programs, and has further found that the use of City funds to finance the Development Incentives is in accord with the provisions of the applicable laws under which the Project will be undertaken, including but not limited to, Iowa Code Chapter 15A.

NOW, THEREFORE, the City and the Developer, in consideration of the promises and mutual obligations set forth in this Agreement now agree and covenant as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS OF DEVELOPER AND TENANTS

1. Representations and Covenants of the Developer. Developer makes the following representations and covenants:

a. Project. Developer shall cause the improvements described in Exhibit B to this Agreement to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

b. No Violations or Claims. To its knowledge and with respect to the Project, the Developer is not in material violation of any local, state, or federal environmental law or regulation and is not aware of any pending or threatened claim against the Developer with respect to such laws.

c. Total Investment. Developer represents that the total investment in the Development Property for the Project will be not less than $17,000, and that without the Development Incentives contemplated herein, Developer would not undertake the Project.

d. Insurance. Developer agrees during construction of the Project and thereafter until the Termination Date, as that term is defined in Article VI, Section 11, to maintain builder's risk, property damage, and liability insurance coverages with respect to the Project in such amounts as are customarily carried by like organizations engaged in activities of comparable size and liability exposure with insurance companies reasonably satisfactory to the City, together with such additional coverages as the City may reasonably request, and shall provide evidence of such coverages to the City upon request.

e. Cooperation. Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal, or public safety problems which may arise in connection with the construction and operation of the Project.

f. Completion Date. Developer expects that, barring delays resulting from acts or occurrences outside its reasonable control, including but not limited to storms, floods, fires, explosions, or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts, or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State or local governmental unit (other than the City), the Project will be completed by November, 2019.

g. Compliance with Laws. Developer will comply with all state, federal, and local laws, rules, and regulations relating to the Project, including laws prohibiting discrimination against any applicant, employee, or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

h. Available Information. Upon request, Developer shall promptly provide the City with copies of information requested by City that are related to this Agreement so that City can

determine compliance with the Agreement.

i. Inspection. Developer agrees that it shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Project to inspect such construction and the progress thereof.

j. Real Property Taxes and Assessments. Developer agrees that prior to the Termination Date of this Agreement:

i. Developer will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Development Property, Project, or Developer, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings;

ii. Developer will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal, or local law with respect to taxation of real property contained on the Development Property between the date of execution of this Agreement and the Termination Date; and

iii. Developer will not seek to change the current land assessment category from commercial/industrial, or the zoning classification, of the Development Property or the Project.

k. Annual Certification. To assist the City in monitoring the Agreement and performance of Developer hereunder, a duly authorized officer of Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Project have been paid for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of certification; and (ii) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto. Such statement, proof and certificate shall be provided not later than October 15 of the year in which the Developer first receives any Development Incentives, and each subsequent October 15 through the Termination Date. Developer shall provide supporting information for its Annual Certifications upon request of the City. See Exhibit D-1 for form required for Developer's Annual Certification.

l. Tenant Lease. Developer shall allow Tenants to lease the Development Property until at least the Termination Date of this Agreement, as that term is defined in Article VI, Section 11.

2. Representations and Covenants of Tenants. Tenants make the following representations and

covenants:

a. Employment. Within two (2) years after disbursement of any Development Incentives to Developer, as set forth in Article II of this Agreement, the Tenants shall employ at least three (3) Full-Time Equivalent Employees at the Development Property, and Tenants shall retain at least three (3) Full-Time Equivalent Employees at the Development Property through the Termination Date of this Agreement, as that term is defined in Article VI, Section 11.

For purposes of this Agreement, "Full Time Equivalent Employees" shall mean either (i) a "full time" employee who works at least 40 hours per week or 2,000 hours per year or (ii) any combination of "part time" employees, who, in the aggregate, work at least 2,000 hours per year.

b. No Violations or Claims. To its knowledge and with respect to the Project, the Tenants are not in material violation of any local, state, or federal environmental law or regulation and is not aware of any pending or threatened claim against the Tenants with respect to such laws.

c. Cooperation. Tenants will cooperate fully with the City in resolution of any traffic, parking, trash removal, or public safety problems which may arise in connection with the construction and operation of the Project.

d. Operation of Minimum Improvements. Tenants will occupy the Development Property until at least the Termination Date as that term is defined in Article VI, Section 11.

e. Compliance with Laws. Tenants will comply with all state, federal, and local laws, rules, and regulations relating to the Project, including laws prohibiting discrimination against any applicant, employee, or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

f. Available Information. Upon request, Tenants shall promptly provide the City with copies of information requested by City that are related to this Agreement so that City can determine compliance with the Agreement.

g. Inspection. Tenants agree that they shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Project to inspect such construction and the progress thereof.

h. Annual Certification. To assist the City in monitoring the Agreement and performance of Tenants hereunder, a duly authorized officer of Tenants shall annually provide to the City: (i) certification of the number of Full-Time Equivalent Employees employed by Tenants as of October 1 and as of the first day of each of the preceding eleven (11) months (prorated for the first certification); and (ii) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Tenants are not, or were not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or

Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto. Such statement, proof and certificate shall be provided not later than October 15 of the year in which the Developer first receives any Development Incentives, and each subsequent October 15 through the Termination Date. Tenants shall provide supporting information for their Annual Certifications upon request of the City. See Exhibits D-2 and D-3 for form required for Tenants' Annual Certification.

i. Signage. Tenants shall prominently post a sign viewable by the public during the construction of the Minimum Improvements and for at least sixty (60) days following the receipt of a certificate of occupancy which reads: "This project is made possible by funding from the City of West Des Moines Redevelopment Programs for Historic West Des Moines." The sign will be provided by the City of West Des Moines.

ARTICLE II
DEVELOPMENT INCENTIVES

1. Applicable Development Incentives. Subject to the conditions set forth in this Article and this Agreement, the City has conditionally approved Developer to receive Development Incentives through the following program(s):

☐ Property Improvement Fund Program ("PIF")

☒ Regulatory Compliance Fund Program ("RCF") (Article II, Section 2)

Developer is only eligible to receive those Development Incentives described in the Section(s) of this Article II that are associated with the program(s) for which Developer is approved, as shown above. If Developer is approved for Incentives under both the PIF and RCF programs, the same project costs may not be submitted for reimbursement under both programs. Those Development Incentives granted through the above approved program(s) shall be the only monetary consideration given by the City to the Developer in connection with this Agreement.

2. Regulatory Compliance Fund Program ("RCF") Incentives

a. Grant. If Developer is approved to receive incentives under the RCF program, then for and in consideration of the obligations of the Developer as set forth herein, and as a necessary means of achieving the goals and objectives of the Urban Renewal Plan, the City agrees (subject to the conditions set forth in this Article and this Agreement) to make a Grant to the Developer for certified and approved Project Costs (as described in Section 2(b)(iv)-(v) below) incurred by Developer in constructing the Project necessary to comply with government regulations, but not to exceed $7,476.24 (the "Grant"). The Grant shall not include any Project Costs that are being reimbursed through the PIF program or which must be paid by the Developer in order to qualify for the RCF incentive.

b. Conditions Precedent. The City's obligation to provide Developer the Grant under this Agreement shall be subject to satisfaction of ALL of the following conditions precedent:

(i) the Developer shall be in material compliance with all the terms and provisions of this Agreement;

(ii) Project construction shall have begun within six (6) months from the date of this Agreement;

(iii) the Project must be necessary to comply with government regulations;

(iv) Developer shall certify to the City the amount of the incurred Project Costs in the form attached as Exhibit E with accompanying proof of payment and lien waivers; and

(v) the Project Costs are subject to review and approval by the City, which shall approve the certified Project Costs if it determines, in good faith but in its sole discretion, that the Project Costs were incurred for the Project, were fully paid by the Developer, are free and clear of any liens, and have not otherwise been reimbursed by the City.

c. Timing of Grant Payment(s). Conditioned upon satisfaction of the Conditions Precedent in Article II, Section 2(b) and the approval by the applicable City building official of the satisfactory completion of a discrete portion of the Project, the City shall provide Developer that portion of the Grant necessary to reimburse the Developer for the approved Project Costs incurred in constructing the completed portion of the Project, but not to exceed $7,476.24 in the aggregate. Each payment under this provision shall be made consistent with the City's disbursement schedule following the City's approval of the completion of the discrete portion of the Project and the approval of the associated Project Costs.

d. Event of Default/Repayment of Grant. If an Event of Default occurs under this Agreement and is not timely cured, Developer shall be obligated to repay to the City a prorated amount of the Grant received by the Developer, with interest at 4% per annum, such interest to be calculated from the date occurring 30-days following the provision of written notice identifying a breach of contract by the City to the Developer, pursuant to Article V, Section 3 below. The amount of the Grant that must be repaid upon an Event of Default will be reduced by 20% each December 31 after the date of this Agreement, assuming there is no uncured Event of Default at that time.

e. Maximum Amount. The total amount of the Grant paid by the City to Developer shall not exceed 50% of the amount of the certified and approved Project Costs incurred by Developer in constructing the Project necessary to comply with government regulations (excluding any Project Costs that are being reimbursed through the PIF program) or $7,476.24, whichever is less. The City makes no guarantee as to the actual amount of the Grant which Developer shall receive. The Grant is only for the Project described in this Agreement and not any future expansions which, to be eligible for additional incentives, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

ARTICLE III
INDEMNIFICATION

1. Release and Indemnification. The Developer and Tenants release the City and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project.

Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, the Developer and Tenants agree to protect and defend the Indemnified Parties, now or forever, and further agree to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by the Developer or Tenants against the City to enforce its rights under this Agreement), (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Project or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Developer or Tenants or its officers, agents, servants or employees or any other person who may be about the Project or Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such Indemnified Party or its officers, agents, servants or employees.

2. Survival. The provisions of this Article III shall survive the termination of this Agreement.

ARTICLE IV
PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

1. Status of Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of Developer and Tenants under this Agreement, Developer and Tenants represent and agree that, prior to the Termination Date, Developer and Tenants will maintain their existence as companies and will not wind up or otherwise dispose of all or substantially all of their assets or transfer, convey, or assign their interest in the Development Property, the Project, or their interest in this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the then-outstanding obligations of Developer and Tenants (as the case may be) under this Agreement; and (ii) the City consents thereto in writing in advance thereof. Notwithstanding the foregoing, however, or any other provisions of this Agreement, Developer may pledge any and/or all of its assets as security for any financing of the Project, and the City agrees that Developer may assign its interest under this Agreement for such purpose.

2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, the Developer, or its successors, or assigns agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Project from property tax liability. Nor can the Development Property or Project be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE V
DEFAULT AND REMEDIES

1. Events of Default Defined. The following shall be "Events of Default" under this

Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events during the Term of this Agreement:

a. Failure by Developer to cause the construction of the Project to be completed and the operations to continue pursuant to the terms and conditions of this Agreement;

b. Transfer of Developer's interest in the Development Property or any interest in this Agreement or the assets of Developer in violation of the provisions of this Agreement;

c. Failure by Developer to pay ad valorem taxes on the Development Property and the Project;

d. Failure by Developer to repay the No Interest Loan consistent with the terms of this Agreement and the Promissory Note;

e. Failure by Developer or Tenants to substantially observe or perform any covenant, condition, or obligation under this Agreement, including but not limited to the employment obligations;

f. The holder of any mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents;

g. Developer or Tenants shall:

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

(ii) make an assignment for the benefit of its creditors; or

(iii) admit in writing its inability to pay its debts generally as they become due; or

(iv) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer or Tenants as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer or Tenants or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer or Tenants, and shall not be discharged within ninety (90) days after such appointment, or if Developer or Tenants shall consent to or acquiesce in such appointment; or

h. Any representation or warranty made by Developer or Tenants in this Agreement or in any written statement or certificate furnished by Developer or Tenants pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

3. Developer and Tenants Breach. If the Developer or Tenants fail(s) to perform any of

its/their obligations under this Agreement, and fail(s) to cure said breach within thirty (30) days after written notice from the City to the Developer or Tenants, the City shall be entitled to do any one or more of the following: (i) suspend its performance under this Agreement, (ii) terminate this Agreement upon written notice to the Developer or Tenants, (iii) demand and receive repayment from Developer of the RCF Grant as described in Article II, Section 2(d), and/or (iv) take any other legal or equitable action deemed appropriate to enforce the Developer's and/or Tenants' obligations under this Agreement.

4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

5. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

6. Enforcement Costs. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer or Tenants herein contained, Developer and Tenants agree that the defaulting party shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE VI
MISCELLANEOUS

1. Conflict of Interest. Developer and Tenants represent and warrant that, to their best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

2. Notices. Notices, demands, or other communications under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

a. In the case of the City, to the City of West Des Moines at 4200 Mills Civic Pkwy, P.O. Box 65320, West Des Moines, Iowa 50265-0320, Attn: Ryan Jacobson, City Clerk;

b. In the case of the Developer, to Bryken, LLC, (the "Developer"), 291 S. 61st Street,

West Des Moines, Iowa 50266, Attn: Brett Biggins, Partner;

c. In the case of the Tenants, to:

i. Martin's Flag Company, LLC, 135 5th Street, West Des Moines, IA 50265, Att: Brett Biggins, Manager
ii. Quill & Nib LLC, 4232 Park Hill Drive, Des Moines, IA 50312, Attn: Robert Beers, Manager

or to such other designated individual or officer or to such other address as either party shall have furnished to the other in writing in accordance herewith.

3. Iowa Law Controlling. This Agreement shall be governed and construed under the laws of the State of Iowa.

4. Entire Agreement. This Agreement and the Exhibits here referenced shall constitute the entire agreement between the City, the Developer, and the Tenants and supersedes all other written and oral agreements, discussions and negotiations.

5. Amendments. This Agreement may not be amended or assigned by either party without the express written permission of the other party.

6. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

7. Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

8. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

10. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit G, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

11. Termination Date. Unless terminated earlier under the provisions of this Agreement, the Agreement shall terminate and be of no further force or effect on the later of: (i) October 31, 2024, or (ii) the date on which the No Interest Loan is fully repaid.

12. Lien. This Private Development Agreement is not binding until the attached Lien (Exhibit "H") is executed. Exhibit G is incorporated by reference.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer and Tenants have caused this Agreement to be duly executed in their names and behalf by their authorized representatives, all on or as of the day first above written.

[Remainder of page intentionally left blank; Signature pages follow]

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2019, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Resolution No. 19-_____, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

(Signature page to Development Agreement – City of West Des Moines, Iowa)

Bryken, LLC, an Iowa limited liability company

By:_____
Brett Biggins, Partner

STATE OF IOWA)
)SS
COUNTY OF POLK)

This record was acknowledged before me on this _____ day of _____, 2019, by Brett Biggins, as Partner of Bryken, LLC, on behalf of whom the record was executed.

_____
Notary Public in and for said County and State

[Signature page to Agreement for Private Development – Developer]

Martin's Flag Company, LLC, an Iowa limited liability company

_____
By: Brett Biggins, Manager

STATE OF IOWA)
)SS
COUNTY OF POLK)

This record was acknowledged before me on this _____ day of _____, 2019, by Brett Biggins as Manager of Martin's Flag Company, LLC, on behalf of whom the record was executed.

_____
Notary Public in and for said County and State

[Signature page to Agreement for Private Development – Martin's Flag Company, LLC]

Quill & Nib LLC, an Iowa limited liability company

_____
By: Robert Beers, Manager

STATE OF IOWA)
)SS
COUNTY OF POLK)

This record was acknowledged before me on this _____ day of _____, 2019, by Robert Beers as Manager of Quill & Nib LLC.

_____
Notary Public in and for said County and State

[Signature page to Agreement for Private Development – Quill & Nib LLC]

EXHIBIT A
DESCRIPTION OF DEVELOPMENT PROPERTY

Street address: 131,133,135 5th Street, West Des Moines, IA 50265

Legal description: LT 14 & S1/2 LT 15 BLK 4 VALLEY JUNCTION

Parcel No.: 320/04246-001-000

EXHIBIT B
DESCRIPTION OF PROJECT

PROJECT:

The Project consists of: HVAC improvements

Those improvements, if any, necessary for regulatory compliance include: HVAC improvements.

The construction of the Project will be completed by: November, 2019

Construction costs are expected to be approximately: $17,000

EXHIBIT C
RESERVED

EXHIBIT D -1

DEVELOPER ANNUAL CERTIFICATION

(due before October 15th as required under terms of Development Agreement)

The Developer certifies the following:

During the time period covered by this Certification, the Developer is and was in compliance with the Agreement as follows:

(i) All ad valorem taxes on the Development Property then owned by the Developer in the Urban Renewal Area have been timely paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) The undersigned officer of Developer has re-examined the terms and provisions of the Agreement and certify that at the date of such certificate, and during the preceding twelve (12) months, the Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of the Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

Bryken, LLC

By:_____

Brett Biggins, Partner

Attachments: Proof of payment of taxes

EXHIBIT D -2

TENANT ANNUAL CERTIFICATION

(due before October 15th as required under terms of Development Agreement)

The Tenant certifies the following:

During the time period covered by this Certification, the Tenant is and was in compliance with the Agreement as follows:

(i) The total number of Full-Time Equivalent Employees, as defined in Article I, paragraph 2(a) of the Agreement, employed by Tenant at the Development Property as of October 1, 20___ and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 20__: _____	April 1, 20__:_____
September 1, 20__:_____	March 1, 20__:_____
August 1, 20__:_____	February 1, 20___:_____
July 1, 20__:_____	January 1, 20__:_____
June 1, 20__:_____	December 1, 20__:_____
May1, 20__: _____	November 1, 20__:_____

(ii) The undersigned officer of Tenant has re-examined the terms and provisions of the Agreement and certify that at the date of such certificate, and during the preceding twelve (12) months, the Tenant is not, or was not, in default in the fulfillment of any of the terms and conditions of the Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

Martin's Flag Company, LLC

By:_____

Brett Biggins, Manager

EXHIBIT D -3

TENANT ANNUAL CERTIFICATION

(due before October 15th as required under terms of Development Agreement)

The Tenant certifies the following:

During the time period covered by this Certification, the Tenant is and was in compliance with the Agreement as follows:

(i) The total number of Full-Time Equivalent Employees, as defined in Article I, paragraph 2(a) of the Agreement, employed by Tenant at the Development Property as of October 1, 20___ and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 20__: _____	April 1, 20__:_____
September 1, 20__:_____	March 1, 20__:_____
August 1, 20__:_____	February 1, 20___:_____
July 1, 20__:_____	January 1, 20__:_____
June 1, 20__:_____	December 1, 20__:_____
May1, 20__: _____	November 1, 20__:_____

(ii) The undersigned officer of Tenant has re-examined the terms and provisions of the Agreement and certify that at the date of such certificate, and during the preceding twelve (12) months, the Tenant is not, or was not, in default in the fulfillment of any of the terms and conditions of the Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

Quill & Nib LLC

By:_____

Robert Beers, Manager

EXHIBIT E

DEVELOPER CERTIFICATION OF PROJECT COSTS

Bryken, LLC (the "Developer") certifies that the expenses shown on the table below were/are the actual expenses incurred by the Developer for the Minimum Improvements that are the subject of a Development Agreement entered into the _____ day of _____, 2019 between the City of West Des Moines, Iowa and the Developer (the "Agreement"). The Developer certifies that no expenses claimed or shown on this table relate to personal or unallowable expenses.

In the event of an overpayment by the City for expenses not actually incurred or for unallowable expenses, or if payment was received from another source for any portion of the expenses claimed, the Developer assumes responsibility for repaying the City in full for those expenses.

Certified Project Costs					
Necessary For Regulatory Compliance? Y/N (Y=will be applied to RCF program if eligible; N=will be applied to PIF program if eligible)	**Project Cost Category**	**Engineering, Plans, Specifications**	**Construction Costs**	**Material Costs**	**Miscellaneous**
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Invoice description and cost				
	Total Cost per category				

If you need additional space please attach another table.

Attach actual receipts and invoices and lien waivers

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

By: _____

Bryken, LLC

EXHIBIT F

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

Type of Document:	**MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT BETWEEN THE CITY OF WEST DES MOINES, BRYKEN, LLC, AND MARTIN'S FLAG COMPANY, LLC AND QUILL & NIB LLC**
Return Document to:	Ryan Jacobson, City Clerk City of West Des Moines 4200 Mills Civic Parkway, Suite 2B West Des Moines, IA 50265
Preparer Information:	Katie Hernandez, City of West Des Moines, 4200 Mills Civic Parkway, Suite 1E, West Des Moines, IA 50265, 515-273-0770
Taxpayer Information:	**N/A**

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION:

LT 14 & S1/2 LT 15 BLK 4 VALLEY JUNCTION

Polk County, Iowa Parcel ID number is 320/04246-001-000

Address: 131,133,135 5th Street, West Des Moines, IA 50265

WHEREAS, the City of West Des Moines, Iowa (the "City"), Bryken, LLC ("Developer"), and Martin's Flag Company, LLC and Quill & Nib LLC ("Tenants") did on or about the _____ day of _____, 2019, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Developer and Tenants agreed, in accordance with the terms of the Agreement to develop and operate certain real property located within the City.

The Development Property is described as follows:

LT 14 & S1/2 LT 15 BLK 4 VALLEY JUNCTION

Polk County, Iowa Parcel ID number is 320/04246-001-000

Address: 131,133,135 5th Street, West Des Moines, IA 50265

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2019, and terminates as set forth in the Agreement; and

WHEREAS, the City and Developer and Tenants desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement for Private Development shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement for Private Development made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, West Des Moines, Iowa.

[Signatures Start on Next Page]

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2019, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Resolution No. 19-_____, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

(Signature page to Memorandum of Agreement – City of West Des Moines, Iowa)

Bryken, LLC

By:_____
Brett Biggins, Partner

STATE OF IOWA)
)SS
COUNTY OF POLK)

This record was acknowledged before me on this _____ day of _____, 2019, by Brett Biggins, as Partner of Bryken, LLC, on behalf of whom the record was executed.

_____
Notary Public in and for said County and State

(Signature page to Memorandum of Agreement –Developer)

Martin's Flag Company, LLC

By:_____
Brett Biggins, Manager

STATE OF IOWA)
)SS
COUNTY OF POLK)

This record was acknowledged before me on this _____ day of _____, 2019, by Brett Biggins as Manager of Martin's Flag Company, LLC, on behalf of whom the record was executed.

_____
Notary Public in and for said County and State

(Signature page to Memorandum of Agreement –Martin's Flag Company, LLC)

Quill & Nib LLC

By:_____
Robert Beers, Manager

STATE OF IOWA)
)SS
COUNTY OF POLK)

This record was acknowledged before me on this _____ day of _____, 2019, by Robert Beers as Manager of Quill & Nib LLC.

_____
Notary Public in and for said County and State

(Signature page to Memorandum of Agreement –Quill & Nib LLC)

EXHIBIT G
LIEN

(Insert signed Lien after this page)

PERSONAL GUARANTY

The undersigned Guarantor(s) (whether one or more, hereafter called "Guarantor") requests that the City of West Des Moines, a municipal corporation in the State of Iowa, ("City") enter into a Private Development Agreement with Bryken, LLC ("Debtor"), and in consideration of benefits received by the Debtor, the Guarantor agrees as follows:

A. The term "Obligations" includes all obligations of Debtor to the City when incurred, regardless of the nature of the obligation, whether existing prior to the date of this Guaranty or arising hereafter, or whether it subsequently becomes unenforceable against Debtor as a result of Debtor's bankruptcy or otherwise.

B. Guarantor hereby unconditionally and irrevocably guarantees payment of all Obligations of Debtor to the City, plus all interest, costs, attorney's fees, and other expenses in the collection of any Obligations guaranteed hereby or in the enforcement of this Guaranty.

C. Guarantor acknowledges that this Guaranty shall be effective and binding on Guarantor without further notice or acknowledgement that it is applicable to all Obligations of Debtor to City. This Guaranty shall terminate on October 31, 2024, or upon receipt of written notice of termination from the Guarantor by registered or certified mail, provided that such termination shall not affect the liability of the Guarantor with respect to:

- Obligations incurred prior to such date; or
- Extensions or renewals of, interest accruing on, or fees, costs, or expenses incurred with respect to, such Obligations on or after such date.

D. This Guaranty is a guarantee of payment, and not merely a guarantee of collection. The City may proceed against Guarantor without first proceeding against Debtor or any collateral securing the Obligations.

E. The liability of the Guarantor hereunder shall not be affected by any surrender or release by the City of any security or rights it may have for any Obligations herein guaranteed, or by any amendment or change in the terms of the Obligations, whether with or without notice to, or the consent of the Guarantor.

F. Until all Obligations guaranteed hereby are paid in full, any indebtedness (including any right or interest or salary, dividends, options, benefits, or proceeds) of Debtor now or hereafter owing to Guarantor is hereby subordinated to all Obligations of Debtor to the City. All amounts received by the Guarantor prior to payment in full of the Obligations shall be received in trust for the City.

G. The Obligations hereunder of Guarantor (if more than one) shall be joint and several.

H. Payments under this Guaranty shall be made to the City at 4200 Mills Civic Parkway, West Des Moines, Iowa, or at such other place as the City shall designate from time to time.

I. If any provision of this Guaranty shall be held invalid or unenforceable, such invalidity or enforceability shall not affect the provisions of this Guaranty which may be given effect without

the invalid or unenforceable provisions, and to this end, the provisions of this Guaranty are to be construed as severable.

J. In consideration of the Private Development agreement with Debtor, Guarantor acknowledges that the City is relying on the evidence of financial solvency and security submitted by the Guarantor to the City and Guarantor agrees to provide the City with a personal financial statement contemporaneously with the execution of this guaranty or at any subsequent date as requested or deemed necessary by the City in its sole discretion. Guarantor agrees to promptly notify the City of any material change in financial status, including marital status, change of address, and any other information which may be material to Guarantor's financial solvency and security for the purpose of this Guaranty.

K. Guarantor waives presentment, demand, protest, notice of dishonor, protest, and nonpayment, and all due diligence or promptness that may otherwise be required by law. The liability of Guarantor hereunder may only be extinguished by payment in full of the amounts guaranteed herein. All rights, power and remedies of the City under this Guaranty shall be cumulative and in addition to all rights, powers, and remedies which the City may otherwise have against Guarantor.

L. This Guaranty shall be governed by and construed according to the laws of Iowa, and the Guarantor hereby submits to the jurisdiction of the District Court of Polk County, in any action brought under or arising out of this Guaranty.

IN TESTIMONY WHEREOF, witness the signature(s) of the Guarantor(s), this ____ day of _____, 2019.

By: _____
Print Name:_____
Address: _____
_____

By: _____
Print Name:_____
Address: _____
_____

STATE OF IOWA)
) SS:
COUNTY OF _____)

This record was acknowledged before me on this _____ day of _____, 2019, by _____ and _____ on behalf of whom the record was executed.

_____
Notary Public in and for the State of Iowa

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF WEST DES MOINES, BRYKEN, LLC, MARTIN'S FLAG COMPANY, LLC, AND QUILL & NIB, LLC

WHEREAS, the City has approved Resolution No. 17-02-06-21, establishing the Regulatory Compliance Fund ("RCF") Program, later amended by Resolution No. 17-06-12-11, which is an economic incentive policy to assist property owners in the eligibility area with costs of compliance with government regulations; and

WHEREAS, it is desirable that properties within the eligibility area be redeveloped as part of the Historic West Des Moines Master Plan; and

WHEREAS, the City has received a proposal from Bryken, LLC (the "Developer") and Martin's Flag Company, LLC, and Quill & Nib LLC (the "Tenants"), in the form of a proposed Development Agreement (the "Agreement") by and among the City, Developer, and Tenants, pursuant to which, among other things, the Developer would agree to construct certain Minimum Improvements (as defined in the Agreement) on certain real property located within the eligibility area as defined and legally described in the Agreement ("Development Property") consisting of HVAC replacement, together with all related site improvements, as outlined in the proposed Development Agreement; and

WHEREAS, pursuant to the Regulatory Compliance Fund program, the Agreement would obligate the City to submit reimbursements to the Developer in the form of a Grant consisting of not more than 50% of the total project cost for improvements to comply with regulatory obligations, or $7,476.24, whichever is less, subject to the terms and conditions set forth in the Agreement; and

WHEREAS, one of the obligations of the Tenants relates to employment retention and/or creation; and

WHEREAS, this Agreement is consistent with the Regulatory Compliance Fund Program; and

WHEREAS, Iowa Code Chapter 15A authorizes cities to make loans and grants for economic development and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapter; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Historic West Des Moines Master Plan and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of

Chapter 15A of the Iowa Code taking into account any or all of the factors set forth in Chapter 15A, to wit:

a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes or which generate tourism-related activities.

c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.

d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds; and

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to approve and authorize execution of the Agreement and has considered the extent of objections received from residents or property owners as to said proposed Agreement; and, accordingly the following action is now considered to be in the best interests of the City and residents thereof.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES IN THE STATE OF IOWA:

Section 1. That the performance by the City of its obligations under the Agreement, including but not limited to making of grants to the Developer in connection with the development of the Development Property under the terms set forth in the Agreement, be and is hereby declared to be a public undertaking and purpose and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapter 15A of the Iowa Code, taking into account the factors set forth therein.

Section 2. That the form and content of the Agreement, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Agreement for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from and after the execution and delivery of the Agreement, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such

documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

PASSED AND APPROVED this 4th day of November, 2019.

_____
Mayor

ATTEST:

_____
City Clerk