



AGREEMENT CONCERNING PAYMENT FOR MUNICIPAL SERVICES

This Agreement is entered into as of the 12th day of February, 2015 (the "Agreement"), by and between the City of La Crosse, a Wisconsin municipal corporation (the "City"), and La Crosse Performing Arts Center, Inc. (the "Owner"), a Wisconsin corporation.

RECITALS

A. Owner currently owns and operates a theater for the performing arts and facilities for arts education in the City on the following described real property (the "Property"), more particularly described in Exhibit 2.

B. Owner's Board of Directors has unanimously approved arranging with the City for a payment to cover the cost of basic services provided by the City.

NOW, THEREFORE, in consideration of the recitals and the mutual promises, obligations and benefits provided under this Agreement, the receipt and adequacy of which are hereby acknowledged, Owner and the City agree as follows:

1. **Representations and Warranties of Owner.** The recitals stated above are incorporated in this Agreement by reference as representations and warranties of Owner to the City. In addition, Owner represents and warrants to the City that Owner: (1) is a corporation organized and existing under the laws of the State of Wisconsin; (2) is in good standing with the Wisconsin Department of Financial Institutions; (3) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code and shall immediately notify the City of any change in this exemption; (4) has taken all action necessary to enter into this Agreement; (5) has duly authorized the individual signers of this Agreement to do so; and (5) will be the sole owner of the Property, in fee simple.

2. **Municipal Services.** The City shall provide public health, safety, fire and police protection, streets and street maintenance, snow removal, and other governmental services ("Municipal Services") with respect to the Property that are funded by property taxes.

3. **Tax Status of Property.** Except as provided by law, the Property shall be subject to property taxation and shall not be exempt from property taxation, in full or in part. Owner shall timely provide, at no cost to the City, all information and access to books, records, documents, and other evidence reasonably requested by the City's assessor to determine whether the Property is exempt

1652330

LACROSSE COUNTY
REGISTER OF DEEDS
CHERYL A. MCBRIDE

RECORDED ON
02/24/2015 11:14AM
REC FEE: 30.00
EXEMPT #:
PAGES: 9

112

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:

Stephen F. Matty
City Attorney, City of La Crosse
400 La Crosse Street
La Crosse, Wisconsin 54601

P.L.N.

from property taxes and shall permit the City's assessor to have reasonable access to the Property for that purpose. The City's assessor granted a tax exemption for the Property on April 4, 2013.

4. Payment for Municipal Services If Property Becomes Tax Exempt. If the Property is determined by the City's assessor to be exempt from real property taxes, in full or in part, for any year (the "Valuation Year"), the City shall send Owner, by United States mail, postage prepaid, an invoice for the amount due as a payment for Municipal Services provided by the City with respect to the Property ("Payment for Municipal Services"), calculated according to this section of the Agreement. The amount due shall be calculated by the City for each Valuation Year by the following method.

- a. The City shall calculate the Total Budgeted City Costs, based on the budget as approved by the City's Common Council at the time the calculation is made. The City shall not be required to consider any change in the City's budget approved by the Common Council after the calculation is made and shall not consider any such change made after the City sends Owner an invoice for Payment for Municipal Services.
- b. The City shall calculate the Cost of Municipal Services to Be Defrayed, consisting of the sum of the total budgeted costs for the City's Fire Department, Police Department, Highway Department and other related highway expenses.
- c. The City shall calculate the Percent of Costs of Municipal Services to Be Defrayed costs by dividing the Cost of Municipal Services to Be Defrayed by the Total Budgeted City Costs.
- d. The City, through its assessor or, in the City's sole discretion, by an appraiser selected by the City, shall calculate the fair market value of the Property (the "Fair Market Value"), including land and improvements, as of January 1 of the year, in the same manner that would be used if the Property were assessed for property tax purposes.
- e. The City shall determine the Total City Mill Rate.
- f. The City shall calculate the Mill Rate to Apply to Value by multiplying the Total City Mill Rate by the Percent of Costs of Municipal Services to Be Defrayed.
- g. The City shall calculate the Payment for Municipal Services due to the City by multiplying the Mill Rate to Apply to Value by the Fair Market Value.
- h. This Agreement shall apply to Valuation Years after 2013. This Agreement shall not apply to Valuation Year 2013.

Attached to this Agreement as **Exhibit 1** is an illustrative calculation by the method provided in this Agreement, using values of land and improvements provided by Owner and other figures provided by

the City. These values and figures are used solely for illustrating the method of calculation provided in this section and are not intended to indicate in any way what the actual calculation for any Valuation Year shall be. The amount of the Payment for Municipal Services for any Valuation Year, calculated as provided in this section, shall be binding on the parties.

5. **Terms of Payment.** The City shall send Owner an invoice for the Payment for Municipal Services due for each Valuation Year by the end of the preceding year or as soon thereafter as practical. The full amount of the Payment for Municipal Services shall be due on January 31 of the year after the Valuation Year. Each payment shall be deemed made when actually received by the City. Any payment made by check shall not be deemed made until the check has cleared all banks. Any amount due that is not paid on time shall bear interest in the same manner and at the same rate as provided by law for unpaid property taxes. The Payment for Municipal Services shall constitute payment for all Municipal Services provided with respect to the Property during the Valuation Year, except Municipal Services requested by Owner that would not ordinarily be provided by the City. The City and Owner acknowledge and agree that the Payment for Municipal Services under this Agreement would constitute a reasonable and appropriate means of carrying out the intent of the parties and would fairly and reasonably compensate the City for the Municipal Services provided during the Valuation Year, except Municipal Services requested by Owner that would not ordinarily be provided by the City.

6. **Special Assessments and/or Special Charges.** Any Payment for Municipal Services that is not made when due shall entitle the City to levy a special assessment and/or special charge against the Property for the amount due, plus interest. Owner hereby consents to the levy of any such special assessment and/or special charge, and, pursuant to Wis. Stat. § 66.0703(7)(b) and/or Wis. Stat. § 66.0627, waives any right to notice of or any hearing on any such special assessment and/or special charge.

7. **Insurance.** Owner shall maintain insurance coverage on the Property, including all improvements, insuring against loss or damage in amounts sufficient to rebuild or replace the improvements constructed on the Property. Owner shall provide the City with a certificate of such insurance within five business days after requested by the City. Owner hereby grants the City a lien on each payment under such insurance sufficient to pay any amount due to the City under this Agreement at the time Owner receives the payment and shall hold the payment or such a sufficient part of the payment in trust for the City until paid to the City.

8. **Indemnification.** Owner shall indemnify the City for all amounts of attorneys' fees and expenses and expert fees and expenses incurred in enforcing this Agreement.

9. **Remedies.** The City shall have all remedies provided by this Agreement, and provided at law or in equity, necessary to cure any default or remedy any damages under this Agreement. Remedies shall include, but are not limited to, special assessments under section 6 of this Agreement, enforcement of a lien or trust under section 7 of this Agreement, indemnification under section 8 of this Agreement, and all remedies available at law or in equity.

10. **Successors and Assigns.** This Agreement is binding on the successors and assigns of the parties, including, but not limited to, any subsequent owner of the Property, any part of the Property, or any real property interest in the Property or any part of the Property. Owner shall provide not less than 45 days advance written notice of any intended transfer of ownership, assignment, lease, or sublease. If at any time the Property has more than one owner, the owners shall be jointly and severally liable for any Payment for Municipal Services due under this Agreement for any Valuation Year. For purposes of invoicing only, the City may, in its sole discretion, allocate the amount of the Payment for Municipal Services due among the owners in proportion to the Fair Market Value of their respective property interests as of January 1 of the Valuation Year, as determined by the City's assessor using the method of calculation described in section 5 of this Agreement. If the City makes such an allocation for purposes of invoicing only, then if any part of the Payment for Municipal Services is not timely paid, the City may, in its sole discretion, at any time or from time to time, send additional invoices to all the owners for all or part of the amount due until the amount due is fully paid.

11. **Notices.** Any notice required to be given under this Agreement shall be deemed given when deposited in the United States mail, postage prepaid, to the party at the address stated below or when actually received by the party, whichever is first. The addresses are:

To City:	City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601
With a copy to:	City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
To Owner:	La Crosse Performing Arts Center, Inc. Attention: President 428 Front Street La Crosse, WI 54601

Either party may change its address for notices by giving a notice as provided in this section.

12. **Term of Agreement.** The term of this Agreement shall begin on November 3, 2011 and shall continue unless terminated by mutual written agreement.

13. **Entire Agreement; Amendments.** This Agreement encompasses the entire agreement of the parties. Any amendment to this Agreement shall be made in writing, signed by both parties.

14. **Severability.** If any part of this Agreement is determined to be invalid or unenforceable, the rest of the Agreement shall remain in effect.

15. **Waiver.** No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

16. **Governing Law.** This Agreement has been negotiated and signed in the State of Wisconsin and shall be governed, interpreted, and enforced in accordance with the laws of the United States and the State of Wisconsin.

17. **Interpretation of Agreement.** The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement, neither party shall be deemed the drafter of this Agreement for purposes of its interpretation. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the Circuit Court for La Crosse County, Wisconsin. Each party waives its right to challenge venue in La Crosse County.

18. **Dispute Resolution.** If there is any dispute between the parties arising out of, related to, or connected with this Agreement:

a. The parties shall attempt in good faith to resolve the dispute.

b. If the parties cannot resolve the dispute after reasonable efforts, the dispute shall be submitted to mediation, at the request of either party. The mediator shall be agreed on by the parties or, if they are unable to agree, selected by the Circuit Court of La Crosse County, on application of either party. If the dispute, in whole or part, concerns the Fair Market Value of the Property or the amount due of any payment for Municipal Services, the mediator shall be an assessor or appraiser licensed by the State of Wisconsin with at least ten years experience in the valuation of commercial property, unless the parties agree otherwise in writing. If the dispute is wholly on some other issue or issues, the mediator shall be an attorney in La Crosse County, Wisconsin with at least ten years experience.

c. If the parties cannot resolve the dispute by mediation, after reasonable efforts, either party may demand arbitration conducted in accordance with chapter 788, Wisconsin Statutes, or any successor statute, by a single arbitrator, chosen by mutual agreement of the parties or, if they do not agree, by the Circuit Court for La Crosse County, on application of either party. The party demanding arbitration shall bear all the costs of arbitration. If the dispute, in whole or part, concerns the Fair Market Value of the Property or the amount of any payment for Municipal Services due under this Agreement, the arbitrator shall be an assessor or appraiser licensed by the State of Wisconsin with at least ten years experience in the valuation of commercial property, unless the parties agree otherwise in writing, and any demand for arbitration shall be made within sixty days after an invoice for payment for Municipal Services

for the Valuation Year in dispute is sent by the City to Owner. If a demand for arbitration is not made within that time, the parties shall be deemed to have waived arbitration with respect to the Fair Market Value of the Property and the amount of any payment for Municipal Services due under this Agreement. If the dispute is wholly on some other issue or issues, the arbitrator shall be an attorney in La Crosse County, Wisconsin with at least ten years experience. Chapter 788, Wisconsin Statutes, or any successor statute, shall govern the arbitration proceeding, except that Owner and the City each waive any right to trial by jury if a dispute concerning the arbitration proceeding is resolved by a court. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver of jury trial by the other party.

19. **Representations.** Each party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the other party or any of its employees, attorneys, agents, or representatives. Each party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.

20. **Reading of Agreement.** Each person signing this Agreement on behalf of any Party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of the agreement, that the person (if other than an attorney for the party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

21. **Authorization to Sign Agreement.** Each person signing this Agreement on behalf of any Party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the Party. Each Party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the Party is bound.

22. **Recording.** The City may record this Agreement with the Register of Deeds for La Crosse County and may record this document again, from time to time, in the City's sole discretion.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date first set forth above.

CITY OF LA CROSSE

BY: Timothy Kabat
Timothy Kabat, Mayor

BY: Teri Lehrke
Teri Lehrke, City Clerk

Approved as to form:

Stephen F. Matty
Stephen F. Matty
City Attorney

LA CROSSE PERFORMING ARTS CENTER, INC.

BY: Richard B. Artman
Richard B. Artman, President

BY: David Kilpatrick
David Kilpatrick, Executive Director

Exhibit 1 attached: Illustrative Calculation

Exhibit 2 attached: Legal Description

This instrument drafted by:
Stephen F. Matty, City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

Exhibit 1

ILLUSTRATIVE CALCULATION

Payment for Municipal Services La Crosse Performing Arts Center, Inc.

1. Total Budgeted City Costs 68,695,080

2. Cost of Municipal Services to be Defrayed:

Fire Department Costs	9,973,050
Highway Department Costs	6,382,028
Police Department Costs	<u>10,867,494</u>

Total Defrayed Costs 27,222,572

3. Percent of Costs for Municipal Services to be Defrayed (#2 divided by #1) 0.39628

4. Fair Market Value of Property

a. Value of Improvements	4,600,000
b. Value of Land	<u>400,000</u>

Total Value 5,000,000

5. Total City Mill Rate 0.01236

6. Percent of Costs of Municipal Services to be Defrayed 0.39628

Mill Rate to Apply to Value (#6 times #5) 0.00490

7. Payment for Municipal Services to the City of La Crosse (#6 times #4) \$24,490.18

Exhibit 2

LEGAL DESCRIPTION

**Payment for Municipal Services
La Crosse Performing Arts Center, Inc.**

Lot 2 of Certified Survey Map #1578556 in Vol. 15, pages 54, Section 6, Township 15 North, Range 7
West, City of La Crosse, La Crosse County, Wisconsin