

Resolution approving a revised DNR Ready for Re-Use Loan for the remediation, monitoring and closure activities on the former ALM Family Limited Partnership property.

AMENDED RESOLUTION

WHEREAS, the Common Council of the City of La Crosse authorized the City Planning Department to apply for a Ready for Reuse Hazardous Substances Grant/Loan to the Wisconsin Department of Natural Resources in Resolution File #2012-06-039 for the environmental remediation of the ALM Family Limited Partnership property and adjacent City-owned property, and

WHEREAS, the Common Council of the City of La Crosse authorized the acceptance of a DNR Ready for Reuse Brownsfield Cleanup Project Loan to remediate the ALM Family Limited Partnership property located at 2326 Commerce Street and appropriation of funds (Kwik Trip Bakery Freezer Expansion Project) in Resolution File 2012-12-040; and

WHEREAS, the environmental remediation, site monitoring, and closure on said property is estimated to cost \$400,000.00 using the Voluntary Party Liability Exemption (VPLE) closure process, and

WHEREAS, the DNR has considered the City's request of grant or loan funds in an amount up to \$312,000.00 and upon consideration of the ability to pay by the Responsible Party, the DNR has stated that Federal assistance would be in the form of a fifteen year, zero interest loan to the City of La Crosse for \$312,000.00 and require a City secured promissory note, and

WHEREAS, the Ready for Reuse program requires a sponsor match of not less than 22 percent (\$88,000.00), and

WHEREAS, the Common Council via Resolution File #2012-06-039 previously appropriated \$250,000.00 as a TID 13 eligible expenditure for this purpose utilizing the City's Reserve Fund which funds cannot be expended unless the City receives the Ready for Reuse Grant/Loan from the State of Wisconsin, and

WHEREAS, Desmond Formal Wear (or affiliated entities) has been deemed the Responsible Party by the DNR of contaminating with dry cleaning fluid (perchloroethylene or PCE) City property as well as the adjacent ALM Family Limited Partnership Property, and

WHEREAS, the City purchased the ALM Family Limited Partnership property on January 22, 2013, and

WHEREAS, the City has taken the position that the Responsible Party shall pay the entire cost of the environmental remediation, site monitoring and closure, estimated at \$400,000.00, including the local share/matching funds and the responsibility for paying back any zero interest loan obtained by the City from the DNR.

NOW THEREFORE BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby rescinds Resolution File #2012-12-040, and

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse authorizes the Mayor and City Clerk to execute and accept a standard Ready for Reuse Program Loan Agreement with the Wisconsin Department of Natural Resources in the amount of \$312,000.00 (15 years at 0% interest), loan proceeds to be placed in TID 13 to be used for the project with the Responsible Party to reimburse the City for the DNR Ready for Reuse Program Loan as well as the local share of \$88,000.00, and

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse that it hereby authorizes the Mayor and Clerk to sign a promissory note with the Wisconsin Department of Natural Resources in the amount of \$312,000.00, 0% interest, for 15 years, and

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse that there is hereby appropriated \$312,000.00 from the Reserve Fund as a TID 13 expense to secure the City issued promissory note issued to the Wisconsin Department of Natural Resources for the 15 year 0% interest loan, and

BE IT FURTHER RESOLVED that the City Attorney is authorized to take any and all action necessary as permitted in State or Federal Law to recover the City's cost of remediation, site monitoring, and closure of this site from the responsible party, and

BE IT FURTHER RESOLVED, that \$70,000.00 of the previously appropriated \$250,000.00 from the Reserve Fund in resolution file #2012-06-039 be appropriated as a TID 13 expense for the demolition of the concrete slab and foundation of the Desmond building and demolition and removal of the asphalt, foundation, and building on the Miller property, and

BE IT FURTHER RESOLVED, that \$88,000.00 of the previously appropriated \$250,000.00 from the Reserve Fund in resolution file #2012-06-039 be appropriated as a TID 13 expense for the local match of the DNR Ready for Reuses Loan, and

BE IT FURTHER RESOLVED that \$158,000.00 be included as a TID 13 expense in the 2014-2018 Capital Improvement Program Budget to reimburse the Reserve Fund, and

BE IT FURTHER RESOLVED that the Board of Public Works is hereby authorized to enter into a professional services agreement in an amount not to exceed \$50,000.00 with Braun Intertec for the remediation and closure of the site, which funding is included in the estimate for remediation of \$400,000.00, and

BE IT FURTHER RESOLVED that the remaining \$92,000.00 of the \$250,000.00 previously appropriated from the Reserve Fund in resolution file #2012-06-039 be returned to the Reserve Fund upon adoption of this resolution, and

BE IT FURTHER RESOLVED that the Board of Public Works, Director of Finance and Purchase, City Engineer, Director of Planning and Development, City Attorney and other appropriate City staff are hereby authorized to carry out the activities required in the grant and to take any and all steps necessary to effectuate this resolution in accordance with State and local laws including project bidding, building demolition, concrete and asphalt removal, remediation and other matters related to this project, and

BE IT FURTHER RESOLVED that the Common Council hereby approves an amendment to the City's Standard Terms and Condition with Braun Intertec regarding indemnification as follows:

15. INDEMNIFICATION. To the fullest extent allowable by law, Contracting Part hereby indemnifies and shall defend and hold harmless, at Contracting Party' s expense , La Crosse, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, Attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party' s aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers , employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement. Notwithstanding any other provisions, Contracting Party's aggregate liability for all claims arising out of Contracting Party's Professional or Pollution Liability is limited to those damages actually incurred as a result of Contracting Party's negligence and paid, and to amounts covered by Contracting Party's professional/pollution liability insurance policy and within the agreed insurance limits. Contracting Party's defense obligation is limited to its proportionate liability for the related loss.

[Link to Federal Terms & Conditions](#)

[Link to Agreement](#)