



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Meeting Agenda - Final

Finance & Personnel Committee

Thursday, March 2, 2023

6:00 PM

Council Chambers
City Hall, First Floor

This meeting is open for in-person attendance and will also be conducted through video conferencing. The meeting can be viewed by visiting the Legislative Information Center (<https://cityoflacrosse.legistar.com/Calendar.aspx>) and clicking on the "In Progress" video link to the far right in the meeting list.

Agenda items approved for public hearing by the committee are open to public comment. If you wish to speak on an agenda item, arrive early to sign up before the meeting begins. If attending virtually and you wish to speak, contact the City Clerk at the email or phone number below so we can provide you with information to join.

Members of the public who would like to provide written comments on any agenda may do so by emailing cityclerk@cityoflacrosse.org, using a drop box outside of City Hall or mailing the City Clerk, 400 La Crosse Street, La Crosse WI 54601. Questions, call 608-789-7510.

Public hearings before the respective standing committee shall be limited to 15 minutes for the proponents; followed by 15 minutes for the opponents and three-minute rebuttal for each side unless such time is extended by a majority vote of the committee. All speakers at a public hearing of the standing committees shall speak no more than three (3) minutes unless waived by the Chair or a majority of the committee.

Call To Order

Roll Call

Agenda Items:

OLD BUSINESS

[22-1397](#)

Resolution amending Appendix C Fee Schedule regarding residential rental dwelling unit registration.

Sponsors: Kahlow

Referred from December 2022 meetings.

NEW BUSINESS

[23-0110](#)

Resolution to reallocate 2023 Capital Equipment funds for Forest Hills Golf Course.

Sponsors: Janssen

[23-0143](#)

Resolution authorizing the Mayor and City Clerk to sign State/Municipal Agreement for the Reconstruction of Green Bay Street from 22nd Street South to Losey Boulevard.

Sponsors: Schwarz

- [23-0144](#) Resolution authorizing the Mayor and City Clerk to sign State/Municipal Agreement for the Reconstruction of Monitor Street from Rose Street to Lang Drive.
Sponsors: Janssen
- [23-0145](#) Resolution approving a Wisconsin Department of Transportation - Transportation Alternatives Program State/Municipal Grant Agreement to reconstruct the Grand Crossing Trail in the La Crosse River Marsh.
Sponsors: Janssen
- [23-0146](#) Resolution approving additional Storm Water Funds for Engineering Services on the EDA Lift Stations.
Sponsors: Janssen and Richmond
- [23-0152](#) Resolution reallocating funds for Backup Hardware Equipment.
Sponsors: Sleznikow
- [23-0159](#) Resolution authorizing 2023 Action Plan and funding allocation in connection with CDBG and HOME Programs.
Sponsors: Janssen
- [23-0160](#) Resolution authorizing a Substantial Amendment of the 2021 Action Plan and Allocation of HOME-ARP Funds.
Sponsors: Janssen
- [23-0161](#) Resolution authorizing a Substantial Amendment of the 2022 Action Plan.
Sponsors: Janssen
- [23-0162](#) Resolution approving the American Rescue Plan Act (ARPA) funding to conduct a Housing Study.
Sponsors: Janssen
- [23-0176](#) Resolution appropriating ARPA funds to pay for the remediation required on detached garages which violate the current floodplain standards per FEMA.
Sponsors: Richmond
- [23-0191](#) Resolution allocating funds for Airport Concession Disadvantaged Business Enterprise program.
Sponsors: Richmond
- [23-0192](#) Resolution approving a professional services agreement with ABS Aviation Consultancy, Inc.
Sponsors: Richmond
- [23-0200](#) Resolution approving Investment Services agreement for the period of April 1, 2023 through March 31, 2024.
Sponsors: Reynolds

- [23-0203](#) Resolution approving the allocation of remaining funds for operations and maintenance expenses related to the unsheltered population for the 2023 season.
Sponsors: Janssen
- [23-0204](#) Resolution approving an appropriation of the City's ARPA monies earmarked for small business support.
Sponsors: Reynolds
- [23-0214](#) Resolution amending Appendix C Fee Schedule regarding special assessment certification fee.
Sponsors: Reynolds
- [23-0217](#) Resolution authorizing additional funding for amendments 3 and 4 to design and bidding services contract with Short Elliott Hendrickson Inc. (SEH) for Phase II of River Point District.
Sponsors: Richmond
- [23-0219](#) Resolution approving Electrical Underground Distribution Easement.
Sponsors: Reynolds
- [23-0220](#) Resolution approving increased CIP costs for Riverside South Toilet Rooms project.
Sponsors: Reynolds
- [23-0205](#) Resolution approving development agreement for The Driftless Apartments and Townhomes.
(Note: The Committee and/or Council may convene in closed session pursuant to Wis. Stat. 19.85(1)(e) to formulate & update negotiation strategies and parameters. Following such closed session, the Committees and/or Council may reconvene in open session.)
Sponsors: Reynolds
- [23-0001](#) Collective Bargaining Update.
(Note: The Committee and/or Council may convene in closed session pursuant to Wis. Stat. 19.85(1)(e) to formulate & update negotiation strategies and parameters. Following such closed session, the Committees and/or Council may reconvene in open session.)
F&P Item Only, unless otherwise directed.

Adjournment

Notice is further given that members of other governmental bodies may be present at the above scheduled meeting to gather information about a subject over which they have decision-making responsibility.

NOTICE TO PERSONS WITH A DISABILITY

Requests from persons with a disability who need assistance to participate in this meeting should call the City Clerk's office at (608) 789-7510 or send an email to ADAcityclerk@cityoflacrosse.org, with as much advance notice as possible.



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 22-1397

Agenda Date: 3/2/2023

Version: 1

Status: Referred

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Amended Resolution amending Appendix C Fee Schedule regarding residential rental dwelling unit registration.

RESOLUTION

WHEREAS, the Common Council previously adopted a fee schedule by resolution, and

WHEREAS, an amendment is needed for costs related to residential rental dwelling ~~unit~~ building registration.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the following changes to Appendix C

103-8	Residential Rental Dwelling Unit <u>Building</u> Registration	<u>2022</u>	\$10.00
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BE IT FURTHER RESOLVED that all other fees included within Appendix C remain unchanged.

BE IT FURTHER RESOLVED that City staff is authorized to take any and all steps necessary to effectuate this resolution.

Resolution amending Appendix C Fee Schedule regarding residential rental dwelling unit registration.

RESOLUTION

WHEREAS, the Common Council previously adopted a fee schedule by resolution, and

WHEREAS, an amendment is needed for costs related to residential rental dwelling unit registration.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the following changes to Appendix C

103-8	Residential Rental Dwelling Unit Registration	<u>2022</u>	\$10.00
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BE IT FURTHER RESOLVED that all other fees included within Appendix C remain unchanged.

BE IT FURTHER RESOLVED that City staff is authorized to take any and all steps necessary to effectuate this resolution.



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0110

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution reallocating 2023 Capital Equipment Budget funds for equipment at Forest Hills Golf Course.

RESOLUTION

WHEREAS, the 2023-2027 Capital Improvement Program budget, approved in Council Resolution file #22-0275, item #234, designated \$16,000.00 to replace 2009 Buffalo Turbine Blowers; and

WHEREAS, Parks and Recreation along with Forest Hills staff has evaluated the current need to replace 2009 Buffalo Turbine Blowers, as compared with other desired projects; and

WHEREAS, Parks and Recreation along with Forest Hills staff recommends two used 2017 Toro Flex Walk Behind Greens Mowers (model 2021) to meet current maintenance and landscaping needs of Forest Hills Golf Course; and

WHEREAS, Section 2-360(c) of the Code of Ordinances states *Unanticipated projects/equipment*. Any Capital Project and Capital Equipment item not previously listed in the adopted Capital Budget requiring immediate funding from the Capital Budget will require a two-thirds vote of the Common Council members present at the meeting.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the \$16,000.00 amount from the 2023-2027 CIP budget # 234 be redirected for the purchase of two used 2017 Toro Flex Walk Behind Greens Mowers (model 2021).

BE IT FURTHER RESOLVED that the Director of Finance and Director of Parks, Recreation and Forestry are authorized to take any and all steps necessary to effectuate this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
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Text File

File Number: 23-0143

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution authorizing the Mayor and City Clerk to sign State/Municipal Agreement for the Reconstruction of Green Bay Street from 22nd Street South to Losey Boulevard (Project I.D. #5991-07-77/78/79).

RESOLUTION

WHEREAS, the City of La Crosse received STP-Urban Funds to replace Green Bay Street from 22nd Street South to Losey Boulevard due to deterioration of the street.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the Mayor and City Clerk are authorized to sign the State/Municipal Financial Agreement (SMFA) for the reconstruction of Green Bay Street from 22nd Street South to Losey Boulevard (Project I.D. #5991-07-77/78/79).

BE IT FURTHER RESOLVED that the State/Municipal Agreement be referred to the 2024-2028 Capital Improvement Program for funding.

BE IT FURTHER RESOLVED that the Director of Engineering & Public Works and Finance Director hereby authorized to perform all duties to effectuate this resolution.



**STATE/MUNICIPAL AGREEMENT
FOR A STATE- LET STP-URBAN
PROJECT**

**Program Name: STP-Urban
Population Group: 50,000 - 200,000
Sub-program #: 206
Cycle: FFY 2023-2026 BIL**

Date: **January 26, 2023**
I.D.: **5991-07-77/78/79**
Road Name: **Green Bay Street**
Limits: **22nd Street South to Losey Blvd**
County: **La Crosse**
Roadway Length: **0.16 miles**
Functional Classification: **Minor Arterial**
Project Sponsor: **City of La Crosse**

The signatory, **City of La Crosse**, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Municipality agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility - Describe and give reason for request: **The existing roadway is a 2-lane Minor Arterial. It is a 41-foot wide facility with an urban cross section constructed of asphalt pavement. The roadway was last improved in 2015. The roadway has a pavement rating of 4. There are existing sidewalks on both sides of the roadway and no bicycle accommodations.**

Proposed Improvement - Nature of work: **A reconstruction project from 22nd Street South to Losey Boulevard is proposed. The project will be 0.16 miles in length constructed of asphalt pavement with an urban cross section consisting of 11-foot wide travel lanes and 7-foot shoulders with concrete curb & gutter. Existing sidewalk to remain in place. Municipal sanitary sewer and water main will be adjusted and replaced. Storm sewer will be upsized to reduce flashing flooding events. Real estate acquisition is anticipated.**

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal requirements: **Municipal sanitary sewer, water main and upsizing storm sewer.**

The Municipality agrees to the following FFY 2023-2026 BIL STP-Urban project funding conditions:

Project ID 5991-07-77 design costs are funded 100% by the Municipality including state review.

Project ID 5991-07-78 construction costs are funded with up to 80% federal funding up to a funding limit of \$810,469. The Municipality agrees to provide the remaining 20% and any funds in excess of the \$810,469 federal funding limit. Non-participating costs are 100% the responsibility of the Municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

Project ID 5991-07-79 construction costs for sanitary sewer and water main are funded 100% by the Municipality including state review.

This project is currently scheduled in State Fiscal Year **2025**. Sunset date: **June 30, 2030**.

Sunset Date is determined based on the date a project is scheduled to be authorized. Sunset date is calculated as six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled. Extensions may be available upon approval of a written request by or on behalf of the Municipality to State per WisDOT Change Management policy. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary of Costs Table below are estimates. The final Municipal share is dependent on the final federal participation, and actual costs will be used in the final division of cost for billing and reimbursement. In no event shall federal funding exceed the estimate of \$810,469 in the Summary of Costs Table, unless such increase is approved in writing by the State through the State's Change Management Policy prior to the Municipality incurring the increased costs.

PHASE	SUMMARY OF COSTS				
	Total Est. Cost	Federal Funds	%	Municipal Funds	%
ID 5991-07-77					
Design	\$0	\$0	0%	\$0	100%
State Review	\$39,326	\$0	0%	\$39,326	100%
<i>Project totals</i>	\$39,326	\$0		\$39,326	
ID 5991-07-78*					
Participating Construction	\$1,218,000	\$704,604.74	80%	\$513,395.26	20% + BAL
Non-Participating Construction	\$0	\$0	0%	\$0	100%
Construction Engineering	\$162,600	\$94,063	80%	\$68,537	20% + BAL
State Review	\$20,400	\$11,801.26	80%	\$8,598.74	20% + BAL
<i>Project totals</i>	\$1,401,000	\$810,469		\$590,531	
ID 5991-07-79 (Sanitary & Water)					
Non-Participating Construction	\$207,000	\$0	0%	\$207,000	100%
State Review	\$4,140	\$0	0%	\$4,140	100%
<i>Project totals</i>	\$211,140	\$0		\$211,140	
Total Est. Cost Distribution	\$1,651,466	\$810,469	N/A	\$840,997	N/A

*Construction ID# 5991-07-78 federal funding is limited to \$810,469.

This request is subject to the terms and conditions that follow and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signatures certify the content has not been altered by the municipality. Signed for and in behalf of: City of La Crosse (please sign in blue ink.)		
Name	Title	Date
Signed for and in behalf of the State:		
Name	Title	Date

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding.
3. The Municipality, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
 - a. Environmental requirements, including but not limited to those set forth in the 23 U.S.C. 139 and National Environmental Policy Act (42 U.S.C. 4321 et seq.)
 - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The municipality agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Municipality agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The Municipality agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
 - c. Prevailing wage requirements, including but not limited to 23 U.S.C 113.
 - d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
 - e. Competitive bidding and confidentiality requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06. This includes the sharing of financial data prior to the conclusion of the competitive bid period.
 - f. All applicable Disadvantaged Business Enterprise (DBE) requirements that the State specifies.
 - g. Federal statutes that govern the Surface Transportation Program (STP), including but not limited to 23 U.S.C. 133.
 - h. General requirements for administrating federal and state aids set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

4. Funding of each project phase is subject to inclusion in Wisconsin's approved FFY 2023-2026 BIL STP-Urban program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
 - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
 - b. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.
 - c. Storm sewer mains necessary for the surface water drainage.
 - d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
 - f. Signing and pavement marking.
 - g. New installations or alteration of street lighting and traffic signals or devices.
 - h. Landscaping.
 - i. State review services for construction ID 5991-07-78.
5. The work will be administered by the State and may include items not eligible for federal participation.
6. As the work progresses, the State will bill the Municipality for work completed that is not chargeable to federal/state funds. Upon completion of the project, a final audit will be made to determine the final division of costs subject to funding limits in the Summary of Costs Table. If reviews or audits show any of the work to be ineligible for federal/state funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the FFY 2023-2026 BIL STP-Urban improvement project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below.
 - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
 - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
 - c. Detour routes and haul roads. The municipality is responsible for determining the detour route.
 - d. Conditioning, if required and maintenance of detour routes.
 - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incidental to the improvement.
 - f. All work related to underground storage tanks and contaminated soils.

- g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
 - h. Real estate for the improvement.
 - i. Preliminary engineering and design.
 - j. State review services for design ID 5991-07-77 and construction ID 5991-07-79.
 - k. Other 100% Municipality funded items: None
8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.
 9. Work to be performed by the Municipality without federal funding participation necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Municipality but must be coordinated with all other work undertaken during construction.
 10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
 11. The Municipality will include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. 51.01 (5), sexual orientation as defined in Wis. Stat. 111.32 (13m), or national origin.
 12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed federal/state financing commitments or are ineligible for federal/state financing. To guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
 13. In accordance with the State's sunset policy for STP-Urban projects, the subject FFY 2023-2026 BIL STP-Urban improvement must be constructed and in final acceptance within six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled. Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.
 14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred on behalf of the project.
 15. The Municipality will at its own cost and expense:
 - a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, sidewalks and parking lanes [including snow and ice removal]) for such maintenance in a manner consistent with reasonable industry standards, and will make ample provision for such maintenance each year.
 - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
 - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.

- d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the project.
- e. Provide complete plans, specifications, and estimates to State upon request.
- f. Provide relocation orders and real estate plats to State upon request.
- g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
- h. Provide maintenance and energy for lighting.
- i. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

16. It is further agreed by the Municipality that:

- a. The Municipality assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the state and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this agreement.
- b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse State if State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Municipality will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Municipality or by others, will be in conformity with such *Manual of Uniform Traffic Control Devices* as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
- e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by federal or state highway regulations will not be permitted within the right-of-way limits of the project. The Municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.
- f. The Municipality is responsible for any damage caused by legally hauled loads, including permitted oversize and overweight loads. The contractor is responsible for any damage caused to haul roads if the contractor does not obey size and weight laws, use properly equipped and maintained vehicles, and does not prevent spilling of materials onto the haul road (*WisDOT Standard Specifications* 618.1, 108.7, 107.8). The local maintaining authority can impose special or seasonal weight limitations as defined in Wis. Stat. 349.16, but this should not be used for the sole purpose of preventing hauling on the road.

The bid item 618.0100 Maintenance and Repair of Haul Roads (project) is ineligible for federal funding on local program projects as per the State/Municipal Agreement. The repair of damages as a result of hauling materials for the project is the responsibility of the Municipality as specified in the State/Municipal Agreement Terms and Conditions under "Municipal Responsibilities and Requirements."

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Municipality and its sureties; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
19. Contract modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of either this State/Municipal Agreement or any of its attachments may be changed, waived or terminated orally.
20. Binding effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third-party enforcement rights.
21. Choice of law and forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

PROJECT FUNDING CONDITIONS

22. Non-appropriation of funds: With respect to any payment required to be made by the State under this State/Municipal Agreement, the parties acknowledge the State's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Municipality or the State may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.
23. Maintenance of records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Municipality, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the State. The State reserves the right to audit and inspect such records and accounts at any time. The Municipality shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

24. The Municipality agrees to the following FFY 2023-2026 BIL STP-Urban project funding conditions:
- a. ID 5991-07-77: Design is funded 100% by the Municipality. This phase includes plan development and state review. The work includes project review, approval of required reports and documents and processing the final Plan, Specification & Estimate (PS&E) document for award of the contract. Costs for this phase include an estimated amount for state review activities, to be funded 100% by the Municipality.
 - b. ID 5991-07-78: Construction: Roadway
 - i. Costs for participating construction items are funded with 80% federal funding up to a funding limit of \$810,469, when the Municipality agrees to provide the remaining 20%, and any funds in excess of the \$810,469 federal funding limit.
 - ii. Non-participating costs for non-participating construction items are funded 100% by the Municipality. Costs include construction delivery.
 - iii. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.
 - c. ID 5991-07-79: Construction: Sanitary Sewer, Water Main and Upsizing Storm Sewer
 - i. Non-participating costs for sanitary sewer, water main and upsizing storm sewer are funded 100% by the Municipality. Costs include construction delivery.
 - ii. Costs for this phase include an estimated amount for state review activities, to be funded 100% by the Municipality.

[End of Document]



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0144

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution authorizing the Mayor and City Clerk to sign State/Municipal Agreement for the Reconstruction of Monitor Street from Rose Street to Lang Drive (Project I.D. #5991-07-67/68/69).

RESOLUTION

WHEREAS, the City of La Crosse received STP-Urban Funds to replace Monitor Street from Rose Street to Lang Drive due to deterioration of the street.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the Mayor and City Clerk are authorized to sign the State/Municipal Financial Agreement (SMFA) for the reconstruction of Monitor Street from Rose Street to Lang Drive (Project I.D. #5991-07-67/68/69).

BE IT FURTHER RESOLVED that the State/Municipal Agreement be referred to the 2024-2028 Capital Improvement Program for funding.

BE IT FURTHER RESOLVED that the Director of Engineering & Public Works and Finance Director hereby authorized to perform all duties to effectuate this resolution.



**STATE/MUNICIPAL AGREEMENT
FOR A STATE- LET STP-URBAN
PROJECT**

**Program Name: STP-Urban
Population Group: 50,000 - 200,000
Sub-program #: 206
Cycle: FFY 2023-2026 BIL**

Date: **January 26, 2023**
I.D.: **5991-07-67/68/69**
Road Name: **Monitor Street**
Limits: **Rose Street to Lang Drive**
County: **La Crosse**
Roadway Length: **0.4 miles**
Functional Classification: **Minor Arterial**
Project Sponsor: **City of La Crosse**

The signatory, **City of La Crosse**, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Municipality agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility - Describe and give reason for request: **The existing roadway is a 2-lane Minor Arterial. It is a 44-foot wide facility with an urban cross section constructed of asphalt pavement. The roadway was last improved in 1993. The roadway has a pavement rating of 5. There are existing sidewalks on both sides of the roadway and on-street bicycle accommodations.**

Proposed Improvement - Nature of work: **A reconstruction project from Rose Street to Lang Drive is proposed. The project will be 0.40 miles in length constructed of asphalt pavement with an urban cross section that is 44 feet wide. Existing sidewalk to remain in place. Municipal sanitary sewer and water main will be adjusted and replaced. Storm sewer will be upsized to reduce flashing flooding events. Real estate acquisition is not anticipated.**

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal requirements: **Municipal sanitary sewer, water main and storm sewer upsizing.**

The Municipality agrees to the following FFY 2023-2026 BIL STP-Urban project funding conditions:

Project ID 5991-07-67 design costs are funded 100% by the Municipality including state review.

Project ID 5991-07-68 construction costs are funded with up to 80% federal funding up to a funding limit of \$1,726,000. The Municipality agrees to provide the remaining 20% and any funds in excess of the \$1,726,000 federal funding limit. Non-participating costs are 100% the responsibility of the Municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

Project ID 5991-07-69 construction costs for municipal utilities and storm sewer upsizing are funded 100% by the Municipality including state review.

This project is currently scheduled in State Fiscal Year **2026**. Sunset date: **June 30, 2031**.

Sunset Date is determined based on the date a project is scheduled to be authorized. Sunset date is calculated as six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled. Extensions may be available upon approval of a written request by or on behalf of the Municipality to State per WisDOT Change Management policy. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary of Costs Table below are estimates. The final Municipal share is dependent on the final federal participation, and actual costs will be used in the final division of cost for billing and reimbursement. In no event shall federal funding exceed the estimate of \$1,726,000 in the Summary of Costs Table, unless such increase is approved in writing by the State through the State's Change Management Policy prior to the Municipality incurring the increased costs.

PHASE	SUMMARY OF COSTS				
	Total Est. Cost	Federal Funds	%	Municipal Funds	%
ID 5991-07-67					
Design	\$0	\$0	0%	\$0	100%
State Review	\$39,326	\$0	0%	\$39,326	100%
<i>Project totals</i>	\$39,326	\$0		\$39,326	
ID 5991-07-68*					
Participating Construction	\$2,157,000	\$1,533,732.39	80%	\$623,267.61	20% + BAL
Non-Participating Construction	\$0	\$0	0%	\$0	100%
Construction Engineering	\$260,000	\$177,762.21	80%	\$82,237.79	20% + BAL
State Review	\$20,400	\$14,505.40	80%	\$5,894.60	20% + BAL
<i>Project totals</i>	\$2,437,400	\$1,726,000		\$711,400	
ID 5991-07-69					
Non-Participating Construction	\$863,000	\$0	0%	\$863,000	100%
State Review	\$17,260	\$0	0%	\$17,260	100%
<i>Project totals</i>	\$880,260	\$0		\$880,260	
Total Est. Cost Distribution	\$3,356,986	\$1,726,000	N/A	\$1,630,986	N/A

*Construction ID# 5991-07-68 federal funding is limited to \$1,726,000.

This request is subject to the terms and conditions that follow and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signatures certify the content has not been altered by the municipality. Signed for and in behalf of: City of La Crosse (please sign in blue ink.)		
Name	Title	Date
Signed for and in behalf of the State:		
Name	Title	Date

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding.
3. The Municipality, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
 - a. Environmental requirements, including but not limited to those set forth in the 23 U.S.C. 139 and National Environmental Policy Act (42 U.S.C. 4321 et seq.)
 - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The municipality agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Municipality agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The Municipality agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
 - c. Prevailing wage requirements, including but not limited to 23 U.S.C 113.
 - d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
 - e. Competitive bidding and confidentiality requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06. This includes the sharing of financial data prior to the conclusion of the competitive bid period.
 - f. All applicable Disadvantaged Business Enterprise (DBE) requirements that the State specifies.
 - g. Federal statutes that govern the Surface Transportation Program (STP), including but not limited to 23 U.S.C. 133.
 - h. General requirements for administrating federal and state aids set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

4. Funding of each project phase is subject to inclusion in Wisconsin's approved FFY 2023-2026 BIL STP-Urban program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
 - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
 - b. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.
 - c. Storm sewer mains necessary for the surface water drainage.
 - d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
 - f. Signing and pavement marking.
 - g. New installations or alteration of street lighting and traffic signals or devices.
 - h. Landscaping.
 - i. State review services for construction ID 5991-07-68.
5. The work will be administered by the State and may include items not eligible for federal participation.
6. As the work progresses, the State will bill the Municipality for work completed that is not chargeable to federal/state funds. Upon completion of the project, a final audit will be made to determine the final division of costs subject to funding limits in the Summary of Costs Table. If reviews or audits show any of the work to be ineligible for federal/state funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the FFY 2023-2026 BIL STP-Urban improvement project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below.
 - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
 - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
 - c. Detour routes and haul roads. The municipality is responsible for determining the detour route.
 - d. Conditioning, if required and maintenance of detour routes.
 - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incidental to the improvement.
 - f. All work related to underground storage tanks and contaminated soils.

- g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
 - h. Real estate for the improvement.
 - i. Preliminary engineering and design.
 - j. State review services for design ID 5991-07-67 and construction ID 5991-07-69.
 - k. Other 100% Municipality funded items: Upsizing storm sewer
8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.
 9. Work to be performed by the Municipality without federal funding participation necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Municipality but must be coordinated with all other work undertaken during construction.
 10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
 11. The Municipality will include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. 51.01 (5), sexual orientation as defined in Wis. Stat. 111.32 (13m), or national origin.
 12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed federal/state financing commitments or are ineligible for federal/state financing. To guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
 13. In accordance with the State's sunset policy for STP-Urban projects, the subject FFY 2023-2026 BIL STP-Urban improvement must be constructed and in final acceptance within six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled. Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.
 14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred on behalf of the project.
 15. The Municipality will at its own cost and expense:
 - a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, sidewalks and parking lanes [including snow and ice removal]) for such maintenance in a manner consistent with reasonable industry standards, and will make ample provision for such maintenance each year.
 - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
 - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.

- d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the project.
- e. Provide complete plans, specifications, and estimates to State upon request.
- f. Provide relocation orders and real estate plats to State upon request.
- g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
- h. Provide maintenance and energy for lighting.
- i. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

16. It is further agreed by the Municipality that:

- a. The Municipality assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the state and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this agreement.
- b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse State if State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Municipality will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Municipality or by others, will be in conformity with such *Manual of Uniform Traffic Control Devices* as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
- e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by federal or state highway regulations will not be permitted within the right-of-way limits of the project. The Municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.
- f. The Municipality is responsible for any damage caused by legally hauled loads, including permitted oversize and overweight loads. The contractor is responsible for any damage caused to haul roads if the contractor does not obey size and weight laws, use properly equipped and maintained vehicles, and does not prevent spilling of materials onto the haul road (*WisDOT Standard Specifications* 618.1, 108.7, 107.8). The local maintaining authority can impose special or seasonal weight limitations as defined in Wis. Stat. 349.16, but this should not be used for the sole purpose of preventing hauling on the road.

The bid item 618.0100 Maintenance and Repair of Haul Roads (project) is ineligible for federal funding on local program projects as per the State/Municipal Agreement. The repair of damages as a result of hauling materials for the project is the responsibility of the Municipality as specified in the State/Municipal Agreement Terms and Conditions under "Municipal Responsibilities and Requirements."

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Municipality and its sureties; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
19. Contract modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of either this State/Municipal Agreement or any of its attachments may be changed, waived or terminated orally.
20. Binding effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third-party enforcement rights.
21. Choice of law and forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

PROJECT FUNDING CONDITIONS

22. Non-appropriation of funds: With respect to any payment required to be made by the State under this State/Municipal Agreement, the parties acknowledge the State's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Municipality or the State may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.
23. Maintenance of records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Municipality, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the State. The State reserves the right to audit and inspect such records and accounts at any time. The Municipality shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

24. The Municipality agrees to the following FFY 2023-2026 BIL STP-Urban project funding conditions:
- a. ID 5991-07-67: Design is funded 100% by the Municipality. This phase includes plan development and state review. The work includes project review, approval of required reports and documents and processing the final Plan, Specification & Estimate (PS&E) document for award of the contract. Costs for this phase include an estimated amount for state review activities, to be funded 100% by the Municipality.
 - b. ID 5991-07-68: Construction: Roadway
 - i. Costs for participating construction items are funded with 80% federal funding up to a funding limit of \$1,726,000, when the Municipality agrees to provide the remaining 20%, and any funds in excess of the \$1,726,000 federal funding limit.
 - ii. Non-participating costs for non-participating construction items are funded 100% by the Municipality. Costs include construction delivery.
 - iii. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.
 - c. ID 5991-07-69: Construction: Sanitary Sewer, Water Main and Storm Sewer Upsizing
 - i. Non-participating costs for sanitary sewer, water main, and storm sewer upsizing are funded 100% by the Municipality. Costs include construction delivery.
 - ii. Costs for this phase include an estimated amount for state review activities, to be funded 100% by the Municipality

[End of Document]



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0145

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving a Wisconsin Department of Transportation – Transportation Alternatives Program State/Municipal Grant Agreement to reconstruct the Grand Crossing Trail in the La Crosse River Marsh

RESOLUTION

WHEREAS, the Grand Crossing trail serves as the primary off-road trail connecting the north and south side of La Crosse; and

WHEREAS, reconstructing a culvert, the spillway and trail surface of the Grand Crossing trail is identified as a high priority in the La Crosse River Marsh Hydrology Analysis Report; and

WHEREAS, the City of La Crosse Parks, Recreation and Forestry Department applied for, and received a Transportation Alternatives Program Grant in the amount of \$625,349.63 to fund 80% of the construction costs of the project; and

WHEREAS, resolution 22-0236 supports funding the project should the City be awarded the grant; and

WHEREAS, a request will be submitted for the 2024-2028 Capital Improvement Budget to fund the construction and design of the project where, upon completion, 80% of the total construction costs up to \$625,349.63 will be reimbursed back to the City.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the State/Municipal Agreement Project I.D. 5991-07-65/66 to accept and receive funding for the project.

BE IT FURTHER RESOLVED that the project would begin in 2023 and complete in 2026.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to take all necessary steps to effectuate this resolution.

BE IT FURTHER RESOLVED that the Directors of Finance, and Planning, Development and Assessment, and Director of Parks, Recreation, Forestry and Buildings and Grounds hereby authorizes City staff to take any and all steps necessary to effectuate this resolution.



STATE/MUNICIPAL AGREEMENT FOR A INFRASTRUCTURE TRANSPORTATION ALTERNATIVES PROGRAM (TAP) PROJECT

Subprogram #: 290
 Program Name: TAP

Date: **October 19, 2022**
 I.D.: **5991-07-65/66**
 WisDOT UEI (Unique Entity Identifier) #: **CBE4JHP1S8H7**
 Project Sponsor UEI #: **To Be Determined**
 FAIN ID: **To Be Determined**
 Project Title: **C La Crosse, Grand Crossing Trail**
 Location/Limit: **Myrick Park Dr. to Saint James St.**
 Project Length (if applicable): **0.38 miles**
 Project Sponsor: **City of La Crosse**
 County: **La Crosse**
 MPO Area (if applicable): **La Crosse MPO**

The signatory, the **City of La Crosse**, hereinafter called the Project Sponsor, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the transportation project hereinafter described.

Wisconsin Statute 85.021 authorizes the State to administer a program to award grants of assistance to certain political subdivisions, state agencies, counties, local government units, and Indian tribes consistent with federal law 23 USC sec. 213 (revised to 23 U.S.C. sec. 133 per the FAST Act of 2015).

The authority for the Project Sponsor to enter into this State/Municipal Agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301(2) of the Wisconsin Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project will be submitted for approval in a federally funded program. The Project Sponsor agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility – The 1-mile Grand Crossing Trail (GCT) is the primary off-street artery connecting the City of La Crosse’s north and south communities. The GCT sits on a former railroad bed in the La Crosse River Marsh; one of only three streets and three trails which cross the marsh north/south.

Proposed Improvement – The proposed improvement is to reconstruct the 1-mile long GCT. The project includes the reconstruction of a flood damaged spillway to include an elevated boardwalk constructed of fabricated concrete materials, restore the former Silver Creek by replacing the existing blocked culvert with an enlarged arch or box culvert, and resurfacing the 10-foot wide path with new HMA.

The Project Sponsor agrees to the following State Fiscal Year 2022-2026 TAP project funding conditions:

All Project Sponsors and processes, including real estate acquisition and environmental documentation, must comply with *A Sponsor's Guide to Non-Traditional Transportation Project Implementation* (Sponsor's Guide) and the current WisDOT Facilities Development Manual (FDM).

The subject project is funded with 80% federal funding up to a maximum of \$625,349.60 for all federally-funded project phases when the Project Sponsor agrees to provide funds in excess of the \$625,349.60 federal funding maximum, in accordance with TAP guidelines. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.

The project is subject to a discretionary Disadvantaged Business Enterprise (DBE) goal assessment. The Catalogue of Federal Domestic Assistance (CFDA) number for this project is 20.205 – Highway Planning and Construction.

The subject project must be commenced within four (4) years of the project award date or the grant is rescinded. Sec. 85.021, Wis. Stats.

- 1) For construction projects, a project is commenced when construction is begun.
- 2) For planning projects, a planning project is commenced when the planning study is begun.
- 3) For non-infrastructure projects that do not fall within any of the above categories, a project is considered commenced on the date that the State receives the first reimbursement request from the Project Sponsor, as noted on form DT1713 in the 'Date Received' field.

Project Award date: 8/25/2022

Commencement deadline: 8/25/2026

Completion deadline: 6/30/2029

The project commencement deadline is fixed by statute and may not be extended.

The subject project must be completed by 6/30/2029, and the Project Sponsor must submit a project completion certificate to the State central office on or before this date. The State may consider a written request to extend the completion deadline from the Project Sponsor and may approve such a request in the presence of extenuating circumstances. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

In the summary funding table below, the federal share of the total estimated cost distribution indicates the maximum amount of federal funding available to the project, to be distributed across federally-funded project phases. The final Project Sponsor share is dependent on the final federal participation, and the actual costs will be used in the final division of costs for billing and reimbursement.

SUMMARY OF COSTS					
PROJECT TYPE	Total Est. Cost	Federal Funds	%	Project Sponsor Funds	%
Design ID 5991-07-65					
Design	\$0	\$0	0%	\$0	100%
State Review	\$11,760	\$0	0%	\$11,760	100%
<i>Project Totals</i>	<i>\$11,760</i>	<i>\$0</i>		<i>\$11,760</i>	
Construction ID 5991-07-66					
Participating Construction	\$761,287	\$609,029.60	80%	\$152,257.40	20% + BAL
State Review	\$20,400	\$16,320	80%	\$4,080	20% + BAL
Non-Participating Construction	\$0	\$0	0%	\$0	100%
<i>Project Totals</i>	<i>\$781,687</i>	<i>\$625,349.60</i>		<i>\$156,337.40</i>	
Total Est. Cost Distribution	\$793,447	\$625,349.60	MAX*	\$168,097.40	N/A

*This project has a TAP federal funding maximum of \$625,349.60. This maximum is cumulative for all federally funded project phases.

This request is subject to the terms and conditions that follow (pages 4–10) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State shall constitute agreement between the Project Sponsor and the State. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of: _____(please sign in blue ink)		
Name	Title	Date
Signed for and in behalf of the State _____(please sign in blue ink)		
Name	Title	Date

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.
3. The initiation and accomplishment of the project will be subject to the applicable federal and state regulations, as referenced in the document *A Sponsor's Guide to Non-Traditional Project Implementation*. The Project Sponsor, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
 - a. Environmental requirements, including but not limited to those set forth in 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
 - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. Sec. 16.765. The Project Sponsor agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Project Sponsor agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Project Sponsor agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
 - c. All applicable DBE requirements that the State specifies.
 - d. Federal and state statutes that govern the Transportation Alternatives Program including 23 USC sec. 213 (revised to 23 U.S.C. sec. 133 per the FAST Act of 2015).
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
 - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. Sec. 103.50.
 - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. Sec. 16.754.
 - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. Sec. 84.06.

STATE RESPONSIBILITIES AND REQUIREMENTS:

5. Funding for the project is subject to inclusion in Wisconsin's approved Transportation Alternatives Program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
 - a. The grading, base, pavement, curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
 - b. Storm sewer mains necessary for the surface water drainage.
 - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).

- e. Signing and pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
 - f. New installations or alteration of street lighting and traffic signals or devices.
 - g. Landscaping.
 - h. Preliminary Engineering.
 - i. State Review Services.
 - j. Other eligible TAP non-infrastructure items as enumerated in the approved application.
6. Project items purchased with federal funding are for the primary use of the Transportation Alternatives Program.
7. State Disbursements:
- a. Payment by the State to the Project Sponsor shall be made on a regular basis upon presentation of Reimbursement Requests for expenditures incurred during prior periods of the project duration subject to the allowable maximum payment. Exceptions to this schedule will be made as appropriate. In general, State reimbursements will be made after sufficient proof of payment is sent to the state.
 - b. A final adjustment of state payments will be made upon completion of the State's audit of the project. If the State's audit establishes that the State paid more than its share of the eligible project costs, the Project Sponsor shall refund to the State upon demand a sum equal to the overpayment.

PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:

8. Work necessary to complete the TAP project to be financed entirely by the Project Sponsor or other utility or facility owner includes the items listed below, when applicable to the project.
- a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
 - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
 - c. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
 - d. Conditioning, if required and maintenance of detour routes.
 - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
 - f. All work related to underground storage tanks and contaminated soils.
 - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
 - h. Real estate for the improvement.
9. The work eligible for Federal and State participation will be administered by the Project Sponsor. The Project Sponsor is an eligible recipient of these grant funds pursuant to Wis. Stat. Sec. 85.021 and all applicable federal laws 23 USC sec. 213 (revised to 23 U.S.C. sec. 133 per the FAST Act of 2015).

10. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. Sec. 84.06. Where applicable, all

contracts for design related services shall be awarded and administered in accordance with the requirements of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.

11. The Project Sponsor must receive, read, and agree to meet the requirements outlined in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor must indicate this understanding and agreement by submitting the *Sponsor's Guide Acknowledgement Form*, which must be accepted by the State before approval of this State/Municipal Agreement shall be granted
12. The Project Sponsor must complete and submit *Certification for Non-Traditional Project Administration and Delivery* documentation, and this documentation must be accepted by the State, before approval of this State/Municipal Agreement shall be granted. The Project Sponsor, and all consultants and other entities working on behalf of the Project Sponsor, are required to comply with the federal and state rules and requirements for projects being administered through a local letting process.
13. The project, in accordance with its scope, must employ the services of a registered professional engineer, architect or landscape architect, to be responsible for design and construction engineering and related activities.
14. A copy of the plans, specifications, and estimates containing the engineer's, architect's, or landscape architect's seal as prepared for bidding purposes (in accordance with project scope) must be provided to the State for approval prior to advertising the project for bids.
15. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Project Sponsor unless such exception is granted.
16. Work to be performed by the Project Sponsor without Federal funding participation, necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Project Sponsor but must be coordinated with all other work undertaken during construction.
17. The Project Sponsor is responsible for financing administrative expenses related to Project Sponsor responsibilities.
18. The project is subject to a discretionary DBE goal assessment.
19. The Project Sponsor will not proceed with any State/Municipal Agreement revisions without first receiving prior approval from the State. A change order must be executed for revisions to the State/Municipal Agreement prior to the Project Sponsor's request for reimbursement for the revisions.
20. If reviews or audits show any of the work to be ineligible for Federal funding, the Project Sponsor will be responsible for any withdrawn costs associated with the ineligible work.
21. If the Project Sponsor should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project upon demand.
22. Sponsors of TAP projects within the Safe Routes to School eligibility category are required to conduct pre and post project/activity surveys using the SRTS Parent Survey and Student Tally Sheets. The results will be provided to the State at the conclusion of the project.
23. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all Local and State submittals and approvals contained in these instructions, and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested.

24. The Project Sponsor shall allow the State and US Department of Transportation auditors to have access to the Project Sponsor's records and financial statements as necessary for determining the presence of and compliance with all information and requirements specified in 2 CFR 200.332-(a) as amended effective November 12, 2020.
25. In connection with the performance of work under this State/Municipal Agreement, the Project Sponsor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in S. 51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Except with respect to sexual orientation, the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.
26. The Project Sponsor will include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin.
27. When applicable to the project, the Project Sponsor will at its own cost and expense:
 - a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure) for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.
 - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
 - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
 - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the projects.
 - e. Provide relocation orders and real estate plats and easements, as required by the project.
 - f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
 - g. Provide maintenance and energy for lighting.
 - h. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.
28. It is further agreed by the Project Sponsor that:
 - a. The Project Sponsor assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the State and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this State/Municipal Agreement.

- b. The Project Sponsor assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Project Sponsor. The Project Sponsor is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Project Sponsor will reimburse the State if the State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
 - c. The Project Sponsor will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
 - d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Project Sponsor or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
29. The subject project must be completed by the project completion date, listed on page 2 of this agreement, and the Project Sponsor must submit a project completion certificate to WisDOT central office on or before this date. The State may consider a written request to extend the completion deadline from the Project Sponsor and may approve such a request in the presence of extenuating circumstances. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

LEGAL RELATIONSHIPS:

30. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Project Sponsor; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the State for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the State; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and officers and employees.

The State shall not be liable to the Project Sponsor for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

It is the express intent of this provision that a Project Sponsor that is a county, town or municipality may and should contractually pass on this entire Responsibility for Damage and Tort Claims provision to any public and private entities with which it may subcontract any of the work covered by this State/Municipal Agreement.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under Wis. Stat. Sec. 779.14.
 - b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.
31. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:
- a. Are not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
 - b. Have not, within a three-year period preceding this State/Municipal Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated above;
 - d. Have not within a three-year period preceding this State/Municipal Agreement had one or more public transactions (Federal, State or Local) terminated for cause or default; and
 - e. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, have certified in writing that neither they or their principals are currently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, State or Local transaction by any Federal, State or Local department, agency or official.
32. *Contract Modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.*
33. *Binding Effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third- party beneficiary rights to be held by any person or entity who is not a party to this State/Municipal Agreement. Nor does it accord on any non-party the right of enforcement.*
34. *Choice of Law and Forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.*
35. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

PROJECT FUNDING CONDITIONS

36. *Non-Appropriation of Fund: With respect to any payment required to be made by the Department under this State/Municipal Agreement, the parties acknowledge the Department's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Project Sponsor or the Department may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.*

37. Maintenance of Records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Project Sponsor, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the Department. The Department reserves the right to audit and inspect such records and accounts at any time. The Project Sponsor shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

Records pertaining to the performance of the State/Municipal Agreement are subject to disclosure pursuant to Wis. Stats. Sec. 19.31 et seq., and shall be preserved by the Project Sponsor.

38. The Project Sponsor agrees to the following State Fiscal Year 2022-2026 TAP project funding conditions: The maximum participation of federal funding will be limited to 80% of the actual eligible project cost or the total cost distribution of TAP funds shown on page 3 of this State/Municipal Agreement, whichever is less. The project federal funding maximum of \$625,349.60 is cumulative for all federal funded project phases.

[END OF DOCUMENT]



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0146

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving additional Storm Water Funds for Engineering Services on the EDA Lift Stations.

RESOLUTION

WHEREAS, Resolution 18-0905 allocated matching local funds for storm water system flood improvement projects (see CIP 19-186, 19-187, 20-295 & 20-296) and Resolution 18-1375 accepted federal funds for a U.S. Department of Commerce-Economic Development Administration Disaster Recovery Program Disaster Supplemental Program Grant; and

WHEREAS, Resolution 20-0860 added additional local funds for the above referenced projects and accepted federal matching funds in the form of a Grant Amendment (Amendment #1); and

WHEREAS, Resolution 21-0557 allocated 100% of these funds plus \$1,320,805.00 additional funding from storm Water utility cash reserves to the construction contract bid award of said project, leaving no allocated funds available for the design contract that was approved by the board of Public Works on July 12th, 2019 (#19-1027) in the amount of \$491,145.00; and

WHEREAS, Resolution 20-0012 did allocate \$100,800.00 from utility cash reserves for Amendment #1 to the design contract; and

WHEREAS, that \$668,870.00 was allocated from the Storm Water utility Cash Reserves Account 650 to fund the following:

\$491,145.00 – Original Strand Design Contract Approved by the BPW on July 12, 2019
\$177,725.00 – Amendment #2 to the strand Design contract by the City of La Crosse Common Council on March 10, 2022

WHEREAS, supply chain delays, and equipment shortages required the extension of the timeline, thus extending the need for engineering services provided by Strand and Associates beyond the scope of Amendment #2; and

WHEREAS, Strand Design Contract Amendment #3 proposes to add \$40,000 of Storm Water Utility Cash Reserves (Account 650) to pay for the additional project management/engineering due to the extended timeline.

NOW, THEREFORE, BE IT RESOVED by the Common Council of the City of La Crosse that Amendment #3 to the Strand Design Contract be approved.

BE IT FURTHER RESOVED, that the Director of Finance and the Director of Public Works are hereby authorized and directed to take all necessary steps to implement this resolution.



CITY OF LA CROSSE

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LEGISLATION STAFF REPORT FOR COUNCIL

File ID	Caption
23-0146	Resolution approving additional storm water funds for engineering services on the EDA Lift Stations.

Staff/Department Responsible for Legislation
Utilities

Requestor of Legislation
Utilities

Location, if applicable
Various Storm Lift Stations

Summary/Purpose
Strand Associates was hired to do the engineering, site inspections, and grant paperwork, due to supply chain delays, the project has taken longer to complete than planned. This requires the extension of Strands engineering contract.

Background
Strand Associates was hired to do the engineering, site inspections, and grant paperwork, due to supply chain delays, the project has taken longer to complete than planned. This requires the extension of Strands engineering contract.

Fiscal Impact
\$40,000 - Storm water Utility Cash Reserves

Staff Recommendation
Utility staff recommends the approval of the resolution to add funding to the Strand engineering services contract.



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0152

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution reallocating funds for Backup Hardware Equipment.

RESOLUTION

WHEREAS, the City’s backup infrastructure equipment needs to be replaced; and

WHEREAS, Capital Improvement Budget items may no longer have a need for funding due to project completions; and

WHEREAS, Capital Improvement Funds appropriated by Resolution #22-0739 for Council Chamber computer purchases; and

WHEREAS, Capital Improvement Budget item number 2020-106 for Forest Hills Equipment Upgrades; and

WHEREAS, Capital Improvement Budget item number 2020-104 for the upgrade of the Legistar system; and

WHEREAS, Capital Improvement Budget item number 2020-176 for the replacement of copier for the City; and

WHEREAS, Capital Improvement Budget item number 2018-95 for replacement wireless infrastructure hardware, no longer require said funding.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the reallocation of the following funds for the purchase of a redundant backup system.

4834295-580600-21509	Resolution #22-0739	\$10,000
4800810-580601	Budget Item #104	\$12,618.47
4800810-580601	Budget Item #106	\$15,000
4800810-580601	Budget Item #176	\$901.25
4800810-580601	Budget Item #95	\$1,120

BE IT FURTHER RESOLVED that the Director of Information Technology and the Director of Finance are hereby authorized to take any and all steps necessary in connection with this resolution.



CITY OF LA CROSSE

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La Crosse, Wisconsin 54601
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LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0159

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution authorizing 2023 Action Plan and funding allocation in connection with CDBG and HOME programs.

RESOLUTION

WHEREAS, the 2020-2024 Consolidated Plan for the City of La Crosse is a five-year planning document that assesses community development needs that impact low-income persons and the Year 4 (2023) Action Plan is used for addressing priority needs referenced in the Strategic Plan; and

WHEREAS, the City is required to approve the 2023 Action Plan, which includes an application under the Community Development Block Grant (CDBG) and HOME Investment Partnerships Entitlement Programs for federal funding, as a prerequisite to the Department of Housing and Urban Development (HUD) funding of the CDBG Grant and HOME Formula Grant Programs; and

WHEREAS, the 2020-2024 Consolidated Plan and 2023 Action Plan is the basis upon which HUD approves or disapproves the allocation of formula grant programs; and

WHEREAS, the 2023 Action Plan of the 2020-2024 Consolidated Plan identifies uses and awards amounts of the 2023 CDBG and HOME Investment Partnerships Entitlement funds; and

WHEREAS, the City desires to commit program income to specific activities that generate such income; and

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LA CROSSE, that the 2023 Action Plan is hereby approved.

BE IT FURTHER RESOLVED that income generated by CDBG & HOME Program activities is dedicated to the continuation of those activities.

BE IT FURTHER RESOLVED that the Mayor is designated as the authorized representative of the City of La Crosse to act in connection with the Consolidated Plan and to provide such additional information as may be required.

BE IT FURTHER RESOLVED that the Mayor is authorized to execute any documents which are necessary for the implementation of activities funded under the Action Plan and Consolidated Plan.

BE IT FURTHER RESOLVED that the City of La Crosse continues to be a Participating Jurisdiction (PJ) in the HOME Investment Partnerships Entitlement Program.

BE IT FURTHER RESOLVED that should the anticipated 2023 Community Development Block Grant Program (\$859,504) entitlement funding level be changed by the Federal Government, that the resulting increase or decrease of 2023 CDBG Entitlement Funds shall be applied to City of La Crosse Housing programs.

BE IT FURTHER RESOLVED that should the anticipated 2023 HOME Program (\$339,663) entitlement funding level be changed by the Federal Government, the increase or decrease in funding shall be applied to the City of La Crosse Replacement Housing Project.

BE IT FURTHER RESOLVED, that City staff is hereby authorized to take any and all steps necessary to effectuate this resolution.



Executive Summary

AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

1. Introduction

The City of La Crosse (the City) anticipates expending nearly \$1.2 million in HUD Community Development Block Grant and HOME Investment Partnership (CDBG/HOME) resources this year to address housing and community needs in La Crosse. These investments are estimated to leverage over \$8 million in other sources of funding, resulting that every \$1 spent in CDBG will leverage \$6.78. In addition, the city will also be focusing on partnering with developers to develop multi-family housing. La Crosse continues to have a large homeless population and the number one barrier is housing availability. The city plans to leverage it's CDBG and HOME-ARP funding to increase the number of affordable rental units within the city.

In year four of the City's Consolidated Plans, the City of La Crosse will continue to prioritize and fund:

1. Neighborhood revitalization through acquisition and demolition of blighted structures, improving housing structures, in-fill ownership housing, and code enforcement.
2. Creation of Affordable housing through the development of mixed income, mixed use rental housing focused on meeting the needs of low-income families, ending homelessness, and housing for persons with disabilities.
3. Support businesses that create economic opportunity for LMI persons and in LMI neighborhoods.

2. Summarize the objectives and outcomes identified in the Plan

This could be a restatement of items or a table listed elsewhere in the plan or a reference to another location. It may also contain any essential items from the housing and homeless needs assessment, the housing market analysis or the strategic plan.

See goals below.

5-YEAR GOALS	5-YEAR NRSA OUTCOMES	NRSA 2021 Goal
Housing Quality and Affordability		
1. Increase safety and maintenance of homes through code enforcement	2000 housing units make repairs as a result of code enforcement	500
2. Repair aging housing infrastructure, both rental and owner-occupied.	25 units of homeowner housing are improved to meet Housing Quality Standards.	5
	25 units of rental housing are improved to meet HQS standards.	
3. Address lead-based paint hazards in homes with children.	10 rental units pass a lead clearance test.	5
4 Build mixed-income, affordable multi-family rental housing, with set-aside units for formerly homeless individuals.	50 units of affordable rental housing built or significantly rehabbed (priority 50% CMI)	25
	35 long-term units for persons transitioning out of homelessness added (30% AMI units).	
Neighborhood Capital Improvements		
5. Rebuild public infrastructure to improve livability and attractiveness of Neighborhood Strategy Areas for families.	Hamilton Elementary School completes capital improvements to enhance learning for its low-income students and surrounding neighborhood.	1
Community Economic Development		
6. Support businesses that create economic opportunity in LMI neighborhoods, with an emphasis on food access.	50 businesses receive technical assistance or financial assistance for start-up or expansion. 100 jobs created as a result. Launch public food market.	30/10

Neighborhood Revitalization Strategy Area (NRSA) Goals

3. Evaluation of past performance

This is an evaluation of past performance that helped lead the grantee to choose its goals or projects.

The city of La Crosse completed 3 housing replacement homes this year in partnership with Western Technical College and Central High School. These properties were sold in late 2022 and early 2023. The housing rehab program is continuing to operate within the city in conjunction with a Lead Safe Homes program from the Wisconsin Department of Health Services. The City has been utilizing the lead program as much as possible because these funds are structured as a grant to eligible property owners. Contractor capacity continues to be a challenge which has reduced the number of projects the city could complete. Finally, the city had anticipated 4 multi-family opportunities to come to fruition in PY22. Unfortunately, none of them did timely. There has been a delay in projects due to supply chain, available contractors and interest rate increases that have impacted project costs significantly. Developers have had to stop plans and re-evaluate projects for financial feasibility and this has caused a delay.

4. Summary of Citizen Participation Process and consultation process

Summary from citizen participation section of plan.

On February 1, 2023, the City noticed in the newspaper the availability of the City's annual action plan for comment. The comment period runs from February 1, 2023 thru March 6, 2023. The legal ad also notified the public that a public hearing would take place on February 22, 2023 at the Community and Economic Development Committee. A twenty-two-day notice was given for the public hearings. It also informed the public that they could comment on the plan. The public was given 33 days to comment on the Action Plan.



Public Services Partners

5. Summary of public comments

This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.

6. Summary of comments or views not accepted and the reasons for not accepting them

7. Summary

The City of La Crosse continues to maintain focus on achieving the goals outlined in its Consolidated Plan. See charts above.

PR-05 Lead & Responsible Agencies – 91.200(b)

1. Agency/entity responsible for preparing/administering the Consolidated Plan

Describe the agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
CDBG Administrator	LA CROSSE	Planning and Development Department
HOME Administrator	LA CROSSE	Planning and Development Department

Table 1 – Responsible Agencies

Narrative (optional)

The City of La Crosse was the lead agency that prepared this Action Plan.

Consolidated Plan Public Contact Information

For questions or comments about the Annual Action Plan, please contact Diane McGinnis Casey, Community Development Administrator, mcginniscaseyd@cityoflacrosse.org or 608-789-7362.

AP-10 Consultation – 91.100, 91.200(b), 91.215(I)

1. Introduction

On February 1, 2023, the City noticed in the newspaper the availability of the City's annual action plan for comment. The comment period runs from February 1, 2023 thru March 6, 2023. The legal ad also notified the public that a public hearing would take place on February 22, 2023 at the Community and Economic Development Committee. A twenty-two-day notice was given for the public hearings. It also informed the public that they could comment on the plan. The public was given 33 days to comment on the Action Plan.

Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(I))

The City of La Crosse works with a variety of agencies to coordinate public and assisted housing providers, and others. The City serves as a member of the La Crosse Collaborative to End Homelessness which seeks to coordinate these efforts.

Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.

The City coordinates with the Continuum of Care through its participation in the Coulee Collaborative to End Homelessness.

Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS

N/A, the City does not receive ESG funds.

2. Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdiction's consultations with housing, social service agencies and other entities

Table 2 – Agencies, groups, organizations who participated

1	Agency/Group/Organization	COULEECAP INC
	Agency/Group/Organization Type	Services-homeless Service-Fair Housing
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Agency applied for public service funding to specifically address permanent supportive housing in our community. There is a need for additional permanent supportive housing to ensure wrap around services meet needs to keep households housed.
2	Agency/Group/Organization	NEW HORIZONS
	Agency/Group/Organization Type	Services-Victims of Domestic Violence Services-homeless Services - Victims
	What section of the Plan was addressed by Consultation?	Homeless Needs - Chronically homeless Homeless Needs - Families with children
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	New Horizons is the homeless shelter provider in the community that specifically targets domestic violence survivors. There is a great need for these services in our community.
3	Agency/Group/Organization	FAMILY AND CHILDREN'S CENTER
	Agency/Group/Organization Type	Housing Services - Housing Services-homeless

	What section of the Plan was addressed by Consultation?	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	City of La Crosse staff met with Independent Living Resources to discuss closer coordination with police for homeless outreach and also discuss community needs.
4	Agency/Group/Organization	La Crosse County
	Agency/Group/Organization Type	Other government - County
	What section of the Plan was addressed by Consultation?	Anti-poverty Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The City of La Crosse staff met with the La Crosse Area Family Collaborative to discuss homeless prevention, public housing, and how to help low-income families in La Crosse.
5	Agency/Group/Organization	La Crosse Public Housing Authority
	Agency/Group/Organization Type	PHA
	What section of the Plan was addressed by Consultation?	Public Housing Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Staff met with the Executive Director of La Crosse Public Housing Authority and also spoke with residents living in public housing.

Identify any Agency Types not consulted and provide rationale for not consulting

Other local/regional/state/federal planning efforts considered when preparing the Plan

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	Couleecap	Our goals coincide with addressing homelessness and creating more affordable housing.

Table 3 – Other local / regional / federal planning efforts

Narrative (optional)

AP-12 Participation – 91.105, 91.200(c)

**1. Summary of citizen participation process/Efforts made to broaden citizen participation
Summarize citizen participation process and how it impacted goal-setting**

The City of La Crosse used an intensive Citizen Participation process to identify its goals for its Consolidated Plan. Citizens overwhelmingly wanted to see the city to continue its efforts to stabilize neighborhoods through investment in housing- especially affordable housing. The public participation process also had active participation from homeless advocates and social workers. They both noted the need for affordable rental housing and code enforcement.

Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (if applicable)
0	Newspaper Ad	Residents of Public and Assisted Housing	La Crosse Tribune			
1	Public Hearing	Non-targeted/broad community				

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (if applicable)
2	Public Hearing	Non-targeted/broad community	On February 22, 2023 a public hearing will be held at 3p.m during the Economic and Community Development Commission meeting.			

Table 4 – Citizen Participation Outreach

Expected Resources

AP-15 Expected Resources – 91.220(c)(1,2)

Introduction

The City anticipates a balance in revolving loan and carry over funds. Two housing development projects did not come to fruition in PY 22. They are both anticipated for PY 23.

Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	859,504	475,000	541,000	1,875,504	1,730,000	The City of La Crosse shall set aside 20% of its receipted program income funds for Administration and Planning and then receipt the balance of funds to the respective revolving loans.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
HOME	public - federal	Acquisition Homebuyer assistance Homeowner rehab Multifamily rental new construction Multifamily rental rehab New construction for ownership TBRA	339,663	350,000	50,950	740,613	0	The City of La Crosse will expend the Program Income as it is received on its Replacement Housing Program.

Table 5 - Expected Resources – Priority Table

Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

The City of La Crosse anticipated leveraging CDBG/HOME funds with approximately \$8.3 million on local funds, private donors, Continuum of Care Funding, city funding, loans and state resources. The City will continue its history of matching nearly \$6.76 for every \$1 of CDBG investment. One advantage for the City of La Crosse looking at the next five years is the energy and commitment to affordable housing and neighborhood revitalization from all public agencies (county, city, council and boards), the private sector, and non-profit organizations. The City has committed \$1.7 million in TIF funds towards neighborhoods and just over \$1 million in American Rescue Plan Act funds. In addition, the City of La Crosse has also received a grant from the State of Wisconsin for Lead Abatement. HOME Match requirements will be satisfied through

donated time and labor from our technical college partner who builds homes. In 2021, HOME match exceeded \$90,000 of donated labor hours. Additionally, the City's strategy of leverage CDBG/HOME funds with housing tax credits has been very successful.

If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

The City of La Crosse is looking at under-utilized land and considering options for new affordable housing development.

Discussion

Annual Goals and Objectives

AP-20 Annual Goals and Objectives

Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator

Table 6 – Goals Summary

Goal Descriptions

1	Goal Name	Repair aging housing infrastructure
	Goal Description	These funds will be used to fund the City's Housing Rehabilitation Loan Program. In addition, the City will leverage these funds to bring up to 8 units of housing in lead-safe home compliance. It is expected that about 30% of the Housing Rehabilitation Loans will be for homes in a NRSA.
2	Goal Name	Replace or rehab dilapidated housing structures
	Goal Description	Increase the number of quality and affordable owner-occupied homes in target neighborhoods. This will be accomplished through single-family owner-occupied development by Couleecap and the City of La Crosse.
3	Goal Name	Increase affordable housing
	Goal Description	Build mixed-income, affordable, multi-family housing, with set-aside units for homeless individuals

4	Goal Name	Increase economic opportunities
	Goal Description	In addition to the CDBG Entitlement indicated below, the City will also undertake activities related to supporting Women and Minority-Owned Business previously described in its 2020 Action Plan. The activities will principally benefit low-and-moderate income families.
5	Goal Name	Prevent and end homelessness
	Goal Description	
6	Goal Name	Alleviate poverty and increase self-reliance.
	Goal Description	
7	Goal Name	Administer CDBG/HOME Program
	Goal Description	

Projects

AP-35 Projects – 91.220(d)

Introduction

The projects listed below are aimed at achieving the City's Consolidated Plan goals

Projects

#	Project Name
1	Housing Rehabilitation
2	Replacement Housing
3	Affordable Multi-Family Housing
4	Micro-Entrepreneurship Assistance
5	Homeless Assistance
6	Poverty Alleviation
7	Administration and Planning
8	2022 La Crosse CHDO

Table 7 - Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

Allocation priorities were based on priorities identified in the Consolidate Plan. A lack of resources and high needs of the homeless population are obstacles to addressing underserved needs.

AP-38 Project Summary

Project Summary Information

Project Summary Information					
No.	Project	Goals Supported	Geographic Areas	Needs Addressed	Funding
1	Housing Rehabilitation	Repair aging housing infrastructure	City-Wide Area - Other	Improve housing quality	CDBG : \$267,850
	Description	10 units of homeowner housing rehabbed to meet housing quality standards (HQS). 8 units of housing will be improved to pass lead safety standards.			
	Target Date for Completion	03/31/2024			
	Estimate the number and type of families that will benefit from the proposed activities (additional information for this discussion may be available on the AP-36 Project Detail screen)	10 units of homeowner housing rehabbed to meet housing quality standards (HQS).8 units of housing will be improved to pass lead safety standards.			
	Location Description (additional information for this discussion may be available on the AP-36 Project Detail screen)	Citywide			
	Planned Activities (additional	Housing Rehabilitation			

information for this discussion may be available on the AP-36 Project Detail screen)				
Replacement Housing	Increase affordable housing Replace or rehab dilapidated housing structures	City-Wide Area - Other Southside Neighborhood Revitalization Strategy Area - Strategy area	Improve housing quality	CDBG : \$150,000 HOME : \$569,747
Description	Two homes will be built in partnership with Western Technical College. One house will utilize a current vacant lot in the city. The second will be a dilapidated home that will be acquired, demolished and replaced with new affordable housing.			
Target Date for Completion	03/31/2024			
2 Estimate the number and type of families that will benefit from the proposed activities (additional information for this discussion may be available on the AP-36 Project Detail screen)	2 Low-Moderate income households			
Location Description (additional information for this discussion may be available on the AP-36 Project Detail screen)	The city will target properties in the NRSA			

Planned Activities (additional information for this discussion may be available on the AP-36 Project Detail screen)				
Affordable Multi-Family Housing	Increase affordable housing	Southside Neighborhood Revitalization Strategy Area - Strategy area	Affordable Rental Housing (In-fill or rehab)	CDBG : \$849,679
Description	The City has awarded funding to two (2) multi family affordable housing projects. One is located in the River Point District. It has been awarded Low Income Housing Tax Credits in 2021 and should begin construction in calendar year 2023. The second applied for Low Income Housing Tax Credits this year and awards will be made in the summer of 2023. These two projects will add 182 units to the community with the majority targeted to LMI households.			
Target Date for Completion	03/31/2024			
Estimate the number and type of families that will benefit from the proposed activities (additional information for this discussion may be available on the AP-36 Project Detail screen)	185 units added, of which the majority are for LMI households.			
Location Description (additional information for this discussion may be available on the AP-36				

3

Project Detail screen)				
Planned Activities (additional information for this discussion may be available on the AP-36 Project Detail screen)				
4 Micro Enterprise Technical Assistance	Increase economic opportunities	City-Wide Area - Other	Economic Development: Food Access and Child Care	CDBG : \$166,075
Description	Funds to operate programs at Wisconsin Women's Business Initiative and Couleecap to provide technical assistance and business loans/grants to businesses that are majority LMI micro-enterprises or have 51% or more of employees that are LMI.			
Target Date for Completion				
4 Estimate the number and type of families that will benefit from the proposed activities (additional information for this discussion may be available on the AP-36 Project Detail screen)	62 businesses will be assisted, of which 51% will be LMI.			
Location Description (additional information for this discussion may be available on the AP-36				

Project Detail screen)				
Planned Activities (additional information for this discussion may be available on the AP-36 Project Detail screen)				
Homeless Assistance	Prevent and end homelessness	City-Wide Area - Other	Poverty Alleviation	CDBG : \$25,000
Description	Grants provided to homeless agencies to operate programs that provide emergency shelter, homelessness prevention, and homeless services. Services for victims of domestic violence, dating violence, sexual assault, or stalking.			
Target Date for Completion	03/31/2024			
5 Estimate the number and type of families that will benefit from the proposed activities (additional information for this discussion may be available on the AP-36 Project Detail screen)	75 households			
Location Description (additional information for this discussion may be available on the AP-36				

Project Detail screen)				
Planned Activities (additional information for this discussion may be available on the AP-36 Project Detail screen)				
Poverty Alleviation	Alleviate poverty and increase self-reliance.	City-Wide Area - Other	Poverty Alleviation	CDBG : \$150,000
Description	This project will fund the Family Advocacy Program (Family and Children's Center), Couleecap Supportive Housing program, La Crosse County Schuh-Mullen Project and Cia Siab's Hmoob Family Housing Program.			
Target Date for Completion	03/31/2024			
6 Estimate the number and type of families that will benefit from the proposed activities (additional information for this discussion may be available on the AP-36 Project Detail screen)	700 households			
Location Description (additional information for this discussion may be available on the AP-36 Project Detail screen)				

Planned Activities (additional information for this discussion may be available on the AP-36 Project Detail screen)	This project will fund the Family Advocacy Program (Family and Children's Center), Couleecap Supportive Housing program, La Crosse County Schuh-Mullen Project and Cia Siab's Hmoob Family Housing Program.				
7	Administration and Planning	Administer CDBG/HOME Program	City-Wide Area - Other	Affordable Rental Housing (In-fill or rehab) Economic Development: Food Access and Child Care Housing and Neighborhood Plans Improve housing quality Poverty Alleviation Storm water Management, Flood Plain Issues Public Infrastructure (lighting, schools, parks)	CDBG : \$266,900 HOME : \$68,966
	Description	These funds will support a City-wide housing study, A&E studies, and administer the CDBG and HOME programs.			
	Target Date for Completion	03/31/2024			
	Estimate the number and type of families that will benefit from the proposed activities (additional information for this discussion may be available on the AP-36 Project Detail screen)				

Location Description (additional information for this discussion may be available on the AP-36 Project Detail screen)				
Planned Activities (additional information for this discussion may be available on the AP-36 Project Detail screen)				
2023 La Crosse CHDO	Repair aging housing infrastructure Replace or rehab dilapidated housing structures	City-Wide Area - Other	Improve housing quality	HOME : \$101,900
Description	HOME CHDO project			
Target Date for Completion	03/31/2024			
8 Estimate the number and type of families that will benefit from the proposed activities (additional information for this discussion may be available on the AP-36 Project Detail screen)				
Location Description				

<p>(additional information for this discussion may be available on the AP-36 Project Detail screen)</p>	
<p>Planned Activities (additional information for this discussion may be available on the AP-36 Project Detail screen)</p>	<p>CHDO project</p>

AP-50 Geographic Distribution – 91.220(f)

Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed

The City of La Crosse will concentrate its effort in Census Tract 4, 9, and 2. These areas are known locally as Washburn, Powell Poage Hamilton, and Lower Northside Neighborhoods. These areas are of the greatest priority for the City.

Geographic Distribution

Target Area	Percentage of Funds
City-Wide Area	41
Northside Neighborhood Revitalization Strategy Area	41
Southside Neighborhood Revitalization Strategy Area	18

Table 8 - Geographic Distribution

Rationale for the priorities for allocating investments geographically

Research demonstrates that concentrating resources in smaller areas creates the largest impact on home values and neighborhoods. Additionally, the NRSA areas represent the City's areas of greatest need and potential to impact low-moderate income households.

Discussion

Affordable Housing

AP-55 Affordable Housing – 91.220(g)

Introduction

The goals are also listed under the goals section of the Consolidated Plan.

One Year Goals for the Number of Households to be Supported	
Homeless	75
Non-Homeless	700
Special-Needs	0
Total	775

Table 9 - One Year Goals for Affordable Housing by Support Requirement

One Year Goals for the Number of Households Supported Through	
Rental Assistance	182
The Production of New Units	3
Rehab of Existing Units	10
Acquisition of Existing Units	0
Total	195

Table 10 - One Year Goals for Affordable Housing by Support Type

Discussion

Assistance will be provided to households through the construction of new affordable housing, housing rehabilitation programs, and code enforcement.

AP-60 Public Housing – 91.220(h)

Introduction

The City of La Crosse continues to improve its level of collaboration with the public housing authority but does not directly fund their projects. The City will collaborate with the Housing Authority on advancing the analysis of impediments to fair housing, working with landlords, and addressing homelessness.

Actions planned during the next year to address the needs to public housing

The City of La Crosse will continue to collaborate with the public housing authority. While the city does not directly fund any projects specifically, we will continue to work together to identify needs and options to address those needs.

Actions to encourage public housing residents to become more involved in management and participate in homeownership

No action being undertaken.

If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance

N/A

Discussion

The City of La Crosse's relationship with the City of La Crosse Housing Authority has significantly improved.

AP-65 Homeless and Other Special Needs Activities – 91.220(i)

Introduction

The City of La Crosse, in addition to the actions listed below, coordinates with the Continuum of Care which is led by the La Crosse Collaborative to End Homelessness and CouleeCap.

- The YWCA Ruth House will help women transition into a drug-free independent lifestyle by providing them transitional housing services.
- Couleecap will operate a Permanent Housing Program which will provide case management and housing for homeless persons.
- In 2021 the REACH center opened. This center includes multiple service providers in one location to better serve our homeless population.
- The City is also using ARPA funds to address critical needs for this population including ensuring additional shelter space is made available during extreme cold weather.

Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The City of La Crosse continues to partner with the non- profit agencies working to address this need. In 2021, the city hired a Homeless Service Coordinator to help improve the coordination between all groups working to address this critical need. The City has also allocated \$1.5 Million towards eliminating homelessness in our community.

Addressing the emergency shelter and transitional housing needs of homeless persons

The city works with multiple homelessness providers. The need for more affordable housing and specifically housing designed for households exiting homelessness has been identified. The city is targeting our HOME ARP funds to help construct additional units as well as supportive services to ensure those that are placed in housing have the supports necessary for success.

The city created a Housing Affordable Revolving Loan fund with a TIF closure. We have been utilizing our CDBG funds in conjunction with this program to leverage our resources to build additional affordable housing in our community.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals

and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The City of La Crosse will support the Couleecap program to transition individuals to permanent supportive housing (75 people served).

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

The City of La Crosse will be issuing an RFP to address households at greatest risk of becoming homeless with our HOME ARP funds. In addition, the city works very closely with the county to support efforts to connect households to public benefits.

Discussion

AP-75 Barriers to affordable housing – 91.220(j)

Introduction:

The City of La Crosse will continue its strong efforts to support affordable housing opportunities in the region, continue to de-concentrate pockets of poverty and create mixed-income neighborhoods, promote home ownership for minorities, collaborate with the Housing Authority, and continue to promote housing for all abilities.

Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment

- Work with landlords to participate in the Housing Choice Voucher program
- Examine ways to reinstate the rental registration and rental inspection program
- Deliver annual fair housing education
- Use CDBG funds to support the construction of affordable housing
- Review family definitions and review permitted locations of housing serving people recovering from alcohol or substance abuse
- Examine a local code amendment that would provide an alternative to a variance application for people requesting modifications related to a disability
- Conduct a housing study to identify needs

Discussion:

This action plan identifies \$849,679 towards creating affordable multi-family housing. These funds will help leverage a similar program utilizing TIF financing to assist developers in developing both affordable units and units targeting our homeless population. In addition, the City of La Crosse is utilizing ARPA and HOME ARP funds towards creating additional affordable housing units.

AP-85 Other Actions – 91.220(k)

Introduction:

There are a variety of other initiatives that the City is undertaking as part of its Action Plan.

Actions planned to address obstacles to meeting underserved needs

Cuts to HUD funding has meant that it's more difficult to address underserved needs. The City is addressing this issue by prioritizing its funds towards only projects that meet a high priority in its Consolidated Plan. It also evaluates applicants for funding based on whether applicants are using CDBG funds to leverage additional funds. Finally, the City has committed over \$3 million of ARPA and a revolving loan fund dedicated to meeting one of the highest underserved needs- affordable housing for renters.

Actions planned to foster and maintain affordable housing

As noted in previous sections, the City is bolstering its efforts to promote affordable housing by utilizing both ARPA funding and a TIF Affordable housing revolving loan program. The city has committed over \$3 million to date to 2 projects that will increase the number of housing units within our community by 182. The City also funds its Housing Rehabilitation Loan program and Replacement Housing program also aimed at fostering and maintaining affordable housing.

Actions planned to reduce lead-based paint hazards

The City of La Crosse applied for and received a grant from the State of Wisconsin to reduce lead-based paint hazards in homes and completely abate lead hazards. This is also a key component of the City's Housing Rehabilitation Loan Program.

Actions planned to reduce the number of poverty-level families

The City of La Crosse and its partners support a diverse range of programs and services funded through multiple sources to help low income families.

1. Assist families and individuals access resources that may help them move into self-sufficiency (stable and affordable housing, neighborhood-based sources, after-school programs, job training) through a partnership with La Crosse County La Crosse Area Family Collaborative;
2. Prevent poverty through assistance to City of La Crosse's youth, building communities, and supporting affordable housing initiatives;
3. Alleviate poverty by improving family and individual economic opportunities that lead to a sustainable living wage.

Actions planned to develop institutional structure

- The City of La Crosse will convene its affordable housing partners both formally and informally to enhance coordination and carry out joint projects.
- The City of La Crosse is also providing technical support to a non-profit organization, La Crosse Promise, to leverage private funds to re-develop its priority neighborhoods.

Actions planned to enhance coordination between public and private housing and social service agencies

The City of La Crosse will continue to improve its efforts to bring together multiple public and private housing and social service agencies for improved collaboration, to assist with strategy and policy-making, and leverage joint resources.

Discussion:

Program Specific Requirements

AP-90 Program Specific Requirements – 91.220(I)(1,2,4)

Introduction:

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

Community Development Block Grant Program (CDBG)

Reference 24 CFR 91.220(I)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

- | | |
|--|----------|
| 1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed | 0 |
| 2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan. | 0 |
| 3. The amount of surplus funds from urban renewal settlements | 0 |
| 4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan | 0 |
| 5. The amount of income from float-funded activities | 0 |
| Total Program Income: | 0 |

Other CDBG Requirements

- | | |
|---|--------|
| 1. The amount of urgent need activities | 0 |
| 2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan. | 75.00% |

HOME Investment Partnership Program (HOME)

Reference 24 CFR 91.220(I)(2)

1. A description of other forms of investment being used beyond those identified in Section 92.205 is

as follows:

None that have not already been described previously.

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in 92.254, is as follows:

The La Crosse HOME Program/CHDO Loan Payment Repayment Agreement signed at closing will indicate which provision will apply to each property. The Agreement enforces the resale or recapture obligation through a lien, deed restriction, or covenant running with the land. The City's homes will use the recapture provision in the case that there is a second mortgage on the property. The CHDO homes will always use the recapture provision. In most cases, recapture will be used by the City but the resale provision will be used by the City of La Crosse in the case that there was no direct subsidy to the homebuyer.

The Declaration of Restrictive Covenants (Deed Restrictions) requires that units utilizing HOME funds meet the affordability requirements of the HOME program at 24 CFR 92.254 for homeowner housing. To ensure affordability, recapture or resale restrictions will be triggered by any transfer of title, either voluntary or involuntary, during the established HOME period of affordability. A copy of the recorded deed restrictions will be on file with the City.

1. In the event that the property is sold during the affordability period, the following recapture conditions will be met:
 - a. Under the recapture option, the period of affordability is based upon the direct HOME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit.
 - b. The CHDO and/or PJ will recapture the full amount of the HOME direct subsidy out of the net proceeds of the sale of the property. The net proceeds mean the sale price minus non-HOME loan repayment and closing costs.
 - c. If there are no net proceeds or insufficient proceeds to recapture the full amount of HOME investment due, the amount subject to recapture must be limited to what is available from net proceeds.
 - d. If the net proceeds are not sufficient to recapture the full amount of HOME investment plus enable the homeowner to recover the amount of the homeowner's down payment and any capital improvements made to the property during the period of occupancy, the homeowner's investment will be repaid in full before any HOME funds are recaptured.
 - e. If no direct subsidy is provided to the homebuyer to allow for the purchase of the unit, then

the resale provisions must be imposed.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR 92.254(a)(4) are as follows:

A resale provision will be used for projects that involve HOME assistance paid to the CHDO/PJ, but with no additional assistance to the buyer, meaning no direct subsidy was provided to the homebuyer that enabled the homebuyer to purchase the unit. This is because there are no funds that are subject to recapture.

- a. The affordability period will be based on the total amount of HOME funds used to assist the property and the buyer. The homebuyer must sell to another Low-Income homebuyer who earn less than 80% of the CMI, with the new home being affordable to the new buyer. The new homebuyer may not pay more than 33 percent of gross income for Principal, Interest, Taxes and Insurance (PITI).
- b. In the event that the resale provisions will be used, the CHDO/PJ must inform the homebuyer prior to the closing of the sale of the property and incorporate the resale provisions in the written agreements with the homebuyer.

In certain circumstances, the CITY may permit a new homebuyer to assume the City/CHDO loan and affordability restrictions, i.e., the CITY will not require the full repayment of the initial HOME subsidy. The HOME subsidy would be transferred to the new buyer and the remaining affordability period will remain with the property unless additional HOME assistance is provided to the new buyer.

The homebuyer for whom a resale restriction is enforced will be allowed a fair return when selling to another income eligible buyer. The seller (i.e., the original buyer) will be allowed to retain their original investment in the property (i.e., down payment) plus the cost of any improvements made to the property.

During the period of affordability, the last recorded purchase price will generally be the minimum restricted price at the time of resale. Neither the minimum nor the maximum restricted resale price is guaranteed to the owner. If the restricted price exceeds the actual market value, the owner may have to accept the lower price. HOME-assisted units must be maintained in good condition receive the maximum restricted price.

Foreclosure and Resale – Foreclosure also triggers Resale provisions. Under a foreclosure scenario the CHDO/PJ must ensure the house is sold to another low-income buyer, as defined by HUD, at an affordable price. The CITY has a right of first refusal under a foreclosure scenario.

4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR 92.206(b), are as follows:

N/A



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation

23-0159

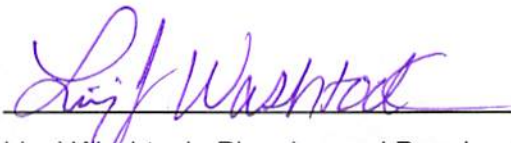
**CERTIFIED COPY OF RESOLUTION ADOPTED AT A
REGULAR MEETING OF THE ECONOMIC AND COMMUNITY DEVELOPMENT
COMMISSION
OF THE CITY OF LA CROSSE, WISCONSIN**

STATE OF WISCONSIN)
) ss.
County of La Crosse, City of La Crosse)

I HEREBY CERTIFY that I am the duly appointed, qualified secretary of the Economic and Community Development Commission of the City of La Crosse and State of Wisconsin; that the following is a true and correct copy of a Resolution adopted at the regular meeting of the Economic and Community Development Commission of the City of La Crosse, State of Wisconsin, held on the twenty second day of February, 2023 at four o'clock, p.m., in the Council Chambers at La Crosse City Hall, 400 La Crosse Street, in said City; and that the same has been duly recorded in the minutes of said Commission and has never been rescinded or revoked.

BE IT RESOLVED: Resolution authorizing 2023 Action Plan and funding allocation in connection with CDBG and HOME Programs be **RECOMMENDED TO BE ADOPTED** to the Finance & Personnel Committee.

IN WITNESS WHEREOF, I have hereunto signed my name at La Crosse, Wisconsin, this twenty second day of February 2023.



Linzi Washtock, Planning and Development Assistant
Recording Secretary, Economic and Community Development Commission
City of La Crosse, Wisconsin



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0160

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution authorizing a Substantial Amendment of the 2021 Action Plan and Allocation of HOME-ARP Funds.

RESOLUTION

WHEREAS, the City of La Crosse received notification from HUD that it will receive a special allocation of HOME – American Rescue Funds to assist individuals or households who are homeless, at-risk of homelessness and other vulnerable populations in the amount of \$1,097,432; and

WHEREAS, to accept these funds, it requires a substantial amendment to our 2021 Action plan; and

WHEREAS, HUD has identified eligible populations to be served by this funding and eligible activities; and

WHEREAS, staff have conducted the required consultation with partner agencies and reviewed data to determine the best use of these funds.

NOW, THEREFORE BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LA CROSSE, that the 2021 Action Plan is hereby amended to include undertaking the activities in the Substantial Amendment, attached in this legislation.

BE IT FURTHER RESOLVED, that these activities shall have oversight by the Economic and Community Development Commission.

BE IT FURTHER RESOLVED, that the Mayor is designated as the authorized representative of the City of La Crosse to act in connection with the Substantial Amendment to the 2021 Action Plan and to provide such additional information as may be required.

BE IT FURTHER RESOLVED, that the Mayor is authorized to execute any documents with are necessary for the implementation of activities funded by this resolution.

BE IT FURTHER RESOLVED, that City staff is hereby authorized to take any and all steps necessary to effectuate this resolution.



HOME – American Rescue Program (ARP) Allocation Plan

COMMUNITY DEVELOPMENT

400 LA CROSSE ST. – LA CROSSE, WI 54601 PHONE: (608) 789-7512
FAX: (608) 789-7318

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INTRODUCTION

Congress passed the American Rescue Plan which included \$5 billion to assist individuals or household's who are homeless, at-risk of homelessness and other vulnerable populations. The City of La Crosse has been awarded funding in the amount of \$1,097,432.

The City of La Crosse currently receives funding from the U.S. Department of Urban Development (HUD) to assist low-to-moderate income families that focus on priority needs for the city including poor quality of available housing, lack of affordable rental housing and a large homeless population. This plan will be submitted to the HUD as an amendment to our PY2021 Annual Action Plan.

Eligible Populations

The ARPA funding must be used to primarily benefit individuals or families from the following qualified populations:

- Homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act
- At-risk of homelessness, as defined in section 401(1) of the McKinney-Vento Homelessness Assistance Act
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking
- In other populations where providing supportive services or assistance under section 212(a) of the Act (42 U.S.C 12742(a)) would prevent the family's homelessness or would serve those with the greatest risk of housing instability
- Veterans and families that include a veteran family member that meet one of the preceding criteria

Eligible Activities

HOME-ARP funds may be used for four (4) eligible activities

- Acquisition and development of non-congregate shelter
- Provisions of supportive services
- Development and Support of affordable housing
- Tenant based rental assistance (TBRA)

CONSULTATION

Describe the consultation process including methods used and dates of consultation:

The PJ reached out to the following agencies.

List the organizations consulted:

Agency/Org Consulted	Type of Agency/Org	Method of Consultation	Feedback
Coulecap, Inc	CoC and Permanent Supportive Housing Provider	Meeting – December 12, 2022	<ul style="list-style-type: none"> • Lack of intensive on-site services and permanent and affordable housing • Address up-stream solutions to prevent homelessness • Barrier free entry into housing
New Horizon	Domestic Violence Service Provider	Meeting – November 29, 2022	<ul style="list-style-type: none"> • Lack of Affordable housing • Lack of communication and coordination for supportive services • Need for more transportation, childcare, outpatient therapy for mental health (people have to wait months). • Not enough space in DV shelter.
Anthony - VA Services	Veterans Services	Emailed November 15, 2022 and January 11, 2023 - No response received	
Garden Terrace	Veterans Group/Consumers	Emailed January 11, 2023 – No response received	
La Crosse Housing Authority	Public Housing Agency	Meeting – November 30, 2022	<ul style="list-style-type: none"> • Need for more supportive services to support tenants with tenant to tenant disputes, creating community, access to services, transportation and childcare.

			<ul style="list-style-type: none"> • Supportive services for seniors aging in place as their needs change. Ensure seniors are aware of resources available to them.
Western Technical College	Public Agency	Email feedback received January 3, 2023	<ul style="list-style-type: none"> • Identified need for more affordable housing and landlords willing to rent to underserved populations. • Identified a need for more case management/support staff once housing is secured. • Identified need to address housing for persons exiting incarcerating with criminal backgrounds. • Identified need for more support for substance abuse.
La Crosse School District	Public School	Emailed November 15, 2022 and January 3, 2023. Met with them on January 30 th , 2023.	<ul style="list-style-type: none"> • Biggest need is to get up stream and address root cause of homelessness. Need prevention funding to support families in current housing. • Need more supportive services of all types, especially mental health and Alcohol and Other Drug Abuse. • Families is an underserved population in our community.
Human Rights Commission	Committee that addresses fair housing and civil rights	Emailed November 15, 2022 and January 11, 2023. Asked to attend meeting – Committee meeting was canceled	
YWCA	Homeless Service Provider	Emailed November 15, 2022 - No response received	
Catholic Charities	Homeless Service Provider	Emailed November 15, 2022 and January 11, 2023 –	

		No response received	
Gundersen Hospital	Public Agency that addresses needs of qualifying populations	Meeting November 22, 2022	<ul style="list-style-type: none"> • Identified need for 24/7 shelter. • Prevention – should never have a child who is homeless. • Identified single site permanent supportive housing unit. • Identified a need for coordinated supportive services/case management
Mayo Hospital	Public Agency that addresses needs of qualifying populations	Emailed November 15, 2022 – No response received	
WAFER Food Pantry	Public Agency that addresses needs of qualifying populations	Emailed January 15, 2023 – No response received	
Independent Living Resources	Public Agency that addresses needs of qualifying populations and agency that addresses persons with disabilities	Emailed November 15, 2022. Meeting cancelled on November 18, 2022. Emailed on January 11, 2023 – No response received	
YMCA	Public Agency that addresses needs of qualifying populations	Meeting on November 28, 2022	<ul style="list-style-type: none"> • Identified a need for housing for people with barriers such as a past eviction. • Identified a need for housing for teenagers. • Identified need for a safe place for families in shelter. Families are not safe in shelters or hotels; lots of drug activity. • Need for more mental health services.

Karuna	Homeless Service Provider and Organization that addresses needs of qualifying populations	Meeting December 7, 2022	<ul style="list-style-type: none"> • Identified need for supportive services for permanent supportive housing. • Identified a need for more affordable housing options/units. • Identified a need for people with super high barriers, access to programs, but currently not enough adequate programming.
La Crosse County Veterans Office	Veterans Groups	Emailed January 11, 2023 – No response received	
Consumer Advocacy Council	Consumer Advocacy	Meeting on January 12 th , 2023	<ul style="list-style-type: none"> • Affordable housing and rehab is needed in the city. There’s a lack of housing options. • Supportive services, specifically around mental health and Alcohol and Other Drug Abuse. • There’s a lack of low-barrier shelters and not enough space in existing shelters.

PUBLIC PARTICIPATION

In accordance with Section V.B of the Notice (page 13), PJs must provide for and encourage citizen participation in the development of the HOME-ARP allocation plan. Before submission of the plan, PJs must provide residents with reasonable notice and an opportunity to comment on the proposed HOME-ARP allocation plan of **no less than 15 calendar days**. The PJ must follow its adopted requirements for “reasonable notice and an opportunity to comment” for plan amendments in its current citizen participation plan. In addition, PJs must hold **at least one public hearing** during the development of the HOME-ARP allocation plan and prior to submission.

PJs are required to make the following information available to the public:

- The amount of HOME-ARP the PJ will receive, and
- The range of activities the PJ may undertake.

Throughout the HOME-ARP allocation plan public participation process, the PJ must follow its applicable fair housing and civil rights requirements and procedures for effective communication, accessibility, and reasonable accommodation for persons with disabilities and providing meaningful access to participation by limited English proficient (LEP) residents that are in its current citizen participation plan as required by 24 CFR 91.105 and 91.115.

Describe the public participation process, including information about and the dates of the public comment period and public hearing(s) held during the development of the plan:

- ***Date(s) of public notice: 2/1/2023***
- ***Public comment period: start date – 2/1/2023 end date – 3/6/2023***
- ***Date(s) of public hearing: 2/22/2023***

Describe the public participation process:

The public notice was published in the La Crosse Tribune on February 1, 2023. The notice directed interested persons to our city website. The website included a copy of our plan and an option to submit comments direct on the site. In addition, comments could be mailed or delivered to City Hall. Copies of the plan were also available for distribution at City Hall or upon request from the public. A public hearing was held on February 22, 2023.

Describe efforts to broaden public participation:

Efforts were made to broaden public participation by making the plan available at the public library and posts were made on social media. Special separate emails were sent to the shelter organizations making sure they were aware the plan was available and included an ask for them

to share it with people staying at the shelter. The plan was also shared with property management to distribute or post for veterans residing at Garden Terrace.

Summarize the comments and recommendations received through the public participation process either in writing, or orally at a public hearing:

Enter narrative response here.

Summarize any comments or recommendations not accepted and state the reasons why:

Enter narrative response here.

NEEDS ASSESSMENT AND GAP ANALYSIS

In accordance with Section V.C.1 of the Notice (page 14), a PJ must evaluate the size and demographic composition of all four of the qualifying populations within its boundaries and assess the unmet needs of each of those populations. If the PJ does not evaluate the needs of one of the qualifying populations, then the PJ has not completed their Needs Assessment and Gaps Analysis. In addition, a PJ must identify any gaps within its current shelter and housing inventory as well as the service delivery system. A PJ should use current data, including point in time count, housing inventory count, or other data available through CoCs, and consultations with service providers to quantify the individuals and families in the qualifying populations and their need for additional housing, shelter, or services.

Homeless Needs Inventory and Gap Analysis Table

Homeless													
	Current Inventory					Homeless Population				Gap Analysis			
	Family		Adults Only		Vets	Family HH (at least 1 child)	Adult HH (w/o child)	Vets	Victims of DV	Family		Adults Only	
	# of Beds	# of Units	# of Beds	# of Units	# of Beds					# of Beds	# of Units	# of Beds	# of Units
Emergency Shelter	25	5	52 year around beds 34 seasonal beds	52 year around units, 34 seasonal units	0								
Transitional Housing	0	0	0	0	0								
Permanent Supportive Housing	0	0	43	43	0								
Other Permanent Housing	0	0	0	0	0								
Sheltered Homeless						16	53	4	16				
Unsheltered Homeless						1	135	0	11				
Current Gap										5	1	135	135

Suggested Data Sources: 1. Point in Time Count (PIT); 2. Continuum of Care Housing Inventory Count (HIC); 3. Consultation

HOUSING NEEDS INVENTORY AND GAP ANALYSIS

The City of La Crosse has approximately 11,415 rental units and 9,770 owner occupied units.

Income Distribution Overview

Table 1

Household Income	Owner	Renter	Total
<=30%	450	3,495	3,945
>30% - <=50%	970	2,510	3,480
>50% - <=80%	2,195	2,630	4,825
>80% - <=100%	1,325	1,380	2,705
>100%	4,830	1,400	6,230
Total	9,770	11,415	21,185

Source: HUD Comprehensive Housing Affordability Strategy (CHAS)

Populations within the City of La Crosse Experiencing Severe Housing Problems

Table 2

	Owner	Renter	Total
Household has at least 1 of 4 Severe Housing Problems	600	3205	3805

Source: HUD Comprehensive Housing Affordability Strategy (CHAS)

Income by Housing Problems

Table 3

Household Income	1-4 Housing Problems Renters	1-4 Housing Problems Owners
<=30%	2,985	395
>30% - <=50%	1,840	455

>50% - <=80%	465	695
>80% - <=100%	30	105
>100%	50	130

Source: HUD Comprehensive Housing Affordability Strategy (CHAS)

Housing Cost Burden

Table 4

Household Income	Owner	Renter	Total
Cost Burden <=30%	8,020	5,970	13,990
Cost Burden >30% - <=50%	1,195	2,325	3,520
Cost Burden >=50%	529	2,915	3,444

Source: HUD Comprehensive Housing Affordability Strategy (CHAS)

Income by Cost Burden

Table 5

Income by Cost Burden	Cost burden >30%		Cost Burden >50%	
	Owner	Renter	Owner	Renter
<=30%	395	2,965	245	2,370
>30% - <=50%	455	1,830	190	505
>50% - <=80%	695	435	90	40
>80% - <=100%	105	10	0	0
>100%	74	0	4	0

Source: HUD Comprehensive Housing Affordability Strategy (CHAS)

Describe the size and demographic composition of qualifying populations within the PJ's boundaries:

Homeless as defined in 24 CFR 91.5

The Point in Time (PIT) count from the summer of 2022 recorded 243 people that were homeless in the City of La Crosse. There is a significant gap between the population of people experiencing homelessness and the available shelter beds within the city.

At Risk of Homelessness as defined in 24 CFR 91.5

Over 32% of households within the City of La Crosse have a cost burden greater than 30% of their income (16% greater than 50% of income). The City has a very low vacancy rate for rental properties and households that have limited income have even fewer choices. The City of La

Crosse Housing Authority has units for families, seniors, individuals and people with disability that have strict income restrictions. These units make up the majority of the affordable income units within the city. The Housing Authority often has waiting lists for tenants to access housing. In addition, the Housing Authority also runs the Section 8 voucher program and current has no available vouchers.

The City works in partnership with many organizations locally to prevent homelessness. We believe prevention is key and getting upstream solutions is critical to stabilizing some of our most vulnerable citizens. Much work is currently being done to provide supportive services to tenants, but the need is greater than what we currently have available. The REACH Services and Resource Center has been a critical partner to assist with housing navigation, homeless prevention, mental/AODA support, healthcare and violence prevention. A critical partnership has also been formed between La Crosse County-La Crosse Area Family Collaborative, La Crosse School District and the City to support households in two of the housing authority neighborhoods. This partnership has provided a social worker and community impact coordinator to reduce evictions, unplanned moveouts, calls to the police department and child protective services, and increase school attendance and participation in afterschool programming. While we have seen great success with these programs, there is much more work to be done.

The Wisconsin Rental Assistance Program has been supporting thousands of households with rent assistance through the pandemic. These funds are running out and no new applications will be accepted for assistance after January 31, 2023. Currently Couleecap, Inc is serving 3,634 households in the Crawford, La Crosse, Monroe and Vernon Counties. While it is unclear how many households are being served within the city, La Crosse is the largest city in the 4-county area.

Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking

In the PIT count, 16 people were fleeing domestic violence that were currently being sheltered and additional 11 were unsheltered. This number is likely understated because some individuals do not wish to identify or disclose this information.

Other populations requiring services or housing assistance to prevent homelessness and other populations at greatest risk of housing instability

Local data is not available to accurately quantify this population. However, from our consultations we have heard great concerns for insufficient availability of permanent supportive housing. Many of the clients served by the CoC that have accessed housing have not stabilized successfully in these units due to lack of supports. Many clients served have severe and persistent mental health and substance abuse disorders. The City has been following the Housing First model, but to really support these clients to be housed successfully for the long-term demands more permanent supportive housing as well as housing options that currently do not exist in our community.

An additional challenge that our community experiences is housing people with certain criminal records and exiting incarceration. Many housing options have restrictions in place that prevent

access to housing to protect the current residents. This makes it virtually impossible to find decent housing options within the city.

Identify any gaps within the current shelter and housing inventory as well as the service delivery system:

There are significant gaps in affordable housing, shelter and service delivery.

Shelters

The City of La Crosse has 94 (34 of these beds are only available in the winter months) available shelter beds within the community provided by four partner agencies to assist individuals experiencing homelessness:

- Catholic Charities
- New Horizons
- Salvation Army
- YWCA

In addition, one agency provides 25 beds for adults with children fleeing domestic and/or sexual violence or human trafficking.

June 2022 PIT count identified 243 individuals experiencing homelessness in the City of La Crosse. During this time, the State of Wisconsin was still providing housing/hotel vouchers through the Wisconsin Emergency Rental Assistance Program. Therefore, the need for shelter beds far exceeds the current availability within the City.

Affordable Housing

There is a significant gap in both availability and safe affordable housing in the market. According to data provided above in Table 1 - 12,250 households have income at or below 80% of the area median income. In addition, Table 5 further exasperates this concern showing 6,775 households pay over 30% of their income on housing and 3,440 pay over 50% of their income on housing.

The data further shows that almost 18% of our housing inventory has at least one severe housing problem. Severe housing problems consist of overcrowding, lack of kitchen or bathroom facilities, or severely cost burden.

The La Crosse Housing Authority has the majority of affordable units in the market place. There portfolio contains nine hundred seventy-one units of combined Public Housing, Housing Choice Voucher, Mainstream Voucher, Section 8 New Construction and Project-Based VASH Voucher Programs. They often have long waiting lists for households to access these units.

Through the consultations conducted in developing this plan, many expressed that there were no or very few options for individuals exiting homelessness to even consider for housing. In addition, individuals may want to stay close to family, friends, health care and transportation

options, but due to the market this was often not an option. Unfortunately, this often negatively impacts the likelihood that a person will stay housed.

Supportive Services

Through the consultation process, supportive services were identified as a need for individuals experiencing homelessness. In addition, the housing authority identified a need for supportive services to assist individuals in staying housed. A pilot project in two of the housing authority's properties assisting families stay housed has been extremely successful. There was a need identified to expand this to all housing authority properties including those for seniors and individuals with disabilities. As needs change for seniors and individuals with disabilities, they often are unaware of resources or how to access those resources for simple things like a walker to assist them moving around the apartment. Additional supportive services would ensure these resources were known and available to residents.

Identify Priority Needs for Qualifying Populations:

The priority needs identified for the qualifying population for the HOME ARP plan include production and preservation of affordable housing and supportive services for those experiencing homelessness as well as working upstream to prevent homelessness.

Explain how the PJ determined the level of need and gaps in the PJ's shelter and housing inventory and service delivery systems based on the data presented in the plan

The city used data from the Point in Time Count, Comprehensive Housing Affordability Strategy data, Census data, the city's 2020-2024 Consolidated Plan and outreach and consultation.

HOME-ARP ACTIVITIES

Describe the method(s) that will be used for soliciting applications for funding and/or selecting developers, service providers, subrecipients and/or contractors:

The City of La Crosse will utilize a Request for Proposals process for both developers and service providers. All requests will be reviewed by staff and awarded through a committee process within the city. Development projects will follow existing processes of underwriting, contract management and monitoring.

If any portion of the PJ's HOME-ARP administrative funds are provided to a subrecipient or contractor prior to HUD's acceptance of the HOME-ARP allocation plan because the subrecipient or contractor is responsible for the administration of the PJ's entire HOME-ARP grant, identify the subrecipient or contractor and describe its role and responsibilities in administering all of the PJ's HOME-ARP program

Not applicable

Use of HOME-ARP Funding

	Funding Amount	Percent of Grant	Statutory Limit
Supportive Services	\$329,230		
Development of Affordable Housing	\$658,459		
Administration and Planning	\$109,743	10%	15%
Total HOME ARP Allocation	\$1,097,432		

Describe how the PJ will distribute HOME-ARP funds in accordance with its priority needs identified in its needs assessment and gap analysis:

Through consultation developing this plan, review of data, and feedback provided through the public comment period, the highest priority for HOME-ARP funding is development of affordable housing. Developing affordable housing is expensive and when tenant rents are restricted to ensure they are affordable, it becomes difficult for developers to cash flow projects. Therefore 60% of the funding is committed to this goal. The second need identified was supportive services. Once households identify housing it is critical that supportive services are available to ensure the proper supports are available to keep people housed. The most cost effective and least burdensome way to prevent homelessness is to get up stream and help ensure

households don't become homeless to begin with. 30% of the funding is directed at this goal. The remaining funding of 10% is allocated to administration. In the event that the PJ does not use all the administration funds, these funds will be utilized for additional supportive services.

Describe how the characteristics of the shelter and housing inventory, service delivery system, and the needs identified in the gap analysis provided a rationale for the plan to fund eligible activities:

The low vacancy rates for rental property, especially affordable rental demonstrates the need for additional affordable housing units. The La Crosse Housing Authority usually had significant wait lists as well for their units. Ending homelessness in our community is not obtainable without additional units. The current PIT count identified 243 people experiencing homelessness in our community. The current market does not have availability for these individuals. The community also utilizes the Housing First model which prioritizes individuals experiencing homelessness have access to stable housing first. Therefore, creating additional affordable housing is the highest priority and weighted accordingly in this proposed plan.

Supportive services are also a critical part of ensuring people remain housed. These services may include, but are not limited to: access to food, transportation, job training, mental health and substance abuse treatment options, childcare and case management. It can further support tenant and landlord mitigation, tenant to tenant disputes, and provide resources when a tenant feels they have been discriminated against.

HOME-ARP PRODUCTION HOUSING GOALS

Estimate the number of affordable rental housing units for qualifying populations that the PJ will produce or support with its HOME-ARP allocation:

Developers are estimating the cost of developing affordable units in our city at approximately \$240,000 per unit. Based on this project cost, the PJ estimates that 3 units would be developed with HOME-ARP funding.

Describe the specific affordable rental housing production goal that the PJ hopes to achieve and describe how the production goal will address the PJ's priority needs:

The PJ anticipates additional affordable housing to be constructed in our city utilizing other resources in conjunction with HOME-ARP funds. Developers will access programs such as Tax Increment Financing, Tax Credits, the PJ's Community Development Block Grant funds and other sources. Construction of affordable housing is our most critical need, but supportive services to ensure households remain funded is also critical. The HOME-ARP funds are a vital resource for supportive services because few other resources are available to meet this need.

PREFERENCES

A preference provides a priority for the selection of applicants who fall into a specific QP or category (e.g., elderly or persons with disabilities) within a QP (i.e., subpopulation) to receive assistance. A *preference* permits an eligible applicant that qualifies for a PJ-adopted preference to be selected for HOME-ARP assistance before another eligible applicant that does not qualify for a preference. A *method of prioritization* is the process by which a PJ determines how two or more eligible applicants qualifying for the same or different preferences are selected for HOME-ARP assistance. For example, in a project with a preference for chronically homeless, all eligible QP applicants are selected in chronological order for a HOME-ARP rental project except that eligible QP applicants that qualify for the preference of chronically homeless are selected for occupancy based on length of time they have been homeless before eligible QP applicants who do not qualify for the preference of chronically homeless.

Please note that HUD has also described a method of prioritization in other HUD guidance. Section I.C.4 of Notice CPD-17-01 describes Prioritization in CoC CE as follows:

“Prioritization. In the context of the coordinated entry process, HUD uses the term “Prioritization” to refer to the coordinated entry-specific process by which all persons in need of assistance who use coordinated entry are ranked in order of priority. The coordinated entry prioritization policies are established by the CoC with input from all community stakeholders and must ensure that ESG projects are able to serve clients in accordance with written standards that are established under 24 CFR 576.400(e). In addition, the coordinated entry process must, to the maximum extent feasible, ensure that people with more severe service needs and levels of vulnerability are prioritized for housing and homeless assistance before those with less severe service needs and lower levels of vulnerability. Regardless of how prioritization decisions are implemented, the prioritization process must follow the requirements in Section II.B.3. and Section I.D. of this Notice.”

If a PJ is using a CE that has a method of prioritization described in CPD-17-01, then a PJ has preferences and a method of prioritizing those preferences. These must be described in the HOME-ARP allocation plan in order to comply with the requirements of Section IV.C.2 (page 10) of the HOME-ARP Notice.

In accordance with Section V.C.4 of the Notice (page 15), the HOME-ARP allocation plan must identify whether the PJ intends to give a preference to one or more qualifying populations or a subpopulation within one or more qualifying populations for any eligible activity or project.

- Preferences cannot violate any applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a).
- The PJ must comply with all applicable nondiscrimination and equal opportunity laws and requirements listed in 24 CFR 5.105(a) and any other applicable fair housing and civil rights laws and requirements when establishing preferences or methods of prioritization.

While PJs are not required to describe specific projects in its HOME-ARP allocation plan to which the preferences will apply, the PJ must describe the planned use of any preferences in its HOME-ARP allocation plan. This requirement also applies if the PJ intends to commit HOME-ARP funds to projects that will utilize preferences or limitations to comply with restrictive eligibility requirements of another project funding source. **If a PJ fails to describe preferences or limitations in its plan, it cannot commit HOME-ARP funds to a project that will implement a preference or limitation until the PJ amends its HOME-ARP allocation plan. For HOME-ARP rental housing projects, Section VI.B.20.a.iii of the HOME-ARP Notice (page 36) states that owners may only limit eligibility or give a preference to a particular qualifying population or segment of the qualifying population if the limitation or preference is described in the PJ's HOME-ARP allocation plan.** Adding a preference or limitation not previously described in the plan requires a substantial amendment and a public comment period in accordance with Section V.C.6 of the Notice (page 16).

Identify whether the PJ intends to give preference to one or more qualifying populations or a subpopulation within one or more qualifying populations for any eligible activity or project:

The PJ has elected to incorporate a preference based on the data and consultation process. The PJ will implement a preference for supportive services for individuals or households exiting homelessness into permanent housing. The second preference will be for supportive services for individuals or households at risk of homelessness.

No preference has been identified for rental housing units and will be on a first come first served bases.

If a preference was identified, explain how the use of a preference or method of prioritization will address the unmet need or gap in benefits and services received by individuals and families in the qualifying population or subpopulation of qualifying population, consistent with the PJ's needs assessment and gap analysis:

The PJ has identified individuals and households experiencing homelessness as a priority in our community. Homelessness will not end without supportive services to identify and address needs quickly to prevent homelessness. According to the CHAS data, over 2300 households with an AMI of 30% or below are spending over 50% of their income on housing, making them severely cost burdened. In addition, through the consultation process service providers identified challenges with finding affordable housing. This is especially true for individuals and households with an AMI of 30% or below.

REFERAL METHODS

PJs are not required to describe referral methods in the plan. However, if a PJ intends to use a coordinated entry (CE) process for referrals to a HOME-ARP project or activity, the PJ must ensure compliance with Section IV.C.2 of the Notice (page10).

A PJ may use only the CE for direct referrals to HOME-ARP projects and activities (as opposed to CE and other referral agencies or a waitlist) if the CE expands to accept all HOME-ARP qualifying populations and implements the preferences and prioritization established by the PJ in its HOME-ARP allocation plan. A direct referral is where the CE provides the eligible applicant directly to the PJ, subrecipient, or owner to receive HOME-ARP TBRA, supportive services, admittance to a HOME-ARP rental unit, or occupancy of a NCS unit. In comparison, an indirect referral is where a CE (or other referral source) refers an eligible applicant for placement to a project or activity waitlist. Eligible applicants are then selected for a HOME-ARP project or activity from the waitlist.

The PJ must require a project or activity to use CE along with other referral methods (as provided in Section IV.C.2.ii) or to use only a project/activity waiting list (as provided in Section IV.C.2.iii) if:

1. the CE does not have a sufficient number of qualifying individuals and families to refer to the PJ for the project or activity;
2. the CE does not include all HOME-ARP qualifying populations; or,
3. the CE fails to provide access and implement uniform referral processes in situations where a project's geographic area(s) is broader than the geographic area(s) covered by the CE

If a PJ uses a CE that prioritizes one or more qualifying populations or segments of qualifying populations (e.g., prioritizing assistance or units for chronically homeless individuals first, then prioritizing homeless youth second, followed by any other individuals qualifying as homeless, etc.) then this constitutes the use of preferences and a method of prioritization. To implement a CE with these preferences and priorities, the PJ **must** include the preferences and method of prioritization that the CE will use in the preferences section of their HOME-ARP allocation plan. Use of a CE with embedded preferences or methods of prioritization that are not contained in the PJ's HOME-ARP allocation does not comply with Section IV.C.2 of the Notice (page10).

Identify the referral methods that the PJ intends to use for its HOME-ARP projects and activities. PJ's may use multiple referral methods in its HOME-ARP program. (Optional):

The PJ does not intend to use a referral method.

LIMITATIONS IN A HOME-ARP RENTAL HOUSING OR NCS PROJECT

Limiting eligibility for a HOME-ARP rental housing or NCS project is only permitted under certain circumstances.

- PJs must follow all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a). This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, section 504 of Rehabilitation Act, HUD's Equal Access Rule, and the Americans with Disabilities Act, as applicable.
- A PJ may not exclude otherwise eligible qualifying populations from its overall HOME-ARP program.
- Within the qualifying populations, participation in a project or activity may be limited to persons with a specific disability only, if necessary, to provide effective housing, aid, benefit, or services that would be as effective as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv). A PJ must describe why such a limitation for a project or activity is necessary in its HOME-ARP allocation plan (based on the needs and gap identified by the PJ in its plan) to meet some greater need and to provide a specific benefit that cannot be provided through the provision of a preference.
- For HOME-ARP rental housing, section VI.B.20.a.iii of the Notice (page 36) states that owners may only limit eligibility to a particular qualifying population or segment of the qualifying population if the limitation is described in the PJ's HOME-ARP allocation plan.
- PJs may limit admission to HOME-ARP rental housing or NCS to households who need the specialized supportive services that are provided in such housing or NCS. However, no otherwise eligible individuals with disabilities or families including an individual with a disability who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

Describe whether the PJ intends to limit eligibility for a HOME-ARP rental housing or NCS project to a particular qualifying population or specific subpopulation of a qualifying population identified in section IV.A of the Notice:

The PJ does not intend to limit eligibility.

HOME-ARP REFINANCING GUIDELINES

If the PJ intends to use HOME-ARP funds to refinance existing debt secured by multifamily rental housing that is being rehabilitated with HOME-ARP funds, the PJ must state its HOME-ARP refinancing guidelines in accordance with [24 CFR 92.206\(b\)](#). The guidelines must describe the conditions under which the PJ will refinance existing debt for a HOME-ARP rental project, including:

- ***Establish a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing to demonstrate that rehabilitation of HOME-ARP rental housing is the primary eligible activity***

The PJ will not be refinancing existing debt with HOME-ARP funds.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation

23-0160

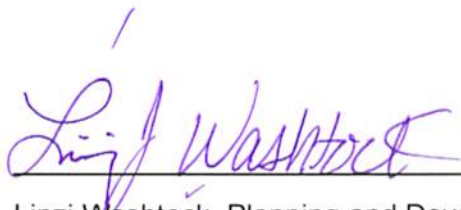
**CERTIFIED COPY OF RESOLUTION ADOPTED AT A
REGULAR MEETING OF THE ECONOMIC AND COMMUNITY DEVELOPMENT
COMMISSION
OF THE CITY OF LA CROSSE, WISCONSIN**

STATE OF WISCONSIN)
) ss.
County of La Crosse, City of La Crosse)

I HEREBY CERTIFY that I am the duly appointed, qualified secretary of the Economic and Community Development Commission of the City of La Crosse and State of Wisconsin; that the following is a true and correct copy of a Resolution adopted at the regular meeting of the Economic and Community Development Commission of the City of La Crosse, State of Wisconsin, held on the twenty second day of February, 2023 at four o'clock, p.m., in the Council Chambers at La Crosse City Hall, 400 La Crosse Street, in said City; and that the same has been duly recorded in the minutes of said Commission and has never been rescinded or revoked.

BE IT RESOLVED: Resolution authorizing a Substantial Amendment of the 2021 Action Plan and Allocation of HOME-ARP Funds be RECOMMENDED TO BE ADOPTED to the Finance & Personnel Committee.

IN WITNESS WHEREOF, I have hereunto signed my name at La Crosse, Wisconsin, this twenty second day of February 2023.



Linzi Washtock, Planning and Development Assistant
Recording Secretary, Economic and Community Development Commission
City of La Crosse, Wisconsin



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0161

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution authorizing a Substantial Amendment of the 2022 Action Plan

RESOLUTION

WHEREAS, the City of La Crosse allocated \$250,000 of Community Development Block Grant funding for Business Assistance to expand licensed child care or early learning opportunities in its 2022 Action Plan; and

WHEREAS, the City of La Crosse has received American Rescue Plan Act Funding and has since dedicated \$2 million to address the need to increase childcare and learning opportunities; and

WHEREAS, the City of La Crosse has prioritized quality affordable housing as one of the greatest needs within the city; and

WHEREAS, the City of La Crosse has two anticipated Low-Income Housing Tax Credit (LIHTC) projects that need additional financial support to ensure affordable housing units are built in the city; and

WHEREAS, these LIHTC projects are anticipated to leverage over \$24 million in LIHTC credits; and

WHEREAS, a substantial amendment is required when a change in scope of an activity exceeds 25% of the funding allocation.

NOW, THEREFORE BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LA CROSSE, that the 2022 Action Plan is hereby amended.

BE IT FURTHER RESOLVED, that these activities shall have oversight by the Economic and Community Development Commission.

BE IT FURTHER RESOLVED, that the Mayor is designated as the authorized representative of the City of La Crosse to act in connection with the Substantial Amendment to the 2022 Action Plan and to provide such additional information as may be required.

BE IT FURTHER RESOLVED, that the Mayor is authorized to execute any documents with are necessary for the implementation of activities funded by this resolution.

BE IT FURTHER RESOLVED, that City staff is hereby authorized to take any and all steps necessary to effectuate this resolution.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022



Executive Summary

AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

1. Introduction

The City of La Crosse (the City) anticipates expending nearly \$1.2 million in HUD Community Development Block Grant and HOME Investment Partnership (CDBG/HOME) resources this year to address housing and community needs in La Crosse. In particular, with the pandemic, the City focused on providing funds to non-profit organizations to help people in need. These funds will be expended in accordance with both City and CDBG/HOME goals, and the purpose will be to positively impact low-and-moderate income residents. These investments will leverage over \$8 million in other sources of funding, resulting that every \$1 spent in CDBG will leverage \$6.78. In addition, the city will also be focusing on childcare needs within our community. This industry has been struggling for a number of years and the

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

pandemic has further negatively impacted this situation. Employers continue to be engaged in this important conversation because when parents do not have safe and stable childcare their employees are less productive. In addition, when childcare centers loose staff or close parents often miss critical time at work. In La Crosse, childcare providers have expressed concern regarding staff turnover, licensing requirements as well as parents ability to pay timely. This has led to closures for both home-based as well as childcare centers in our community. The City has allocated \$2 million dollars of it's ARPA funding to this effort. Therefore, CDBG funds will be redirected to multi-family housing.

In year three of the City's Consolidated Plans, the City of La Crosse will continue to prioritize and fund:

1. Neighborhood revitalization through acquisition and demolition of blighted structures, improving housing structures, in-fill ownership housing, and code enforcement.
2. Creation of Affordable housing through the development of mixed income, mixed use rental housing focused on meeting the needs of low-income families, ending homelessness, and housing for persons with disabilities.
3. Support businesses that create economic opportunity for LMI persons and in LMI neighborhoods, and focus on expanding access to licensed child care or early learning opportunities for LMI persons.

2. Summarize the objectives and outcomes identified in the Plan

This could be a restatement of items or a table listed elsewhere in the plan or a reference to another location. It may also contain any essential items from the housing and homeless needs assessment, the housing market analysis or the strategic plan.

See goals below.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

5-YEAR GOALS	5-YEAR NRSA OUTCOMES	NRSA 2021 Goal
Housing Quality and Affordability		
1. Increase safety and maintenance of homes through code enforcement	2000 housing units make repairs as a result of code enforcement	500
2. Repair aging housing infrastructure, both rental and owner-occupied.	25 units of homeowner housing are improved to meet Housing Quality Standards.	5
	25 units of rental housing are improved to meet HQS standards.	
3. Address lead-based paint hazards in homes with children.	10 rental units pass a lead clearance test.	5
4 Build mixed-income, affordable multi-family rental housing, with set-aside units for formerly homeless individuals.	50 units of affordable rental housing built or significantly rehabbed (priority 50% CMI)	25
	35 long-term units for persons transitioning out of homelessness added (30% AMI units).	
Neighborhood Capital Improvements		
5. Rebuild public infrastructure to improve livability and attractiveness of Neighborhood Strategy Areas for families.	Hamilton Elementary School completes capital improvements to enhance learning for its low-income students and surrounding neighborhood.	1
Community Economic Development		
6. Support businesses that create economic opportunity in LMI neighborhoods, with an emphasis on food access.	50 businesses receive technical assistance or financial assistance for start-up or expansion. 100 jobs created as a result. Launch public food market.	30/10

Neighborhood Revitalization Strategy Area (NRSA) Goals

3. Evaluation of past performance

This is an evaluation of past performance that helped lead the grantee to choose its goals or projects.

The global pandemic has caused the City of La Crosse to focus on support non-profit organizations to deliver needed services to low-income families this year. The City, however, will continue to operate its Housing Rehabilitation program, as households find themselves trying to make even more improvements to their homes, due to staying at home. Neighborhood revitalization is still a need and the City's Replacement Housing Program won a state-wide award in November 2019. This successful program will be continued.

4. Summary of Citizen Participation Process and consultation process

Summary from citizen participation section of plan.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

On February 1, 2023, the City noticed in the newspaper the substantial amendment of the City's annual action plan for comment until March 6, 2023. The legal ad also notified the public that a public hearing would take place on February 22, 2023 at the Economic and Community Development Commission. A twenty-two day notice was given for the public hearings. It also informed the public that they could comment on the plan.



Public Services Partners

5. Summary of public comments

This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.

6. Summary of comments or views not accepted and the reasons for not accepting them

7. Summary

The City of La Crosse continues to maintain focus on achieving the goals outlined in its Consolidated Plan. See charts above.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

PR-05 Lead & Responsible Agencies – 91.200(b)

1. Agency/entity responsible for preparing/administering the Consolidated Plan

Describe the agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
CDBG Administrator	LA CROSSE	Planning and Development Department
HOME Administrator	LA CROSSE	Planning and Development Department

Table 1 – Responsible Agencies

Narrative (optional)

The City of La Crosse was the lead agency that prepared this Action Plan.

Consolidated Plan Public Contact Information

For questions or comments about the Annual Action Plan, please contact Diane McGinnis Casey, Community Development Administrator, mcginniscaseyd@cityoflacrosse.org or 608-789-7362.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

AP-10 Consultation – 91.100, 91.200(b), 91.215(I)

1. Introduction

On February 1, 2023, the city noticed in the newspaper the Amended Action Plan with public comment period of February 1, 2023 through March 6, 2023. The legal ad also notified the public that a public hearing would take place on February 22, 2023 at the Economic and Community Development Commission. A twenty two day notice was given for the public hearing.

On December 20, 2021, the City noticed in the newspaper the availability of the City's annual action plan for comment until January 21, 2022. The legal ad also notified the public that a public hearing would take place on January 11, 2022 at the Community Development Committee. A twenty day notice was given for the public hearings. It also informed the public that they could comment on the plan. The public was given 32 days to comment on the Action Plan.

Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(I))

The City of La Crosse works with a variety of agencies to coordinate public and assisted housing providers, and others. The City serves as a member of the La Crosse Collaborative to End Homelessness which seeks to coordinate these efforts.

Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.

The City coordinates with the Continuum of Care through its participation in the Coulee Collaborative to End Homelessness.

Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS

N/A, the City does not receive ESG funds.

2. Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdiction's consultations with housing, social service agencies and other entities

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Table 2 – Agencies, groups, organizations who participated

1	Agency/Group/Organization	COULEECAP INC
	Agency/Group/Organization Type	Services-homeless Service-Fair Housing
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Agency attended a public hearing and commented how CDBG funds were instrumental in addressing homelessness in the City of La Crosse. Agency has been instrumental in encourage the City to consider allocating funds for affordable rental housing.
2	Agency/Group/Organization	Catholic Charities
	Agency/Group/Organization Type	Services - Housing Services-homeless
	What section of the Plan was addressed by Consultation?	Homeless Needs - Chronically homeless
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The City of La Crosse frequently partnered with Catholic Charities and consulted with them on homeless needs in the community, during the pandemic.
3	Agency/Group/Organization	INDEPENDENT LIVING RESOURCES
	Agency/Group/Organization Type	Housing Services - Housing Services-homeless

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

	What section of the Plan was addressed by Consultation?	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	City of La Crosse staff met with Independent Living Resources to discuss closer coordination with police for homeless outreach and also discuss community needs.
4	Agency/Group/Organization	La Crosse County
	Agency/Group/Organization Type	Other government - County
	What section of the Plan was addressed by Consultation?	Anti-poverty Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The City of La Crosse staff met with the La Crosse Area Family Collaborative to discuss homeless prevention, public housing, and how to help low-income families in La Crosse.
5	Agency/Group/Organization	La Crosse Public Housing Authority
	Agency/Group/Organization Type	PHA
	What section of the Plan was addressed by Consultation?	Public Housing Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Staff met with the Executive Director of La Crosse Public Housing Authority and also spoke with residents living in public housing.

Identify any Agency Types not consulted and provide rationale for not consulting

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Other local/regional/state/federal planning efforts considered when preparing the Plan

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	Couleecap	Our goals coincide with addressing homelessness and creating more affordable housing.

Table 3 – Other local / regional / federal planning efforts

Narrative (optional)

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

AP-12 Participation – 91.105, 91.200(c)

- 1. Summary of citizen participation process/Efforts made to broaden citizen participation
Summarize citizen participation process and how it impacted goal-setting**

The City of La Crosse used an intensive Citizen Participation process to identify its goals for its Consolidated Plan. Citizens overwhelmingly wanted to see the city to continue its efforts to stabilize neighborhoods through investment in housing- especially affordable housing. The public participation process also had active participation from homeless advocates and social workers. They both noted the need for affordable rental housing and code enforcement. Supporting child care also emerged as a priority.

Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (if applicable)
1	Public Hearing	Non-targeted/broad community	No public comments were received			
2	Public Hearing	Non-targeted/broad community	On February 3, 2022 a second public hearing was available at the Finance and Personnel Meeting. No comments were received on the Action Plan.	No comments were received on the Action Plan.	All comments were accepted.	

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Table 4 – Citizen Participation Outreach

Annual Action Plan
2022

11

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Expected Resources

AP-15 Expected Resources – 91.220(c)(1,2)

Introduction

The City anticipates a balance of \$400,000 in revolving loan for its housing rehabilitation loan program. The demands for the CDBG program were greater than what was available. The Community Development Committee prioritized projects based on need.

Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	859,504	430,000	200,000	1,489,504	2,600,000	The City of La Crosse shall set aside 20% of its receipted program income funds for Administration and Planning and then receipt the balance of funds to the respective revolving loans.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
HOME	public - federal	Acquisition Homebuyer assistance Homeowner rehab Multifamily rental new construction Multifamily rental rehab New construction for ownership TBRA	339,663	300,000	0	639,663	0	The City of La Crosse will expend the Program Income as it is received on its Replacement Housing Program.

Table 5 - Expected Resources – Priority Table

Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

The City of La Crosse anticipated leveraging CDBG/HOME funds with approximately \$8.3 million on local funds, private donors, Continuum of Care Funding, city funding, loans and state resources. The City will continue its history of matching nearly \$6.76 for every \$1 of CDBG investment. One advantage for the City of La Crosse looking at the next five years is the energy and commitment to affordable housing and neighborhood revitalization from all public agencies (county, city, council and boards), the private sector, and non-profit organizations. The City has committed \$1.7 million in TIF funds towards neighborhoods and affordable housing and \$1.2 million was committed in County Grant Funding towards the revitalization of neighborhoods. In addition, the City of La Crosse has also received a grant from the State of Wisconsin for

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Lead Abatement. HOME Match requirements will be satisfied through donated time and labor from our technical college partner who builds homes. In 2021, HOME match exceeded \$90,000 of donated labor hours. Additionally, the City's strategy of leverage CDBG/HOME funds with housing tax credits has been very successful.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

The City of La Crosse is looking at under-utilized land and considering options for new affordable housing development.

Discussion

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Annual Goals and Objectives

AP-20 Annual Goals and Objectives

Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Repair aging housing infrastructure	2020	2024	Affordable Housing	City-Wide Area Northside Neighborhood Revitalization Strategy Area Southside Neighborhood Revitalization Strategy Area	Improve housing quality	CDBG: \$305,969	Homeowner Housing Rehabilitated: 15 Household Housing Unit
2	Replace or rehab dilapidated housing structures	2020	2025	Affordable Housing	City-Wide Area Northside Neighborhood Revitalization Strategy Area Southside Neighborhood Revitalization Strategy Area	Improve housing quality	CDBG: \$42,331 HOME: \$575,697	Homeowner Housing Added: 2 Household Housing Unit

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
3	Increase affordable housing	2020	2025	Affordable Housing Homeless	City-Wide Area Northside Neighborhood Revitalization Strategy Area Southside Neighborhood Revitalization Strategy Area	Affordable Rental Housing (In-fill or rehab)	CDBG: \$610,476	Rental units constructed: 40 Household Housing Unit
4	Increase economic opportunities	2020	2025	Non-Housing Community Development	City-Wide Area	Economic Development: Food Access and Child Care	CDBG: \$100,000	Businesses assisted: 62 Businesses Assisted
5	Prevent and end homelessness	2020	2025	Homeless	City-Wide Area	Poverty Alleviation	CDBG: \$88,000	Tenant-based rental assistance / Rapid Rehousing: 75 Households Assisted Homeless Person Overnight Shelter: 100 Persons Assisted Overnight/Emergency Shelter/Transitional Housing Beds added: 330 Beds
6	Alleviate poverty and increase self-reliance.	2020	2025	Non-Housing Community Development	City-Wide Area	Poverty Alleviation	CDBG: \$102,000	Public service activities for Low/Moderate Income Housing Benefit: 1600 Households Assisted

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
7	Administer CDBG/HOME Program	2015	2020	Administration	City-Wide Area	Housing and Neighborhood Plans	CDBG: \$240,728 HOME: \$63,966	Other: 1 Other

Table 6 – Goals Summary

Goal Descriptions

1	Goal Name	Repair aging housing infrastructure
	Goal Description	These funds will be used to fund the City's Housing Rehabilitation Loan Program. In addition, the City will leverage these funds to bring up to 8 units of housing in lead-safe home compliance. It is expected that about 30% of the Housing Rehabilitation Loans will be for homes in a NRSA.
2	Goal Name	Replace or rehab dilapidated housing structures
	Goal Description	Increase the number of quality and affordable owner-occupied homes in target neighborhoods. This will be accomplished through single-family owner-occupied development by Couleecap and the City of La Crosse.
3	Goal Name	Increase affordable housing
	Goal Description	Build mixed-income, affordable, multi-family housing, with set-aside units for homeless individuals
4	Goal Name	Increase economic opportunities
	Goal Description	In addition to the CDBG Entitlement indicated below, the City will also undertake activities related to supporting Women and Minority-Owned Business previously described in its 2020 Action Plan. The activities will principally benefit low-and-moderate income families.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

5	Goal Name	Prevent and end homelessness
	Goal Description	
6	Goal Name	Alleviate poverty and increase self-reliance.
	Goal Description	
7	Goal Name	Administer CDBG/HOME Program
	Goal Description	

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

Projects

AP-35 Projects – 91.220(d)

Introduction

The projects listed below are aimed at achieving the City's Consolidated Plan goals

Projects

#	Project Name
1	Housing Rehabilitation
2	Replacement Housing
3	Affordable Multi-Family Housing
4	Micro-Entrepreneurship Assistance
5	Homeless Assistance
6	Poverty Alleviation
7	Administration and Planning
8	2022 La Crosse CHDO

Table 7 - Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

Allocation priorities were based on priorities identified in the Consolidate Plan. A lack of resources and high needs of the homeless population are obstacles to addressing underserved needs.

SUBSTANTIAL AMENDMENT – PROGRAM YEAR 2022

AP-38 Project Summary **Project Summary Information**

Annual Action Plan
2022

21

1	Project Name	Housing Rehabilitation
	Target Area	City-Wide Area Northside Neighborhood Revitalization Strategy Area Southside Neighborhood Revitalization Strategy Area
	Goals Supported	Repair aging housing infrastructure
	Needs Addressed	Affordable Rental Housing (In-fill or rehab)
	Funding	CDBG: \$305,969
	Description	15 units of homeowner housing rehabbed to meet housing quality standards (HQS).8 units of housing will be improved to pass lead safety standards.
	Target Date	3/31/2023
	Estimate the number and type of families that will benefit from the proposed activities	15 low-moderate income households will benefit for critical rehabilitation in their homes.
	Location Description	Citywide
	Planned Activities	Housing Rehabilitation
2	Project Name	Replacement Housing
	Target Area	Northside Neighborhood Revitalization Strategy Area Southside Neighborhood Revitalization Strategy Area
	Goals Supported	Replace or rehab dilapidated housing structures
	Needs Addressed	Improve housing quality
	Funding	CDBG: \$42,331 HOME: \$524,747
	Description	Two dilapidated homes will be acquired, demolished, and replaced with new affordable housing. Two will be built by the City of La Crosse through partnership with Western Technical College. A third project will begin in partnership with Central High School, but these projects are completed over a two year program.
	Target Date	3/31/2023
	Estimate the number and type of families that will benefit from the proposed activities	2 Low-Moderate income households

	Location Description	The city will target properties in the NRSA.
	Planned Activities	
3	Project Name	Affordable Multi-Family Housing
	Target Area	Northside Neighborhood Revitalization Strategy Area Southside Neighborhood Revitalization Strategy Area
	Goals Supported	Increase affordable housing
	Needs Addressed	Affordable Rental Housing (In-fill or rehab)
	Funding	CDBG: \$610,476
	Description	City is setting aside \$410,476 for a multi family project. In PF21 properties were acquired and demolished. The City is working with a developer to finalize planning and underwriting for an affordable housing project.
	Target Date	3/31/2023
	Estimate the number and type of families that will benefit from the proposed activities	
	Location Description	
	Planned Activities	
4	Project Name	Micro-Entrepreneurship Assistance
	Target Area	City-Wide Area
	Goals Supported	Increase economic opportunities
	Needs Addressed	Economic Development: Food Access and Child Care
	Funding	CDBG: \$100,000
	Description	Funds to operate programs at Wisconsin Women's Business Initiative and Couleecap to provide technical assistance to businesses that are majority LMI micro-enterprises or have 51% or more of employees that are LMI.
	Target Date	3/31/2023
	Estimate the number and type of families that will benefit from the proposed activities	This project will assist 50 business with technical assistance and start up business loans.

	Location Description	
	Planned Activities	
5	Project Name	Homeless Assistance
	Target Area	City-Wide Area
	Goals Supported	Prevent and end homelessness
	Needs Addressed	Poverty Alleviation
	Funding	CDBG: \$88,000
	Description	Grants provided to homeless agencies to operate programs that provide emergency shelter, homelessness prevention, and homeless services.
	Target Date	3/31/2023
	Estimate the number and type of families that will benefit from the proposed activities	
	Location Description	
	Planned Activities	
6	Project Name	Poverty Alleviation
	Target Area	City-Wide Area
	Goals Supported	Alleviate poverty and increase self-reliance.
	Needs Addressed	Poverty Alleviation
	Funding	CDBG: \$102,000
	Description	This project will fund the Family Advocacy Program (Family and Children's Center), the La Crosse Area Family Collaborative, Marine Credit Union Increasing Homeownership Diversity with Finding HOME, the Kane Street Community Garden, La Crosse County Hintgen-Huber Collaborative.
	Target Date	3/31/2023
	Estimate the number and type of families that will benefit from the proposed activities	
	Location Description	

	Planned Activities	
7	Project Name	Administration and Planning
	Target Area	City-Wide Area
	Goals Supported	Administer CDBG/HOME Program
	Needs Addressed	Improve housing quality Affordable Rental Housing (In-fill or rehab) Economic Development: Food Access and Child Care Poverty Alleviation Housing and Neighborhood Plans
	Funding	CDBG: \$240,728 HOME: \$63,966
	Description	- Develop a regional affordable housing plan and housing market analysis and the Comprehensive Plan - administer the CDBG and HOME programs
	Target Date	3/31/2023
	Estimate the number and type of families that will benefit from the proposed activities	
	Location Description	
	Planned Activities	
8	Project Name	2022 La Crosse CHDO
	Target Area	City-Wide Area
	Goals Supported	Replace or rehab dilapidated housing structures Increase affordable housing
	Needs Addressed	Improve housing quality
	Funding	HOME: \$50,950
	Description	HOME CHDO project
	Target Date	3/31/2023
	Estimate the number and type of families that will benefit from the proposed activities	One or two households will benefit from activity
	Location Description	Within the City of La Crosse

Planned Activities	
---------------------------	--

AP-50 Geographic Distribution – 91.220(f)

Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed

The City of La Crosse will concentrate its effort in Census Tract 4, 9, and 2. These areas are known locally as Washburn, Powell Poage Hamilton, and Lower Northside Neighborhoods. These areas are of the greatest priority for the City.

Geographic Distribution

Target Area	Percentage of Funds
City-Wide Area	41
Northside Neighborhood Revitalization Strategy Area	41
Southside Neighborhood Revitalization Strategy Area	18

Table 8 - Geographic Distribution

Rationale for the priorities for allocating investments geographically

Research demonstrates that concentrating resources in smaller areas creates the largest impact on home values and neighborhoods. Additionally, the NRSA areas represent the City's areas of greatest need and potential to impact low-moderate income households.

Discussion

Affordable Housing

AP-55 Affordable Housing – 91.220(g)

Introduction

The goals are also listed under the goals section of the Consolidated Plan.

One Year Goals for the Number of Households to be Supported	
Homeless	515
Non-Homeless	32
Special-Needs	0
Total	547

Table 9 - One Year Goals for Affordable Housing by Support Requirement

One Year Goals for the Number of Households Supported Through	
Rental Assistance	75
The Production of New Units	62
Rehab of Existing Units	15
Acquisition of Existing Units	0
Total	115

Table 10 - One Year Goals for Affordable Housing by Support Type

Discussion

Assistance will be provided to households through the construction of new affordable housing, housing rehabilitation programs, and code enforcement.

AP-60 Public Housing – 91.220(h)

Introduction

The City of La Crosse continues to improve its level of collaboration with the public housing authority but does not directly fund their projects. The City will collaborate with the Housing Authority on advancing the analysis of impediments to fair housing, working with landlords, and addressing homelessness.

Actions planned during the next year to address the needs to public housing

The City of La Crosse Public Housing Authority has obtained 40 additional Section 8 Vouchers to help prevent families from becoming homeless during Covid-19. The City of La Crosse supported and advocated for this effort.

Actions to encourage public housing residents to become more involved in management and participate in homeownership

No action being undertaken.

If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance

N/A

Discussion

The City of La Crosse's relationship with the City of La Crosse Housing Authority has significantly improved.

AP-65 Homeless and Other Special Needs Activities – 91.220(i)

Introduction

The City of La Crosse, in addition to the actions listed below, coordinates with the Continuum of Care which is led by the La Crosse Collaborative to End Homelessness and CouleeCap.

- Independent Living Resources (ILR) will operate an Outreach Worker Program. ILR will provide assistance to homeless persons or persons at risk of being homeless.
- Additionally, studies show there is a strong correlation between homelessness and domestic violence victims. The City of La Crosse's will help New Horizons shelter provided emergency shelter to homeless women.
- The YWCA Ruth House will help women transition into a drug-free independent lifestyle by providing them transitional housing services.
- Couleecap will operate a Permanent Housing Program which will provide case management and housing for homeless persons.
- Funding is being provided to the Warming Center to provide emergency services during the winter.
- In 2021 the REACH center opened. This center includes multiple service providers in one location to better serve our homeless population.

Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The City of La Crosse is funding Independent Living Resources to provide homeless outreach services. It is anticipated that they will serve 110 people.

Addressing the emergency shelter and transitional housing needs of homeless persons

The City is funding Catholic Charities Warming Center and New Horizons Domestic Violence Shelter. It is anticipated that they will serve 330 people.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were

recently homeless from becoming homeless again

The City of La Crosse will support the Couleecap program to transition individuals to permanent supportive housing (110 people served).

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

The City of La Crosse will support the ILR to operate an outreach worker program that anticipates serving 120 individuals to undertake these activities.

Discussion

AP-75 Barriers to affordable housing – 91.220(j)

Introduction:

The City of La Crosse will continue its strong efforts to support affordable housing opportunities in the region, continue to de-concentrate pockets of poverty and create mixed-income neighborhoods, promote home ownership for minorities, collaborate with the Housing Authority, and continue to promote housing for all abilities. The onset of Covid-19 made it difficult to achieve its goals but it is making significant progress through promoting minority homeownership and promoting fair housing education.

Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment

- Develop a regional affordable housing plan to examine these issues in the ex-urban areas of La Crosse such as Onalaska, Holmen, Town of Shelby
- Examine ways to increase the number of rental housing vouchers available in the region
- Work with landlords to participate in the Housing Choice Voucher program
- Examine ways to reinstate the rental registration and rental inspection program
- Deliver annual fair housing education
- Use CDBG funds to support the construction of affordable housing
- Review family definitions and review permitted locations of housing serving people recovering from alcohol or substance abuse
- Examine a local code amendment that would provide an alternative to a variance application for people requesting modifications related to a disability

Discussion:

The City recently completed its analysis of impediments to fair housing. It is located at <https://www.cityoflacrosse.org/your-government/departments/community-development-and-housing/fair-housing/fair-housing-study>. At this time, the City is committing \$25,000 towards encouraging minority homeownership (as indicated in its Fair Housing Analysis) and \$410,476 towards creating affordable multi-family housing. These funds will help leverage a similar program utilizing TIF financing to assist developers in developing both affordable units and units targeting our homeless

population. In addition, the City of La Crosse anticipates utilizing some of the ARPA funds the city received toward affordable housing projects.

AP-85 Other Actions – 91.220(k)

Introduction:

There are a variety of other initiatives that the City is undertaking as part of its Action Plan.

Actions planned to address obstacles to meeting underserved needs

Cuts to HUD funding has meant that it's more difficult to address underserved needs. The City is addressing this issue by prioritizing its funds towards only projects that meet a high priority in its Consolidated Plan. It also evaluates applicants for funding based on whether applicants are using CDBG funds to leverage additional funds. Finally, the City this year is starting a revolving loan fund dedicated to meeting one of the highest underserved needs- affordable housing for renters. Currently, there is legislation being written to provide non-HUD capital towards this fund, which will leverage HUD funds.

Actions planned to foster and maintain affordable housing

As noted in previous sections, the City is bolstering its efforts to promote affordable housing by creating a capital funds, currently anticipated to be capitalized at \$1.7 million in addition to the \$410,476 outlined in this plan towards affordable multi-family housing. The City also funds its Housing Rehabilitation Loan program and Replacement Housing program also aimed at fostering and maintaining affordable housing.

Actions planned to reduce lead-based paint hazards

The City of La Crosse applied for and received a grant from the State of Wisconsin to reduce lead-based paint hazards in homes and completely abate lead hazards. This is also a key component of the City's Housing Rehabilitation Loan Program.

Actions planned to reduce the number of poverty-level families

The City of La Crosse and its partners support a diverse range of programs and services funded through multiple sources to help low income families.

1. Assist families and individuals access resources that may help them move into self-sufficiency (stable and affordable housing, neighborhood-based sources, after-school programs, job training) through a partnership with La Crosse County La Crosse Area Family Collaborative;
2. Prevent poverty through assistance to City of La Crosse's youth, building communities, and supporting affordable housing initiatives;
3. Alleviate poverty by improving family and individual economic opportunities that lead to a sustainable living wage.

Actions planned to develop institutional structure

- The City of La Crosse will continue to support a strategic planning process to explore the viability of a La Crosse Neighborhood Development Corporation.
- The City of La Crosse will convene its affordable housing partners both formally and informally to enhance coordination and carry out joint projects.
- The City of La Crosse is also providing technical support to a non-profit organization, La Crosse Promise, to leverage private funds to re-develop its priority neighborhoods.
- The City plans to update its Neighborhood Revitalization Strategy Area to HUD in the near future.

Actions planned to enhance coordination between public and private housing and social service agencies

The City of La Crosse will continue to improve its efforts to bring together multiple public and private housing and social service agencies for improved collaboration, to assist with strategy and policy-making, and leverage joint resources.

Discussion:

Program Specific Requirements

AP-90 Program Specific Requirements – 91.220(I)(1,2,4)

Introduction:

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

Community Development Block Grant Program (CDBG)

Reference 24 CFR 91.220(I)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

- | | |
|--|----------|
| 1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed | 0 |
| 2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan. | 0 |
| 3. The amount of surplus funds from urban renewal settlements | 0 |
| 4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan | 0 |
| 5. The amount of income from float-funded activities | 0 |
| Total Program Income: | 0 |

Other CDBG Requirements

- | | |
|---|--------|
| 1. The amount of urgent need activities | 0 |
| 2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan. | 75.00% |

HOME Investment Partnership Program (HOME)

Reference 24 CFR 91.220(I)(2)

1. A description of other forms of investment being used beyond those identified in Section 92.205 is

as follows:

None that have not already been described previously.

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in 92.254, is as follows:

The La Crosse HOME Program/CHDO Loan Payment Repayment Agreement signed at closing will indicate which provision will apply to each property. The Agreement enforces the resale or recapture obligation through a lien, deed restriction, or covenant running with the land. The City's homes will use the recapture provision in the case that there is a second mortgage on the property. The CHDO homes will always use the recapture provision. In most cases, recapture will be used by the City but the resale provision will be used by the City of La Crosse in the case that there was no direct subsidy to the homebuyer.

The Declaration of Restrictive Covenants (Deed Restrictions) requires that units utilizing HOME funds meet the affordability requirements of the HOME program at 24 CFR 92.254 for homeowner housing. To ensure affordability, recapture or resale restrictions will be triggered by any transfer of title, either voluntary or involuntary, during the established HOME period of affordability. A copy of the recorded deed restrictions will be on file with the City.

1. In the event that the property is sold during the affordability period, the following recapture conditions will be met:
 - a. Under the recapture option, the period of affordability is based upon the direct HOME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit.
 - b. The CHDO and/or PJ will recapture the full amount of the HOME direct subsidy out of the net proceeds of the sale of the property. The net proceeds mean the sale price minus non-HOME loan repayment and closing costs.
 - c. If there are no net proceeds or insufficient proceeds to recapture the full amount of HOME investment due, the amount subject to recapture must be limited to what is available from net proceeds.
 - d. If the net proceeds are not sufficient to recapture the full amount of HOME investment plus enable the homeowner to recover the amount of the homeowner's down payment and any capital improvements made to the property during the period of occupancy, the homeowner's investment will be repaid in full before any HOME funds are recaptured.
 - e. If no direct subsidy is provided to the homebuyer to allow for the purchase of the unit, then

the resale provisions must be imposed.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR 92.254(a)(4) are as follows:

A resale provision will be used for projects that involve HOME assistance paid to the CHDO/PJ, but with no additional assistance to the buyer, meaning no direct subsidy was provided to the homebuyer that enabled the homebuyer to purchase the unit. This is because there are no funds that are subject to recapture.

- a. The affordability period will be based on the total amount of HOME funds used to assist the property and the buyer. The homebuyer must sell to another Low-Income homebuyer who earn less than 80% of the CMI, with the new home being affordable to the new buyer. The new homebuyer may not pay more than 33 percent of gross income for Principal, Interest, Taxes and Insurance (PITI).
- b. In the event that the resale provisions will be used, the CHDO/PJ must inform the homebuyer prior to the closing of the sale of the property and incorporate the resale provisions in the written agreements with the homebuyer.

In certain circumstances, the CITY may permit a new homebuyer to assume the City/CHDO loan and affordability restrictions, i.e., the CITY will not require the full repayment of the initial HOME subsidy. The HOME subsidy would be transferred to the new buyer and the remaining affordability period will remain with the property unless additional HOME assistance is provided to the new buyer.

The homebuyer for whom a resale restriction is enforced will be allowed a fair return when selling to another income eligible buyer. The seller (i.e., the original buyer) will be allowed to retain their original investment in the property (i.e., down payment) plus the cost of any improvements made to the property.

During the period of affordability, the last recorded purchase price will generally be the minimum restricted price at the time of resale. Neither the minimum nor the maximum restricted resale price is guaranteed to the owner. If the restricted price exceeds the actual market value, the owner may have to accept the lower price. HOME-assisted units must be maintained in good condition receive the maximum restricted price.

Foreclosure and Resale – Foreclosure also triggers Resale provisions. Under a foreclosure scenario the CHDO/PJ must ensure the house is sold to another low-income buyer, as defined by HUD, at an affordable price. The CITY has a right of first refusal under a foreclosure scenario.

4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR 92.206(b), are as follows:

N/A

N/A



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation

23-0161

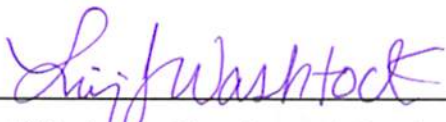
CERTIFIED COPY OF RESOLUTION ADOPTED AT A
REGULAR MEETING OF THE ECONOMIC AND COMMUNITY DEVELOPMENT
COMMISSION
OF THE CITY OF LA CROSSE, WISCONSIN

STATE OF WISCONSIN)
) ss.
County of La Crosse, City of La Crosse)

I HEREBY CERTIFY that I am the duly appointed, qualified secretary of the Economic and Community Development Commission of the City of La Crosse and State of Wisconsin; that the following is a true and correct copy of a Resolution adopted at the regular meeting of the Economic and Community Development Commission of the City of La Crosse, State of Wisconsin, held on the twenty second day of February, 2023 at four o'clock, p.m., in the Council Chambers at La Crosse City Hall, 400 La Crosse Street, in said City; and that the same has been duly recorded in the minutes of said Commission and has never been rescinded or revoked.

BE IT RESOLVED: Resolution authorizing a Substantial Amendment of the 2022 Action Plan be RECOMMENDED TO BE ADOPTED to the Finance & Personnel Committee.

IN WITNESS WHEREOF, I have hereunto signed my name at La Crosse, Wisconsin, this twenty second day of February 2023.



Linzi Washtock, Planning and Development Assistant
Recording Secretary, Economic and Community Development Commission
City of La Crosse, Wisconsin



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0162

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution approving American Rescue Plan Act (ARPA) Funding to Conduct a Housing Study.

WHEREAS, the City Council has identified the need for additional housing within the City of La Crosse as a priority; and

WHEREAS, the city is currently working on the Comprehensive Plan to provide a vision for the future of the city, but this plan will not provide a detailed analysis of housing needs; and

WHEREAS, according to the HUD Comprehensive Housing Affordability Strategy:

- Of the 21,185 dwelling units in the city, over half (12,250) are occupied by households making equal to or less than 80 percent of the county median income
- Over 32 percent of households within the city have a cost burden greater than 30 percent of their income and 16 percent are greater than 50 percent of their income
- The June 2022 Point in Time Count identified 243 people that were homeless in the city

WHEREAS, a housing study will analysis the demographic and economic characteristics of the city, review of existing housing stock, assessment of affordability for both for-sale properties and rental units, and a vision and recommendation of the number and types of housing the city will want to consider for the next 10+ years; and

WHEREAS, a study provides developers confidence in building housing in the city by demonstrating the needs as well as the type of housing to construct to meet the current and future demands.

NOW, THEREFORE BE IT RESOLVED by the Common Council of the City of La Crosse to allocate up to \$75,000 of the ARPA "Lost Revenue" funds to complete a comprehensive housing study.

BE IT FURTHER RESOLVED that Planning, Development and Assessment Department is authorized to effectuate this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation

23-0162

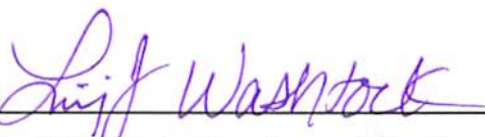
CERTIFIED COPY OF RESOLUTION ADOPTED AT A
REGULAR MEETING OF THE ECONOMIC AND COMMUNITY DEVELOPMENT
COMMISSION
OF THE CITY OF LA CROSSE, WISCONSIN

STATE OF WISCONSIN)
) ss.
County of La Crosse, City of La Crosse)

I HEREBY CERTIFY that I am the duly appointed, qualified secretary of the Economic and Community Development Commission of the City of La Crosse and State of Wisconsin; that the following is a true and correct copy of a Resolution adopted at the regular meeting of the Economic and Community Development Commission of the City of La Crosse, State of Wisconsin, held on the twenty second day of February, 2023 at four o'clock, p.m., in the Council Chambers at La Crosse City Hall, 400 La Crosse Street, in said City; and that the same has been duly recorded in the minutes of said Commission and has never been rescinded or revoked.

BE IT RESOLVED: Resolution approving the American Rescue Plan Act (ARPA) funding to conduct a Housing Study be RECOMMENDED TO BE ADOPTED to the Finance & Personnel Committee.

IN WITNESS WHEREOF, I have hereunto signed my name at La Crosse, Wisconsin, this twenty second day of February 2023.



Linzi Washtock, Planning and Development Assistant
Recording Secretary, Economic and Community Development Commission
City of La Crosse, Wisconsin



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0176

Agenda Date: 3/2/2023

Version: 3

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution appropriating ARPA funds to pay for the remediation required on detached garages which violate the current floodplain standards per FEMA.

RESOLUTION

WHEREAS, Federal Emergency Management Agency (FEMA) manages the National Flood Insurance Program (NFIP) that provides flood insurance to the public; and

WHEREAS, Resolution 22-0643 was approved for \$24,000 for the remediation of sixteen garages, an additional ten properties have come forward; and.

WHEREAS, Resolution 22-1352 was approved for \$30,000 for the remediation of the additional ten properties, four more owners opted for flood vents as remediation in lieu of Deed Restrictions raising the number of vents, installs, and Elevation Certificates required; and

WHEREAS, there are currently in excess of thirty properties on the north side of La Crosse who have garages that are below the base flood elevation, which violates the current floodplain standards; and

WHEREAS, in order for City residents to continue to qualify for subsidized flood insurance per the NFIP, these violations are required be mitigated either by placing flood vents in the existing garages or by elevating the finished floor; and

WHEREAS, FEMA requires verification of compliance in the form of an updated elevation certificate.

NOW, THEREFORE, BE IT RESOLVED BY THE Common Council of the City of La Crosse that it hereby appropriates an additional sum of up to \$10,000.00 from the ARPA Lost Revenue Allocation fund to pay for the purchase and installation of flood vents and updated elevation certificates.

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse that the Fire Department – Division of Community Risk Management and the City Finance Department are hereby authorized to take any and all steps necessary to effectuate this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
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LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0191

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution allocating funds for Airport Concession Disadvantaged Business Enterprise program update.

RESOLUTION

WHEREAS, Crawford, Murphy, & Tilly, Inc. was hired to perform work associated with reviewing and updating the Airport Concession Disadvantaged Business Enterprise ("ACDBE") program by Resolution 22-1368; and

WHEREAS, the current ACDBE program requires a review and update to meet current Federal Aviation Administration standards; and

WHEREAS, Crawford, Murphy, & Tilly, Inc. will review and update the ACDBE program, to include all language development, required consultations, and industry benchmarking.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby allocate \$8,500 for ACDBE program services.

BE IT FURTHER RESOLVED that the funds allocated herein be expended from Airport Operating Funds.

BE IT FURTHER RESOLVED that the Director of the La Crosse Regional Airport and the Director of Finance are hereby authorized and directed to take all necessary steps to implement this resolution.



CITY OF LA CROSSE

400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org

LEGISLATION STAFF REPORT FOR COUNCIL

File ID

Caption

23-0191

Resolution allocating funds for Airport Concession Disadvantaged Business Enterprise program.

Staff/Department Responsible for Legislation

Airport

Requestor of Legislation

Ian Turner

Location, if applicable

La Crosse Regional Airport

Summary/Purpose

This resolution allocates funding for work associated with reviewing and updating the Airport Concession Disadvantaged Business Enterprise ("ACDBE") program.

Background

The current ACDBE program requires a review and update to meet current Federal Aviation Administration standards. The La Crosse Regional Airport hired Crawford, Murphy, & Tilly, Inc. to assist in updating the ACDBE program by Resolution 22-1368. This fee includes required revisions and updates to the ACDBE program, including language development, industry benchmarking, and consultations.

Fiscal Impact

The fee for this work is not to exceed \$8,180, with an additional \$320 in contingency, for a total cost of \$8,500.

Staff Recommendation

Airport staff recommends approving this item.

February 20, 2023

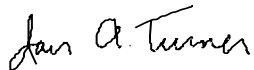
Honorable Mayor Mitch Reynolds
Common Council Members

Ladies and Gentleman:

The Aviation Board, at its last regular meeting, approved by unanimous vote item 23-0191 – *Resolution allocating funds for Airport Concession Disadvantages business Enterprise program update.*

Therefore, it is respectfully requested that the Common Council approve the same.

Respectfully Submitted,



Ian Turner
Airport Director



Aviation Board

OFFICERS • Chairman: Andrea Richmond, Vice Chairman: Neil Duresky
MEMBERS • Jeff Wrobel, Drake Hokanson, William Blank, Ryan Seib
EX OFICIO • Tonya Townsell, David Winiecki



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0192

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving a professional services agreement with ABS Aviation Consultancy, Inc.

RESOLUTION

WHEREAS, the City of La Crosse operates an airport known as the La Crosse Regional Airport; and

WHEREAS, the La Crosse Regional Airport is a self-supporting enterprise fund of the City; and

WHEREAS, in order to best achieve long-term goals, the La Crosse Regional Airport issued a request for proposals for professional services in support of those goals; and

WHEREAS, the request for proposals resulted in no submittals for airport appraisal services.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the agreement for professional services with ABS Aviation Consultancy, Inc., dba Airport Business Solutions.

BE IT FURTHER RESOLVED that the Director of the La Crosse Regional Airport is hereby authorized to sign said agreement.

BE IT FURTHER RESOLVED that the Director of the La Crosse Regional Airport is authorized to take the necessary steps to implement this resolution.

PROFESSIONAL SERVICES AGREEMENT
ON-CALL PROFESSIONAL SERVICES
BETWEEN THE CITY OF LA CROSSE – LA CROSSE REGIONAL AIRPORT
AND AIRPORT BUSINESS SOLUTIONS

This professional services agreement is made and entered into this 20th day of February, 2023, by and between, the City of La Crosse, a Wisconsin municipal corporation (“City”), acting by and through the La Crosse Regional Airport (“Airport”), with offices at 400 La Crosse Street, La Crosse, WI, 54601, and ABS Aviation Consultancy, Inc. dba Airport Business Solutions (“Contractor”), a Florida corporation, with offices located at 90 Fort Wade Road, Suite 100, Ponte Vedra, Florida 32081-5114.

WHEREAS, the Airport issued a request for proposals for on-call professional consulting services through RFP AIR-2022-01; and,

WHEREAS, multiple proposals were received and a selection committee evaluated all the proposals; and,

WHEREAS, no proposals included services for appraisals at the airport; and,

WHEREAS, Contractor has been identified by Airport staff as a qualified and competent provider of said services.

NOW, THEREFORE, in consideration of the mutual promises, agreements, and conditions contained herein, the Airport and Contractor hereby agree to the scope of work outlined within this Agreement, and the City’s Standard Terms and Conditions for Service Contracts as amended herein.

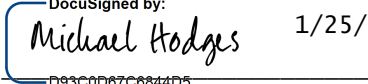
1. **TERMS AND CONDITIONS** – The City’s Standard Terms and Conditions (Service Contracts) is agreed to by both Contractor and City. This is included as Exhibit A. The following sections are amended as follows:
 - a. Section 13.b.ii.2. Automobile Liability. - One million dollars (\$1,000,000) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.
 - b. Section 13.b.ii.3. Umbrella Liability. – Omitted.
2. **TERM** – The term of this agreement shall be for a period of five years from March 1, 2023, (“Effective Date”) until December 31, 2027 (“Termination Date”). There shall be no extension of this agreement beyond the Termination Date, except that any work Consultant and Airport agree to prior to the Termination Date may extend beyond the term of this agreement and shall be faithfully and expeditiously completed.
3. **SCOPE OF WORK** – Consultant has been selected for the nonexclusive performance of the following scope of work items:
 - a. Airport Appraisal Services
4. **SCHEDULE AND PERFORMANCE** – Airport shall determine, in its sole opinion, the need to perform any item contained within the identified scope of work. Once the Airport determines that a need exists, Airport and Consultant shall agree to specific deliverables and a schedule for performance of said deliverables. Airport and Consultant shall enter into an engagement letter for said deliverables. Such engagement letter shall become part of, but subordinate to, this Agreement. Contractor shall negotiate any engagement letter with the Airport Director, who is authorized to obligate Airport and sign said engagement letter.

5. FEES – This agreement does not guarantee any fee to Contractor. Any fee due to Contractor shall be outlined and agreed to in the engagement letter, as identified in Section 4, above, for the specific deliverable and schedule outlined therein.

IN WITNESS WHEREOF, Contractor and City hereto have executed this Agreement, as of the Effective Date outlined first written above.

ABS Aviation Consultancy, Inc:

City:

By:  1/25/2023
Michael A. Hodges
President/CEO

By: _____
Ian Turner
Director of the La Crosse Regional Airport

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this document titled "Standard Terms and Conditions (Service Contracts)" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.

2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be in a manner at least equal to the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services

3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and, if applicable, shall be authorized or permitted under all applicable state and local laws and any other applicable laws or regulations to perform the services.

4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a timely and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement. The scope of services to be performed shall include, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement. The scope of service may not be fully definable during initial phases, and as the project progresses, facts discovered may indicate that the scope must be redefined. If mutually agreed to in advance in writing, Contracting Party shall make changes, furnish necessary materials, and perform the work that La Crosse may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the total cost of the project. Under no circumstances shall Contracting Party make any changes, either as additions or deductions, without the written consent of La Crosse, and La Crosse shall not pay any extra charges made by Contracting Party that have not been agreed upon in advance and documented in writing.

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingences set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices, unless lump sum, must be itemized to identify labor costs and the Contracting Party's direct expenses, including subcontractor and supplier costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work

completed as a percentage of the work to be performed. If payment is by lump sum, then only the percent complete will be invoiced. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement. Without prejudice to any other right or remedy it may have, La Crosse reserves the right to setoff at any time any amount owing to it by Contracting Party against any amount payable by La Crosse to Contracting Party.

7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. **TERMINATION FOR CAUSE.** If, through its own fault, intentional misconduct, or the fault or intentional misconduct of its subcontractors, agents or volunteers, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, both as determined by La Crosse in its sole discretion, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other deliverables performed by the Contracting Party under this Agreement for which compensation has been made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of the Contracting Party's intentional misconduct or negligent performance of this Agreement, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined. Use of incomplete or unfinished work is at the sole risk of La Crosse.

9. **TERMINATION FOR CONVENIENCE.** Either Party may terminate this Agreement for convenience at any time and for any reason by giving sixty (60) days written notice to the other Party of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually performed and accepted by La Crosse bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of other persons or property. Except as otherwise provided in this

Agreement, Contracting Party disclaims any authority or responsibility for general job site safety, or the safety of third-parties or their property.

11. DELAYS. If performance of Contracting Party's obligations under this Agreement is delayed through no fault of Contracting Party, Contracting Party shall be entitled to a reasonable extension of time as proposed by Contracting Party and as accepted or amended by La Crosse. If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.

12. USE OF LA CROSSE PROPERTY. Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.

13. INSURANCE. Unless otherwise specified in this Agreement, Contracting Party shall, at its sole expense, maintain in effect at all times during the Agreement, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

a. *Worker's Compensation and Employers Liability Insurance.* Contracting Party shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Contracting Party shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employer's liability of one hundred thousand dollars (\$100,000.00) per each accident, one hundred thousand dollars (\$100,000.00) per each employee and five hundred thousand dollars (\$500,000.00) total policy limit.

b. *Commercial General Liability and Automobile Liability Insurance.* Contracting Party shall provide and maintain the following commercial general liability and automobile liability insurance:

- i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:
 1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
 2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).
- ii. Contracting Party shall maintain limits no less than the following:
 1. General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
 2. ~~Automobile Liability-----Two-----million-----dollars (\$2,000,000.00) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.~~

3. ~~Umbrella Liability--Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.~~

c. *Professional Liability Insurance.* When Contracting Party renders professional services to La Crosse under the Agreement, Contracting Party shall provide and maintain two million dollars (\$2,000,000.00) of professional liability insurance. If such policy is a "claims made" policy, all renewals thereof during the life of the Agreement shall include "prior acts coverage" covering at all times all claims made with respect to Contracting Party's work performed under the Agreement. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the La Crosse.

d. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- i. La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Contracting Party; products and completed operations of Contracting Party; premises occupied or used by Contracting Party; and vehicles owned, leased, hired or borrowed by Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers' compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of La Crosse.
- ii. For any claims related to this Agreement, Contracting Party's insurance shall be primary insurance with respect to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by La Crosse, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
- iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to La Crosse, its elected and appointed officers, employees or authorized representatives or volunteers.
- iv. Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v. Coverage shall not be canceled by the insurance carrier or the Contracting Party, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to La Crosse.

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- vi. Such liability insurance shall indemnify La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Contracting Party for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
- vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
- viii. All of the insurance shall be provided on policy forms and through companies satisfactory to La Crosse, and shall have a minimum AM Best's rating of A- VIII.

e. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by La Crosse.

f. *Evidences of Insurance.* Prior to execution of the Agreement, Contracting Party shall file with La Crosse a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

g. *Sub-Contractor.* In the event that Contracting Party employ other contractors (sub-contractors) as part of this Agreement, it shall be the Contracting Party's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

h. *Amendments.* La Crosse may amend its requirements for insurance upon sixty (60) days written notice. Contracting Party shall procure updated insurance to comply with the new requirements of La Crosse if commercially available and at La Crosse's expense. Contracting Party may appeal any requirement to amend the insurance coverage to La Crosse's City Council who may, in its sole discretion, mutually agree to waive such changes.

14. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees, authorized representatives and volunteers ("La Crosse Indemnitees") from and against third party tort suits, actions, legal or administrative proceedings, claims, costs and expenses (including, without limitation, reasonable attorney and professional fees) to the extent caused by the negligent acts, errors or omissions of Contracting Party, its subcontractors or of anyone acting under its direction or control or on its behalf in the performance of this Agreement. Contracting Party's defense obligation shall not apply to professional liability claims. The aforesaid indemnity and hold harmless

agreement shall not be applicable to any liability to the extent caused by La Crosse, its elected and appointed officials, officers, employees or authorized representatives, consultants, contractors or volunteers in the performance of this Agreement. Contracting Party's obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees, authorized representatives or volunteers.

Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of La Crosse or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against La Crosse, (a) La Crosse or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law; and (b) La Crosse's obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify La Crosse in writing of any such claims, demands, liabilities, damages, costs and expenses within ten (10) days of discovery; (ii) La Crosse shall have sole control of, and the indemnified party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations; and (iii) the indemnified party shall not make any admission or disclosure or otherwise take any action prejudicial to La Crosse except as required by law.

Neither party shall be liable for indirect, special, exemplary, consequential or incidental damages, including, without limitation, any damages for lost profits, revenue or business interruption. The parties represent that, as of the effective date, neither party has any notice or knowledge of any claims, demands, liabilities, damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

15. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of either party have any personal liability arising out of this Agreement, unless an employee of the Contracting Party shall commit a criminal, fraudulent, malicious, or dishonest act which is excluded from Contracting Party's insurance coverage.

16. Intentionally omitted.

17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its

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employees. The parties shall not be considered joint agents, joint venturers, or partners.

18. GOVERNING LAW. This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

19. JURY TRIAL WAIVER. The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

20. NOTIFICATION. Parties shall:

(1) As soon as possible and in any event within a reasonable period of time after the occurrence of any event of default by either party, notify the other Party in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by defaulting party to cure or mitigate the default.

(2) Promptly notify the other Party of the commencement of any litigation or administrative proceeding that would cause any representation contained in this Agreement to be untrue.

(3) If related to the performance of services and work under this Agreement, notify the other Party, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by a Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of a Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against a Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

21. SEVERABILITY. The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

22. ASSIGNMENT, SUBLET, AND TRANSFER. A Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the other Party. This Agreement shall be binding on the heirs, successors, and permitted assigns of each party hereto. A Party shall provide not less than forty-five (45) days advance written notice of

request to assign, sublet or transfer any services provided under this Agreement. The decision to allow an assignment by Contracting Party rests solely with La Crosse, in its discretion

23. NO WAIVER. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

24. SUBCONTRACTING. None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. CONFLICTS OF INTEREST. Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse

26. NON-DISCRIMINATION. Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

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27. POLITICAL ACTIVITIES. Contracting Party employees shall not engage in any political activities within the City of La Crosse while in performance of any and all services and work under this Agreement. This does not apply to periods of time in which employee is not at work, or is billing other than La Crosse for his/ her time.

28. GOVERNMENTAL APPROVALS. Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis. .

29. ENTIRE AND SUPERSEDING AGREEMENT. This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. To the extent that any terms and conditions contained in this Agreement, all Exhibits hereto, and the other documents and agreement referenced herein conflict with these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence.

30. AMENDMENT. This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

31. IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE. Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that modification or deviation from such schedules shall occur only upon approval of La Crosse or reasons of Force Majeure. Any phase or schedule that is determined to be "time of the essence" shall be specifically identified as such within the scope of services. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days. If such delays cause additional cost, Contracting Party shall be reimbursed.

32. TIME COMPUTATION. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or

notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn. City Clerk	Copy to:	Attn. City Attorney
	City of La Crosse		City of La Crosse
	400 La Crosse Street		400 La Crosse Street
	La Crosse, WI 54601		La Crosse, WI 54601

Contracting Party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

34. Intentionally omitted.

35. ACCESS TO RECORDS. Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. La Crosse, or any of its duly authorized representatives, shall have access, at no cost to La Crosse, to such books, records, documents, papers or any records, including electronic, of Contracting Party which are pertinent to the hourly rates of pay and reimbursable costs under this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. Once deliverables are provided to La Crosse, additional copies will be provided for a fee.

36. PUBLIC RECORDS LAW. Contracting Party understands and acknowledges that La Crosse is subject to the Public Records Law of the State of Wisconsin. As such, Contracting Party agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Contracting Party agrees to assist La Crosse in complying with any public records request that La Crosse receives pertaining to this Agreement. If the requested record is not within that which is required to be produced by statute or other authority, then Contracting Party may object, and La Crosse will reject the request. Contracting Party shall seek to intervene in any subsequent public records lawsuit, writ of mandamus, or other action against La Crosse seeking to compel disclosure in order to dispute disclosure of the requested record. Contracting Party shall also cooperate and provide assistance to La Crosse, at no cost, in the defense of such lawsuit, writ or other action. If the request is upheld by a court of law, then Contracting Party will produce the records or indemnify and hold harmless La Crosse Indemnitees from any liability, including without limitation, attorney fees related to or in any way arising from Contracting Party's actions or omissions which contribute to La Crosse's inability to comply with the Public Records Law. In the event that Contracting Party decides not to retain its records for a period of seven (7) years, then it shall provide written

DS
Mh

notice to La Crosse whereupon La Crosse shall take custody of said records assuming such records are not already maintained by La Crosse. This provision shall survive the termination of this Agreement.

37. CONSTRUCTION. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

38. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

39. COMPLIANCE WITH LAW. The parties shall comply in all material respects with applicable federal, state and local laws, regulations and ordinances.

40. FORCE MAJEURE. Neither Party shall be responsible for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

41. GOOD STANDING. Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

42. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

43. EXECUTION OF AGREEMENT. Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its

approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

44. COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

45. SURVIVAL. All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination.

46. COMPLIANCE WITH LAW. Contracting Party agrees to abide by applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

47. RELIANCE. Contracting Party has the right to reasonably rely on information provided by or through La Crosse.

*Revised:
06.21.19*

DS
Mh



CITY OF LA CROSSE

400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org

LEGISLATION STAFF REPORT FOR COUNCIL

File ID

23-0192

Caption

Resolution approving a professional services agreement with ABS Aviation Consultancy, Inc.

Staff/Department Responsible for Legislation

Airport

Requestor of Legislation

Ian Turner

Location, if applicable

Summary/Purpose

This resolution approves a five year contract to provide non-exclusive appraisal services for airport land and facilities at the La Crosse Regional Airport.

Background

In the fall of 2022, the La Crosse Regional Airport issued a request for proposal for a number of services. No firm included providing appraisals for aeronautical land. In the absence of a bid, airport staff reached out to Airport Business Solutions who agreed to provide these services.

Fiscal Impact

This item does not commit any additional funding.

Staff Recommendation

It is recommended by staff to approve this item.

February 20, 2023

Honorable Mayor Mitch Reynolds
Common Council Members

Ladies and Gentleman:

The Aviation Board, at its last regular meeting, approved by unanimous vote item 23-0192 – *Resolution approving a professional services agreement with ABS Aviation Consultancy, Inc.*

Therefore, it is respectfully requested that the Common Council approve the same.

Respectfully Submitted,



Ian Turner
Airport Director



Aviation Board

OFFICERS • Chairman: Andrea Richmond, Vice Chairman: Neil Duresky
MEMBERS • Jeff Wrobel, Drake Hokanson, William Blank, Ryan Seib
EX OFICIO • Tonya Townsell, David Winiecki



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0200

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving Investment Services agreement for the period of April 1, 2023 through March 31, 2024.

RESOLUTION

WHEREAS, on February 14th, 2019, the Common Council of the City of La Crosse, Wisconsin approved the specifications to provide certain investment services for the City of La Crosse, and

WHEREAS proposals for investment services for the period of April 1, 2023 through March 31, 2024 were received on February 1st, 2023.

NOW THEREFORE BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the following bids for said investment services:

- 1.) River Bank for the \$10,000,000 level of investment at the rate of 0.0027 per month in excess of the monthly rate established by the State of Wisconsin Local Government Investment Pool (LGIP) including collateralization, and
- 2.) Citizens State Bank for the \$10,000,000 level of investment at the rate of 0.0010 per month in excess of the monthly rate established by the State of Wisconsin Local Government Investment Pool (LGIP) including collateralization, and
- 3.) Associated Bank for the \$1,000,000 level of investment at the rate of 0.0005 per month in excess of the monthly rate established by the State of Wisconsin Local Government Investment Pool (LGIP) including collateralization,
- 4.) Home Federal for the \$1,000,000 level of investment at the rate of 0.0005 per month in excess of the monthly rate established by the State of Wisconsin Local Government Investment Pool (LGIP) including collateralization,
- 5.)
all in accordance with the report of bids and recommendations of the Director of Finance/Treasurer, and

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign said Investment Services agreements on behalf of the City.

BE IT FURTHER RESOLVED that the Director of Finance is hereby authorized to take any and all steps necessary to effectuate this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation

**City of La Crosse
Analysis of Local Investment Services Bids
for the Period 4/1/2023 thru 3/31/2024**

Evaluation Criteria:

Determine Funds Available (Approximately \$22,000,000.00)

Use Highest Bidder First Down to the Lowest Bidder

No More Than \$10,000,000 to Any One Bidder

Bidder	Rate over LGIP	Levels									
		1,000,000.00	2,000,000.00	3,000,000.00	4,000,000.00	5,000,000.00	6,000,000.00	7,000,000.00	8,000,000.00	9,000,000.00	10,000,000.00
2022 Results:											
Associated Bank	0.0005	500.00	1,000.00	300.00	400.00	500.00	600.00	700.00	800.00	900.00	1,000.00
BMO Harris	no bid										
Bremer Bank	no bid										
Citizens	0.0010	1,000.00	2,000.00	3,000.00	4,000.00	5,000.00	6,000.00	7,000.00	8,000.00	9,000.00	10,000.00
Coulee Bank	no bid										
First National Bank	no bid										
Home Federal	0.0005	500.00									
Merchants Bank	no bid										
Park Bank	no bid										
River Bank	0.0027	2,700.00	5,400.00	8,100.00	10,800.00	13,500.00	16,200.00	18,900.00	21,600.00	24,300.00	27,000.00
State Bank Financial	0.0005	500.00	1,000.00	1,500.00	2,000.00	2,500.00	3,000.00	3,500.00	4,000.00	4,500.00	5,000.00
US Bank	no bid										
Wells Fargo	no bid										

INVESTMENT SERVICES SPECIFICATIONS

1. **INTRODUCTION**

The City of La Crosse, Wisconsin is seeking sealed bid proposals for investing services of certain available funds as more particularly described in section 5. Sealed proposals for investment services will be received by the City Clerk, City of La Crosse, 400 La Crosse Street, La Crosse, WI 54601 until 11:00 a.m. Wednesday, February 1st, 2023. The institution(s) selected will receive an annual contract. The contract will begin on April 1, 2023 and expire on March 31, 2024. The selected institution(s) will work closely with the Finance Department.

2. **PROPOSAL DUE DATE**

Proposals must be delivered in a sealed envelope to:

City Clerk
2nd Floor City Hall
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

Proposals must be received no later than 11:00 a.m. on February 1st, 2023 at the office of the City Clerk, 2nd Floor, City Hall.

The proposal shall also be clearly marked "**Investment Services Proposal**" in the lower left-hand corner on the front of the sealed envelope.

All proposals will be opened in the City Clerk's Office at City Hall. Any proposal received after the due date and time will remain unopened.

3. **ACCEPTANCE/REJECTION**

The City of La Crosse reserves the right to accept any or all proposals in part or in total, as deemed to be in the best interest of the City of La Crosse, and to waive all minor irregularities in the proposal process.

4. **QUESTIONS CONCERNING THIS REQUEST FOR PROPOSAL**

Any questions concerning this RFP or its specifications should be directed to:

Daniel DeGier, Deputy Director of Finance
degierd@cityoflacrosse.org
(608)789-8682

5. **GENERAL CONDITIONS**

The City of La Crosse will invest certain "excess" funds (not to exceed approximately 25% of its total funds available for investment) per the following general conditions:

- * The attached bid form (Appendix I) must be used.
- * Financial institutions intending to conduct investment transactions with the City must be approved by Common Council resolution.
- * The Investment agreement will be for the period of one (1) year beginning April 1, 2023 and expiring March 31, 2024.
- * All bidders must have an office/branch located within the limits of La Crosse County.
- * Funds must be invested subject to restrictions as may be imposed by law (Section 66.0603 of the Wisconsin State Statutes).
- * Collateralization of funds in excess of \$650,000 at any one financial institution is required. Funds must be collateralized by U.S. Treasury Obligations and/or Government Agency Securities and held in the name of the City of La Crosse. Proof of such collateralization must be on hand within the current business day.
- * Funds may be invested up to a maximum of \$10,000,000 in no less than \$1,000,000 increments.
- * The interest rate quoted for the one-year contract for the various levels must be tied to the rate for the month quoted and paid by the State of Wisconsin Local Government Investment Pool (LGIP). The quote must state at what percent **above** the State Investment Pool rate will be earned each month (i.e. our rate on investment will be 1/2 % higher than the State Investment Pool rate each month.

- * If minimum or maximum amounts are needed in order to participate, those qualifications must be stated on the bid sheet (Appendix I).
- * Interest is to be credited to the account as of the close of business on the last day of each month. The interest calculation method used will be based on the actual number of days in the year (365/366).
- * No bids will be considered offering rates less than, potentially less than, or equal to those paid by the State of Wisconsin Local Government Investment Pool.

6. **RATES OF CURRENT INVESTMENT**

The following is a list of monthly annualized interest rates paid by the State of Wisconsin Local Government Investment Pool for the periods of January 2022-December 2022:

December 2022	4.05%
November 2022	3.72%
October 2022	2.91%
September 2022	2.42%
August 2022	2.15%
July 2022	1.55%
June 2022	0.98%
May 2022	0.62%
April 2022	0.30%
March 2022	0.16%
February 2022	0.09%
January 2022	0.07%

**CITY OF LA CROSSE, WISCONSIN
INVESTMENT SERVICES BID SPECIFICATIONS
APPENDIX I**

**BID % (where 1% = .01) IN EXCESS OF MONTHLY RATE PAID BY THE STATE OF
WISCONSIN LOCAL GOVERNMENT**

<u>INVESTMENT INCREMENT AMOUNT</u>	<u>INVESTMENT POOL</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Name of Financial Institution: _____

Name of person responsible for bid: _____
(Please Print Name & Title)

Signature of person responsible for bid: _____

Date: _____



March 9, 2023

AGREEMENT FOR CITY OF LA CROSSE, WISCONSIN INVESTMENT SERVICES

This Investment Agreement is entered into this 1st day of April 2023, by and between the City of La Crosse, Wisconsin, a Municipal Corporation (the City), and River Bank (the financial institution), a financial institution licensed to conduct business in the State of Wisconsin and having an office located within the City of La Crosse's city limits.

RECITALS

WHEREAS, on February 14th, 2019, the City of La Crosse, Wisconsin Common Council approved the specifications to provide certain investment services for the City of La Crosse, and

WHEREAS, on March 9th, 2023 the City of La Crosse, Wisconsin Common Council approved the report of bids to implement a new one-year agreement for such investment services,

NOW, THEREFORE IN CONSIDERATION of the mutual promises and undertakings herein contained, the parties agree hereto as:

1. The City of La Crosse will invest up to an amount not to exceed \$10,000,000.00 with the financial institution.
2. This investment agreement will be for a period of up to 12 months from April 1, 2023 and ending on or before March 31, 2024.
3. All funds must be invested subject to restrictions as may be imposed by the law, Section 66.04(2) of the Wisconsin State Statutes.
4. Collateralization of funds over \$650,000.00 at any one financial institution is required. Funds must be collateralized by U.S. Treasury Obligations and/or Government Agency Securities and held in the name of the City of La Crosse. Proof of such collateralization must be provided to the City and be on hand within the current business day.

5. Per the quote received, the interest rate of .0027 for \$10,000,000.00 over and above the rate paid monthly by the State of Wisconsin Local Government Investment Pool will be used to determine the investment interest amount to be credited to the City's account each month.
6. The interest rate will be determined and the institution will be notified each month immediately upon release of the interest rate paid by the State of Wisconsin Local Government Investment Pool.
7. The interest on investment will be calculated using a 365-day year (366 days for leap year), as soon as the interest rate can be determined, and placed in the principal fund account until the end of the agreement on March 31, 2024.
8. The principal balance of invested funds, or any portion thereof, must be made available to the City in a 24-hour turn-around period with 12:00 noon the "cut-off" time each day for notification of withdrawal.

SUCCESSORS AND ASSIGNS

The parties hereto further agree that this agreement and the conditions contained herein shall be binding upon the parties and that this agreement shall be enforceable by specific performance as well as other remedies provided by law.

WITNESS: THE CITY OF LA CROSSE, WISCONSIN

_____ By _____
Mitch Reynolds, Mayor

_____ By _____
Nikki Elsen, City Clerk

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2023, the above named Mitch Reynolds, Mayor, and Nikki Elsen, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI
My commission expires _____

(Name of Institution)

By _____
(Name)

WITNESS: RIVER BANK OF LA CROSSE, WISCONSIN

_____ By _____
Brooke Greeno, CFO

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2023, the above named _____, CFO, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI
My commission expires _____

(Name of Institution)

By _____
(Name)



March 9, 2023

AGREEMENT FOR CITY OF LA CROSSE, WISCONSIN INVESTMENT SERVICES

This Investment Agreement is entered into this 1st day of April 2023, by and between the City of La Crosse, Wisconsin, a Municipal Corporation (the City), and Citizens State Bank (the financial institution), a financial institution licensed to conduct business in the State of Wisconsin and having an office located within the City of La Crosse's city limits.

RECITALS

WHEREAS, on February 14th, 2019 the City of La Crosse, Wisconsin Common Council approved the specifications to provide certain investment services for the City of La Crosse, and

WHEREAS, on March 9th, 2023 the City of La Crosse, Wisconsin Common Council approved the report of bids to implement a new one-year agreement for such investment services,

NOW, THEREFORE IN CONSIDERATION of the mutual promises and undertakings herein contained, the parties agree hereto as:

1. The City of La Crosse will invest up to an amount not to exceed \$10,000,000.00 with the financial institution.
2. This investment agreement will be for a period of up to 12 months from April 1, 2023 and ending on or before March 31, 2024.
3. All funds must be invested subject to restrictions as may be imposed by the law, Section 66.04(2) of the Wisconsin State Statutes.
4. Collateralization of funds over \$650,000.00 at any one financial institution is required. Funds must be collateralized by U.S. Treasury Obligations and/or Government Agency Securities and held in the name of the City of La Crosse. Proof of such collateralization must be provided to the City and be on hand within the current business day.

5. Per the quote received, the interest rate of .0010 over the monthly Local Government Investment Pool interest rate for \$10,000,000.00 above the rate paid monthly by the State of Wisconsin Local Government Investment Pool will be used to determine the investment interest amount to be credited to the City's account each month.
6. The interest rate will be determined and the institution will be notified each month immediately upon release of the interest rate paid by the State of Wisconsin Local Government Investment Pool.
7. The interest on investment will be calculated using a 365-day year (366 days for leap year), as soon as the interest rate can be determined, and placed in the principal fund account until the end of the agreement on March 31, 2023.
8. The principal balance of invested funds, or any portion thereof, must be made available to the City in a 24-hour turn-around period with 12:00 noon the "cut-off" time each day for notification of withdrawal.

SUCCESSORS AND ASSIGNS

The parties hereto further agree that this agreement and the conditions contained herein shall be binding upon the parties and that this agreement shall be enforceable by specific performance as well as other remedies provided by law.

WITNESS: THE CITY OF LA CROSSE, WISCONSIN

_____ By _____
Mitch Reynolds Mayor

_____ By _____
Nikki Elsen, City Clerk

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2023, the above named Mitch Reynolds, Mayor, and Nikki Elsen, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI
My commission expires _____

(Name of Institution)

By _____
(Name)

WITNESS: CITIZENS STATE BANK LA CROSSE, WI

_____ By _____
Brian Cossette, CFO

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2023, the above named _____, CFO, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI
My commission expires _____

(Name of Institution)

By _____
(Name)



March 9, 2023

AGREEMENT FOR CITY OF LA CROSSE, WISCONSIN INVESTMENT SERVICES

This Investment Agreement is entered into this 1st day of April 2023, by and between the City of La Crosse, Wisconsin, a Municipal Corporation (the City), and Associated Bank of La Crosse (the financial institution), a financial institution licensed to conduct business in the State of Wisconsin and having an office located within the City of La Crosse's city limits.

RECITALS

WHEREAS, on February 14th, 2019, the City of La Crosse, Wisconsin Common Council approved the specifications to provide certain investment services for the City of La Crosse, and

WHEREAS, on March 9th, 2023 the City of La Crosse, Wisconsin Common Council approved the report of bids to implement a new one-year agreement for such investment services,

NOW, THEREFORE IN CONSIDERATION of the mutual promises and undertakings herein contained, the parties agree hereto as:

1. The City of La Crosse will invest up to an amount not to exceed \$1,000,000.00 with the financial institution.
2. This investment agreement will be for a period of up to 12 months from April 1, 2023 and ending on or before March 31, 2024.
3. All funds must be invested subject to restrictions as may be imposed by the law, Section 66.04(2) of the Wisconsin State Statutes.
4. Collateralization of funds over \$650,000.00 at any one financial institution is required. Funds must be collateralized by U.S. Treasury Obligations and/or Government Agency Securities and held in the name of the City of La Crosse. Proof of such collateralization must be provided to the City and be on hand within the current business day.

5. Per the quote received, the interest rate of .0005 over the monthly Local Government Investment Pool interest rate for \$1,000,000.00 above the rate paid monthly by the State of Wisconsin Local Government Investment Pool will be used to determine the investment interest amount to be credited to the City's account each month.
6. The interest rate will be determined and the institution will be notified each month immediately upon release of the interest rate paid by the State of Wisconsin Local Government Investment Pool.
7. The interest on investment will be calculated using a 365-day year (366 days for leap year), as soon as the interest rate can be determined, and placed in the principal fund account until the end of the agreement on March 31, 2023.
8. The principal balance of invested funds, or any portion thereof, must be made available to the City in a 24-hour turn-around period with 12:00 noon the "cut-off" time each day for notification of withdrawal.

SUCCESSORS AND ASSIGNS

The parties hereto further agree that this agreement and the conditions contained herein shall be binding upon the parties and that this agreement shall be enforceable by specific performance as well as other remedies provided by law.

WITNESS: THE CITY OF LA CROSSE, WISCONSIN

_____ By _____
Mitch Reynolds, Mayor

_____ By _____
Nikki Elsen, City Clerk

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2023, the above named Mitch Reynolds, Mayor, and Nikki Elsen, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI
My commission expires _____

(Name of Institution)

By _____
(Name)

WITNESS: ASSOCIATED BANK OF LA CROSSE, WISCONSIN

_____ By _____
David Winiecki, Senior Vice President

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2023, the above named _____, SVP, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI
My commission expires _____

(Name of Institution)

By _____
(Name)



March 9, 2023

AGREEMENT FOR CITY OF LA CROSSE, WISCONSIN INVESTMENT SERVICES

This Investment Agreement is entered into this 1st day of April 2023, by and between the City of La Crosse, Wisconsin, a Municipal Corporation (the City), and Home Federal of La Crosse (the financial institution), a financial institution licensed to conduct business in the State of Wisconsin and having an office located within the City of La Crosse's city limits.

RECITALS

WHEREAS, on February 14th, 2019, the City of La Crosse, Wisconsin Common Council approved the specifications to provide certain investment services for the City of La Crosse, and

WHEREAS, on March 9th, 2023 the City of La Crosse, Wisconsin Common Council approved the report of bids to implement a new one-year agreement for such investment services,

NOW, THEREFORE IN CONSIDERATION of the mutual promises and undertakings herein contained, the parties agree hereto as:

1. The City of La Crosse will invest up to an amount not to exceed \$1,000,000.00 with the financial institution.
2. This investment agreement will be for a period of up to 12 months from April 1, 2023 and ending on or before March 31, 2024.
3. All funds must be invested subject to restrictions as may be imposed by the law, Section 66.04(2) of the Wisconsin State Statutes.
4. Collateralization of funds over \$650,000.00 at any one financial institution is required. Funds must be collateralized by U.S. Treasury Obligations and/or Government Agency Securities and held in the name of the City of La Crosse. Proof of such collateralization must be provided to the City and be on hand within the current business day.

5. Per the quote received, the interest rate of .0005 over the monthly Local Government Investment Pool interest rate for \$1,000,000.00 above the rate paid monthly by the State of Wisconsin Local Government Investment Pool will be used to determine the investment interest amount to be credited to the City's account each month.
6. The interest rate will be determined and the institution will be notified each month immediately upon release of the interest rate paid by the State of Wisconsin Local Government Investment Pool.
7. The interest on investment will be calculated using a 365-day year (366 days for leap year), as soon as the interest rate can be determined, and placed in the principal fund account until the end of the agreement on March 31, 2023.
8. The principal balance of invested funds, or any portion thereof, must be made available to the City in a 24-hour turn-around period with 12:00 noon the "cut-off" time each day for notification of withdrawal.

SUCCESSORS AND ASSIGNS

The parties hereto further agree that this agreement and the conditions contained herein shall be binding upon the parties and that this agreement shall be enforceable by specific performance as well as other remedies provided by law.

WITNESS: THE CITY OF LA CROSSE, WISCONSIN

_____ By _____
Mitch Reynolds, Mayor

_____ By _____
Nikki Elsen, City Clerk

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2023, the above named Mitch Reynolds, Mayor, and Nikki Elsen, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI
My commission expires _____

(Name of Institution)

By _____
(Name)

WITNESS: HOME FEDERAL SAVINGS BANK OF LA CROSSE, WISCONSIN

_____ By _____
Sandy Steele, Vice President

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2023, the above named _____, SVP, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI
My commission expires _____

(Name of Institution)

By _____
(Name)



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0203

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving the allocation of remaining funds for operations and maintenance expenses related to the unsheltered population for the 2023 season.

RESOLUTION

WHEREAS, the City of La Crosse in the past has deemed providing resources for the unsheltered population a top priority; and

WHEREAS, the City Council approved Resolution #22-0589 to allocate \$262,000 from the American Rescue Plan Act Funds for the operations and maintenance expenses of Houska Park Campground for the 2022 season; and

WHEREAS, there will be continued need of operating and maintenance expenses for the 2023 calendar year.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby allocates the remaining funds from Resolution #22-0589 for the operations and maintenance expenses of the unsheltered population for the 2023 calendar year.

BE IT FURTHER RESOLVED that the City staff are hereby authorized to take any and all steps necessary to effectuate this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0204

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Amended Resolution approving an appropriation of the City's ARPA monies earmarked for small business support.

RESOLUTION

WHEREAS, the City was awarded American Rescue Plan Act (ARPA) funding from the U.S. Treasury; and

WHEREAS, the City Council passed a Resolution on January 13, 2022 appropriating some of these ARPA funds addressing negative economic impacts caused by the public health emergency to small businesses and impacted industries; and

WHEREAS, the City Council passed a Resolution on March 10, 2022 further specifying the funding amounts and uses for this initiative as programs such as façade improvements, small business development, and upper floor renovations; and

WHEREAS, ARPA funding is subject to restrictions as dictated by the Federal government and the City's usage of this funding must be compliant with those restrictions; and

WHEREAS, many local property owners of older buildings who lease space to small businesses on their first floors have found utilizing the upper floors of their building for other uses, primarily residential development, to be cost prohibitive in part due to the need for sprinkler system requirements; and

WHEREAS, the City has a highly successful façade grant program that can be used as a template to more easily and efficiently administer a similar program that provides financial support to property owners who add sprinkler systems; and

WHEREAS, creating such a grant program would simultaneously increase fire safety, encourage residential development, assist in redeveloping under-utilized upper floors in the City's older buildings, and stimulate more mixed-use building in the City's commercial buildings; and

WHEREAS, due to funding sources available the City's current façade grant programs have been restricted to commercial buildings in the downtown and the Highway 53 corridor on the Northside; and

WHEREAS, these same geographic restrictions ~~are not relevant to~~ differ from those of the American Rescue Plan Act funding; and

WHEREAS, the City has also maintained successful Minority Owned Business Assistance (MOBA) and Architectural & Engineering (A&E) grant programs that are currently inactive due to lack of funding, in part because the interest in utilizing these programs surpassed the available funding available; and

WHEREAS, multiple respected and impactful business support entities exist in the City with the purposed of providing targeting support to small businesses, particularly in addressing impacts resulting from the pandemic and environmental and economic changes overall.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse to allocate \$200,000 of ARPA funds to a sprinkler system grant program that will be facilitated in a similar fashion to the existing façade grant programs and that the program guidelines will be approved by the Economic and Community Development Commission prior to implementation.

BE IT FURTHER RESOLVED that ~~\$100,000~~\$150,000 will be allocated to a City-wide façade grant program and revitalizing the MOBA and A&E grant programs.

~~BE IT FURTHER RESOLVED that \$50,000 will be allocated to revitalizing the MOBA and A&E grant programs.~~

BE IT FURTHER RESOLVED that \$100,000 will be made available through an RFP to small business support entities providing targeted support to small businesses in the City of La Crosse, and the RFP will be reviewed and approved by the ECDC prior to release.

BE IT FURTHER RESOLVED that the Mayor and Director of Planning, Development and Assessment are hereby authorized to take any and all steps necessary to effectuate this resolution.

Resolution approving an appropriation of the City's ARPA monies earmarked for small business support.

RESOLUTION

WHEREAS, the City was awarded American Rescue Plan Act (ARPA) funding from the U.S. Treasury; and

WHEREAS, the City Council passed a Resolution on January 13, 2022 appropriating some of these ARPA funds addressing negative economic impacts caused by the public health emergency to small businesses and impacted industries; and

WHEREAS, the City Council passed a Resolution on March 10, 2022 further specifying the funding amounts and uses for this initiative as programs such as façade improvements, small business development, and upper floor renovations; and

WHEREAS, many local property owners of older buildings who lease space to small businesses on their first floors have found utilizing the upper floors of their building for other uses, primarily residential development, to be cost prohibitive in part due to the need for sprinkler system requirements; and

WHEREAS, the City has a highly successful façade grant program that can be used as a template to more easily and efficiently administer a similar program that provides financial support to property owners who add sprinkler systems; and

WHEREAS, creating such a grant program would simultaneously increase fire safety, encourage residential development, assist in redeveloping under-utilized upper floors in the City's older buildings, and stimulate more mixed-use building in the City's commercial buildings; and

WHEREAS, due to funding sources available the City's current façade grant programs have been restricted to commercial buildings in the downtown and the Highway 53 corridor on the Northside; and

WHEREAS, these same geographic restrictions are not relevant to American Rescue Plan Act funding; and

WHEREAS, the City has also maintained successful Minority Owned Business Assistance (MOBA) and Architectural & Engineering (A&E) grant programs that are currently inactive due to lack of funding, in part because the interest in utilizing these programs surpassed the available funding available; and

WHEREAS, multiple respected and impactful business support entities exist in the City with the purposed of providing targeting support to small businesses, particularly in addressing impacts resulting from the pandemic and environmental and economic changes overall.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse to allocates \$200,000 of ARPA funds to a sprinkler system grant program that will be facilitated in a similar fashion to the existing façade grant programs and that the program guidelines will be approved by the Economic and Community Development Commission (ECDC) prior to implementation.

BE IT FURTHER RESOLVED that \$100,000 will be allocated to a City-wide façade grant program.

BE IT FURTHER RESOLVED that \$50,000 will be allocated to revitalizing the MOBA and A&E grant programs.

BE IT FURTHER RESOLVED that \$100,000 will be made available through an RFP to small business support entities providing targeted support to small businesses in the City of La Crosse, and the RFP will be reviewed and approved by the ECDC prior to release.

BE IT FURTHER RESOLVED that the Mayor and Director of Planning, Development and Assessment are hereby authorized to take any and all steps necessary to effectuate this resolution.



CITY OF LA CROSSE

400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org

LEGISLATION STAFF REPORT FOR COUNCIL

File ID

Caption

23-0204

Resolution approving an appropriation of the City's ARPA monies earmarked for small business support.

Staff/Department Responsible for Legislation

Planning

Requestor of Legislation

Mayor Reynolds & Planning Staff

Location, if applicable

Summary/Purpose

This Resolution further specific usage of the \$450k of ARPA funds allocated toward small businesses and impacted industries.

\$200k: sprinkler system program, \$100k: City-wide façade program, \$50k: MOBA and A&E, \$100k: an RFP to support small businesses.

Background

Last March, the Council approved the \$450k to go towards addressing negative economic impacts caused by the public health emergency to small businesses and impacted industries utilizing programs such as façade improvements, small business development, and upper floor renovations.

Fiscal Impact

\$450k from ARPA dollars that were previously allocated

Staff Recommendation

Staff recommends approval.

23-0204

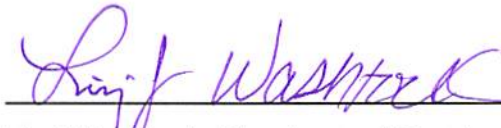
CERTIFIED COPY OF RESOLUTION ADOPTED AT A
REGULAR MEETING OF THE ECONOMIC AND COMMUNITY DEVELOPMENT
COMMISSION
OF THE CITY OF LA CROSSE, WISCONSIN

STATE OF WISCONSIN)
) ss.
County of La Crosse, City of La Crosse)

I HEREBY CERTIFY that I am the duly appointed, qualified secretary of the Economic and Community Development Commission of the City of La Crosse and State of Wisconsin; that the following is a true and correct copy of a Resolution adopted at the regular meeting of the Economic and Community Development Commission of the City of La Crosse, State of Wisconsin, held on the twenty second day of February, 2023 at four o'clock, p.m., in the Council Chambers at La Crosse City Hall, 400 La Crosse Street, in said City; and that the same has been duly recorded in the minutes of said Commission and has never been rescinded or revoked.

BE IT RESOLVED: A Resolution approving an appropriation of the City's ARPA monies earmarked for small business support be RECOMMENDED TO BE ADOPTED AS AMENDED to the Finance & Personnel Committee. The Amendment makes the following changes:
-Language was added to include ARPA Restrictions
-All funds for existing programs reduced to one category.

IN WITNESS WHEREOF, I have hereunto signed my name at La Crosse, Wisconsin, this twenty second day of February 2023.



Linzi Washtock, Planning and Development Assistant
Recording Secretary, Economic and Community Development Commission
City of La Crosse, Wisconsin

Craig, Sondra

From: Elsen, Nikki
Sent: Thursday, March 2, 2023 1:08 PM
To: Craig, Sondra
Subject: FW: F & P Meeting File #23-0204

NIKKI M. ELSÉN, WCMC

CITY CLERK

CITY OF LA CROSSE (POPULATION 52,160)
400 LA CROSSE ST, LA CROSSE WI 54601
DIRECT: 608.789.7555 | OFFICE: 608.789.7510

City Clerk's Office hours: 8:00 a.m. to 4:30 p.m., Monday through Friday
Public Service hours 8:00 a.m. to 4:00 p.m. Monday through Thursday in the City Hall Lobby



From: Terry Bauer <terry.bauer@lacrossedowntown.com>
Sent: Thursday, March 2, 2023 1:02 PM
To: Elsen, Nikki <Elsenn@cityoflacrosse.org>; Kahlow, Chris <kahlowc@cityoflacrosse.org>
Subject: F & P Meeting File #23-0204

*** CAUTION: This email originated from an external sender. **DO NOT** click links or open attachments unless you recognize the sender and know the content is safe. ***

Nikki –

Downtown Mainstreet endorses file #23-0204 for approval by the City Council.

We have a shortage of available downtown housing. Having the sprinkler grant available is a valuable resource to a building owner that would like to remodel a second or third floor space into apartments.

Thank you

Terry Bauer

Executive Director

Downtown Mainstreet, Inc.

422 Main Street

La Crosse, WI 54601

608-792-0745 cell phone

Office 608-784-0440

Email: Terry.Bauer@lacrossedowntown.com



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0214

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution amending Appendix C Fee Schedule regarding special assessment certification fee.

RESOLUTION

WHEREAS, the Common Council previously adopted a fee schedule by resolution, and

WHEREAS, an amendment is needed for costs related to special assessment certifications.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the following changes to Appendix C

2-293	Special assessment certification fee	2023	\$25.00
	Special assessment RUSH certification fee	2023	\$45.00

BE IT FURTHER RESOLVED that all other fees included within Appendix C remain unchanged.

BE IT FURTHER RESOLVED that City staff is authorized to take any and all steps necessary to effectuate this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0217

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution authorizing additional funding for amendments 3 and 4 to design and bidding services contract with Short Elliott Hendrickson Inc. (SEH) for Phase II of River Point District.

Resolution

WHEREAS, the City of La Crosse and the Redevelopment Authority have been working on the River Point District redevelopment site, which is preparing for the next phase of design, and has received a contract from SEH for this work, and

WHEREAS, this contract includes design and bidding services, which includes storm water design, landscape architecture design, street, sanitary sewer, water main, street lighting and traffic signal design, as well as permit applications and bidding services for these items; and

WHEREAS, Amendments 1 and 2 for this contract addressed the addition of Geotechnical Services and demolition plan for 110 Causeway Boulevard; and

WHEREAS, Amendment 3 addresses re-bid services and value engineering for Phase 2 construction in the amount of \$15,220; and

WHEREAS, Amendment 4 addresses the intersection revision of River Point Court and update to the plans, plat and files in the amount of \$34,440; and

WHEREAS, Resolution #21-1321 allocated expenses for original contract and Resolution #22-0815 allocated expenses for the amendments for a total of \$530,370 to be paid through an allocation of 1% of contract by Water Utility Reserve Fund 640 and 99% of contract from Tax Increment Financing District 18 cash; and

WHEREAS, per Division 3 – Section 2-360 of the City Code of Ordinances, approval requires a two-thirds (2/3) vote of the Common Council members present as it was not listed in a previously adopted Capital Improvement Plan.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the design and bidding services contract is approved and that expenses related to the amendments of contract of \$49,660 to be paid from:

Water Utility Reserve Fund 640 (1% of contract): \$496.60

Tax Increment Financing District 18 cash available (99% of contract): \$49,163.40

BE IT FURTHER RESOLVED by the Director of Engineering and Public Works, Director of Planning, Development and Assessment and the Director of Finance are hereby authorized to implement this resolution.

Agreement for Professional Services – Amendment 3

This Agreement is effective as of July 1, 2022, between City of La Crosse (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: River Point District Phase 2 – Value engineering, design, and specification revisions for rebid.

Client's Authorized Representative: Ms. Andrea Trane
Address: 400 La Crosse Street
La Crosse, WI 54601
Telephone: 608.789.8321 email: tranea@cityoflacrosse.org

Project Manager: Jeremy Tomesh, PE
Address: 329 Jay Street
La Crosse, WI 54601
Telephone: 608.498.4947 email: jtomesh@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 07.14.16), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

This scope of work amends the Agreement for Professional Services, effective July 1, 2021, for the project described as "River Point District Phase II (Street A) – Design and Bidding Services". The purpose of this amendment is to review the rejected bid, provide value engineering for re-bid, and update the plans and specifications for re-bid.

Task 1: Re-bid Services

- Attend and conduct a review meeting with the Engineering Department
- Provide the proposed revisions to the plans and specifications:
 - Remove bid item #1 – contingency (\$100k)
 - Remove mobilization item from the bid
 - Remove "demo building" item. City to contract for this work separately.
 - Clarify in the plans and specs that the City 2-inch fiber includes excavating and backfilling the joint trench
 - Contamination – assume no contamination of the soil or water for the purposes of bidding.
 - Revise item to "Dewatering non-contaminated water"
 - Remove item for removing contaminated soil
 - Incidental to trench excavation and backfill
 - Replacement backfill – review quantity and look at removing item. Also, Isle La Plume may be a source of material contractors could use. Look into this further (rock excavation to include replacement backfill. Contractor may obtain backfill from isle la plume)
 - Remove HMA paving and tack coat – City of La Crosse Streets Department will perform this work
 - Concrete pavement – change from 8" to 7" thick (revise corridor model)
 - Change retaining wall bid item to "wet cast modular block retaining wall"
 - Have a separate bid item for the piling for the storm water tank
 - Have a separate bid item for the washed stone under the tank (ton)
 - Remove park benches from the plan and specs

- o Remove all small plantings (median planting). Replace with grass (hydro-seeding) Keep the trees in the plan
- o Remove bid item "sewer televising" – work is incidental to placing the sewer pipe
- o Remove bid items for sanitary sewer wyes – work is incidental to placing the sewer pipe
- o Allow "plastic" for storm sewer pipes up to 30" (follow WisDOT guidelines) Reminder, all joints at structures require boots for non-concrete pipes
- o Upsize 54" and 66" storm sewer manholes to 60" and 72" respectively
- o Use white, plastic tubular markers (epoxied to the surface) instead of u-channel posts to mark sidewalk bump-outs
- o Remove item "v-lock". City to supply and install
- o Add item for sealed sanitary manhole (for those below the water table) Class W
- o Contractor supplied casting (all). Add note to plans/specs since the City normally supplies (contractor to supply)
- o Use Type A storm sewer castings only (not Type B)
- o Signals
- o Replot/Restamp all disciplines
- o Project Management time for the changes
- o QC these revisions
- o Coordination with City staff

Total: \$15,220 (See Exhibit 1 for details of level of effort)

Schedule: Complete the work by August 1, 2022 for incorporation into a new bid set for a bid opening set for September 1, 2022.

Payment: The estimated fee for this amendment is subject to a not-to-exceed amount of \$15,220.00 including expenses and equipment, for a new contract total of \$546,590.00. The payment method, basis, frequency and other special conditions are set forth in attached Standard Terms and Conditions (Service Contracts)(SEH 06.21.19).

This Agreement for Professional Services, attached (Exhibit 2) Standard Terms and Conditions (Service Contracts)(SEH 06.21.19), Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached Standard Terms and Conditions (Service Contracts)(SEH 06.21.19) shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the Standard Terms and Conditions (Service Contracts)(SEH 06.21.19)(including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
None.

\\sp-pz1.sehinc.com\pzprojects1\ko\lacs\163627\1-gen\10-setup-cont\02-contract\amend 3 - value engineering\amend_3 rebid & value engineering services.docx

Short Elliott Hendrickson Inc.

City of La Crosse

By:



By:

Jeremy Tomesh, PE
Title: Principal - Client Service Manager

Title:

Exhibit 1

RPD Revisions – July 2022

	Bid Form Hours	Spec Hours	Plan Sheet Hours
Remove bid item #1 – contingency (\$100k)		.25	
Remove mobilization item from the bid	.25	.5	
Remove “demo building” item. City to contract for this work separately.	.25	1	.5
Clarify in the plans and specs that the City 2-inch fiber includes excavating and backfilling the joint trench		.5	.5
Contamination – assume no contamination of the soil or water for the purposes of bidding. <ul style="list-style-type: none"> • Revise item to “Dewatering non-contaminated water” • Remove item for removing contaminated soil Incidental to trench excavation and backfill	.25	3	
Replacement backfill – review quantity and look at removing item. Also, Isle La Plume may be a source of material contractors could use. Look into this further (rock excavation to include replacement backfill. Contractor may obtain backfill from isle la plume)	.25	2	
Remove HMA paving and tack coat – City of La Crosse Streets Department will perform this work	.5	.5	1
Concrete pavement – change from 8” to 7” thick (revise corridor model)	.25	.5	8
Change retaining wall bid item to “wet cast modular block retaining wall”		.5	.5
Have a separate bid item for the piling for the storm water tank	.5	.5	.5
Have a separate bid item for the washed stone under the tank (ton)		.5	.5
Remove park benches from the plan and specs	.5	1	2
Remove all small plantings (median planting). Replace with grass (hydro-seeding) Keep the trees in the plan	.5	4	8
Remove bid item “sewer televising” – work is incidental to placing the sewer pipe	.25	.25	
Remove bid items for sanitary sewer wyes – work is incidental to placing the sewer pipe	.5	.5	2
Allow “plastic” for storm sewer pipes up to 30” (follow WisDOT guidelines) Reminder, all joints at structures require boots for non-concrete pipes	.5	1	4
Upsize 54” and 66” storm sewer manholes to 60” and 72” respectively	.5	.5	2
Use white, plastic tubular markers (epoxied to the surface) instead of u-channel posts to mark sidewalk bump-outs	.25	.5	1
Remove item “v-lock”. City to supply and install	.25	.5	2
Add item for sealed sanitary manhole (those below the water table) Class W Contractor supplied casting (all). Add note to plans/specs since the City normally supplies (contractor to supply)	.25	.5	1.0
Use Type A storm sewer castings only (not Type B)		.5	1
Process electronic design files (XML files)		2	
Redline these changes	6		
Replot/Restamp all disciplines	2		6
PM these Changes	8		
QC these Changes	4		
Coordination time to discuss/scope changes with City	8		
Totals	34	22.5	42

Exhibit 1

Bid documents to be posted August 1, 2022

Open bids September 1, 2022

Project substantial completion: November 15, 2023

32 Hours @ \$185/hour = \$5,920

22 Hours @ \$165/hour = \$3,630

42 Hours @ \$135/hour = \$5,670

Amendment: \$15,220

Exhibit 2

19-1018

Resolution approving Agreement for Professional Services and revised terms and conditions for the Floodplain Re-Mapping of Ebner Coulee by the consultant Short Elliott Hendrickson Inc. (SEH).

RESOLUTION

WHEREAS, the 2019 CIP #288 approved the re-mapping project for Ebner Coulee and provide \$150,000 in funding for the work; and

WHEREAS, the Floodplain Advisory Committee approved and directed the hiring of Short Elliott Hendrickson INC. (SEH) for this project in Resolution #18-1234; and

WHEREAS, SEH would not agree to the City's Standard Terms and Conditions; and

WHEREAS, the City Attorney and Utilities Manager worked with SEH to develop mutually agreeable revised Standard Terms and Conditions.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the Agreement for Professional Services with revised Standard Terms and Conditions and dates is hereby approved.

BE IT FURTHER RESOLVED that additional contracts may use this revised Terms and Conditions in the future.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to sign the Agreement.

BE IT FURTHER RESOLVED that the Director of Finance, Utilities Manager and Director of Engineering and Public Works are hereby authorized and directed to take all necessary steps to implement this resolution.

STANDARD TERMS AND CONDITIONS (Service Contracts)

(SEH 06.21.19)

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this document titled "Standard Terms and Conditions (Service Contracts)" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.

2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be in a manner at least equal to the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services

3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and, if applicable, shall be authorized or permitted under all applicable state and local laws and any other applicable laws or regulations to perform the services.

4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a timely and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement. The scope of services to be performed shall include, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement. The scope of service may not be fully definable during initial phases, and as the project progresses, facts discovered may indicate that the scope must be redefined. If mutually agreed to in advance in writing, Contracting Party shall make changes, furnish necessary materials, and perform the work that La Crosse may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the total cost of the project. Under no circumstances shall Contracting Party make any changes, either as additions or deductions, without the written consent of La Crosse, and La Crosse shall not pay any extra charges made by Contracting Party that have not been agreed upon in advance and documented in writing.

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingences set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices, unless lump sum, must be itemized to identify labor costs and the Contracting Party's direct expenses, including subcontractor and supplier costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work

completed as a percentage of the work to be performed. If payment is by lump sum, then only the percent complete will be invoiced. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement. Without prejudice to any other right or remedy it may have, La Crosse reserves the right to setoff at any time any amount owing to it by Contracting Party against any amount payable by La Crosse to Contracting Party.

7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. **TERMINATION FOR CAUSE.** If, through its own fault, intentional misconduct, or the fault or intentional misconduct of its subcontractors, agents or volunteers, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, both as determined by La Crosse in its sole discretion, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other deliverables performed by the Contracting Party under this Agreement for which compensation has been made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of the Contracting Party's intentional misconduct or negligent performance of this Agreement, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined. Use of incomplete or unfinished work is at the sole risk of La Crosse.

9. **TERMINATION FOR CONVENIENCE.** Either Party may terminate this Agreement for convenience at any time and for any reason by giving sixty (60) days written notice to the other Party of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually performed and accepted by La Crosse bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of other persons or property. Except as otherwise provided in this

Agreement, Contracting Party disclaims any authority or responsibility for general job site safety, or the safety of third-parties or their property.

11. DELAYS. If performance of Contracting Party's obligations under this Agreement is delayed through no fault of Contracting Party, Contracting Party shall be entitled to a reasonable extension of time as proposed by Contracting Party and as accepted or amended by La Crosse. If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.

12. USE OF LA CROSSE PROPERTY. Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement..

13. INSURANCE. Unless otherwise specified in this Agreement, Contracting Party shall, at its sole expense, maintain in effect at all times during the Agreement, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

a. *Worker's Compensation and Employers Liability Insurance.* Contracting Party shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Contracting Party shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employer's liability of one hundred thousand dollars (\$100,000.00) per each accident, one hundred thousand dollars (\$100,000.00) per each employee and five hundred thousand dollars (\$500,000.00) total policy limit.

b. *Commercial General Liability and Automobile Liability Insurance.* Contracting Party shall provide and maintain the following commercial general liability and automobile liability insurance:

- i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:
 1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
 2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).
- ii. Contracting Party shall maintain limits no less than the following:
 1. General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
 2. Automobile Liability. Two million dollars (\$2,000,000.00) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.

3. Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.

c. *Professional Liability Insurance.* When Contracting Party renders professional services to La Crosse under the Agreement, Contracting Party shall provide and maintain two million dollars (\$2,000,000.00) of professional liability insurance. If such policy is a "claims made" policy, all renewals thereof during the life of the Agreement shall include "prior acts coverage" covering at all times all claims made with respect to Contracting Party's work performed under the Agreement. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the La Crosse.

d. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- i. La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Contracting Party; products and completed operations of Contracting Party; premises occupied or used by Contracting Party; and vehicles owned, leased, hired or borrowed by Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers' compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of La Crosse.
- ii. For any claims related to this Agreement, Contracting Party's insurance shall be primary insurance with respect to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by La Crosse, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
- iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to La Crosse, its elected and appointed officers, employees or authorized representatives or volunteers.
- iv. Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v. Coverage shall not be canceled by the insurance carrier or the Contracting Party, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to La Crosse.

- vi. Such liability insurance shall indemnify La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Contracting Party for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
- vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
- viii. All of the insurance shall be provided on policy forms and through companies satisfactory to La Crosse, and shall have a minimum AM Best's rating of A- VIII.

e. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by La Crosse.

f. *Evidences of Insurance.* Prior to execution of the Agreement, Contracting Party shall file with La Crosse a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

g. *Sub-Contractor.* In the event that Contracting Party employ other contractors (sub-contractors) as part of this Agreement, it shall be the Contracting Party's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

h. *Amendments.* La Crosse may amend its requirements for insurance upon sixty (60) days written notice. Contracting Party shall procure updated insurance to comply with the new requirements of La Crosse if commercially available and at La Crosse's expense. Contracting Party may appeal any requirement to amend the insurance coverage to La Crosse's City Council who may, in its sole discretion, mutually agree to waive such changes.

14. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees, authorized representatives and volunteers ("La Crosse Indemnitees") from and against third party tort suits, actions, legal or administrative proceedings, claims, costs and expenses (including, without limitation, reasonable attorney and professional fees) to the extent caused by the negligent acts, errors or omissions of Contracting Party, its subcontractors or of anyone acting under its direction or control or on its behalf in the performance of this Agreement. Contracting Party's defense obligation shall not apply to professional liability claims. The aforesaid indemnity and hold harmless

agreement shall not be applicable to any liability to the extent caused by La Crosse, its elected and appointed officials, officers, employees or authorized representatives, consultants, contractors or volunteers in the performance of this Agreement. Contracting Party's obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees, authorized representatives or volunteers.

Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of La Crosse or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against La Crosse, (a) La Crosse or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law; and (b) La Crosse's obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify La Crosse in writing of any such claims, demands, liabilities, damages, costs and expenses within ten (10) days of discovery; (ii) La Crosse shall have sole control of, and the indemnified party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations; and (iii) the indemnified party shall not make any admission or disclosure or otherwise take any action prejudicial to La Crosse except as required by law.

Neither party shall be liable for indirect, special, exemplary, consequential or incidental damages, including, without limitation, any damages for lost profits, revenue or business interruption. The parties represent that, as of the effective date, neither party has any notice or knowledge of any claims, demands, liabilities, damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

15. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of either party have any personal liability arising out of this Agreement, unless an employee of the Contracting Party shall commit a criminal, fraudulent, malicious, or dishonest act which is excluded from Contracting Party's insurance coverage.

16. Intentionally omitted.

17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its

employees. The parties shall not be considered joint agents, joint venturers, or partners.

18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

20. **NOTIFICATION.** Parties shall:

(1) As soon as possible and in any event within a reasonable period of time after the occurrence of any event of default by either party, notify the other Party in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by defaulting party to cure or mitigate the default.

(2) Promptly notify the other Party of the commencement of any litigation or administrative proceeding that would cause any representation contained in this Agreement to be untrue.

(3) If related to the performance of services and work under this Agreement, notify the other Party, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by a Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of a Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against a Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

21. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

22. **ASSIGNMENT, SUBLET, AND TRANSFER.** A Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the other Party. This Agreement shall be binding on the heirs, successors, and permitted assigns of each party hereto. A Party shall provide not less than forty-five (45) days advance written notice of

request to assign, sublet or transfer any services provided under this Agreement. The decision to allow an assignment by Contracting Party rests solely with La Crosse, in its discretion

23. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

24. **SUBCONTRACTING.** None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. **CONFLICTS OF INTEREST.** Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse

26. **NON-DISCRIMINATION.** Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

27. POLITICAL ACTIVITIES. Contracting Party employees shall not engage in any political activities within the City of La Crosse while in performance of any and all services and work under this Agreement. This does not apply to periods of time in which employee is not at work, or is billing other than La Crosse for his/ her time.

28. GOVERNMENTAL APPROVALS. Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis. .

29. ENTIRE AND SUPERSEDING AGREEMENT. This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. To the extent that any terms and conditions contained in this Agreement, all Exhibits hereto, and the other documents and agreement referenced herein conflict with these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence.

30. AMENDMENT. This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

31. IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE. Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that modification or deviation from such schedules shall occur only upon approval of La Crosse or reasons of Force Majeure. Any phase or schedule that is determined to be "time of the essence" shall be specifically identified as such within the scope of services. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days. If such delays cause additional cost, Contracting Party shall be reimbursed.

32. TIME COMPUTATION. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or

notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn. City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601	Copy to:	Attn. City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
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To SEH:	Attn. Bruce Olson SEH 10 N Bridge Street Chippewa Falls, WI 54729
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34. Intentionally omitted.

35. ACCESS TO RECORDS. Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. La Crosse, or any of its duly authorized representatives, shall have access, at no cost to La Crosse, to such books, records, documents, papers or any records, including electronic, of Contracting Party which are pertinent to the hourly rates of pay and reimbursable costs under this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. Once deliverables are provided to La Crosse, additional copies will be provided for a fee.

36. PUBLIC RECORDS LAW. Contracting Party understands and acknowledges that La Crosse is subject to the Public Records Law of the State of Wisconsin. As such, Contracting Party agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Contracting Party agrees to assist La Crosse in complying with any public records request that La Crosse receives pertaining to this Agreement. If the requested record is not within that which is required to be produced by statute or other authority, then Contracting Party may object, and La Crosse will reject the request. Contracting Party shall seek to intervene in any subsequent public records lawsuit, writ of mandamus, or other action against La Crosse seeking to compel disclosure in order to dispute disclosure of the requested record. Contracting Party shall also cooperate and provide assistance to La Crosse, at no cost, in the defense of such lawsuit, writ or other action. If the request is upheld by a court of law, then Contracting Party will produce the records or indemnify and hold harmless La Crosse Indemnitees from any liability, including without limitation, attorney fees related to or in any way arising from Contracting Party's actions or omissions which contribute to La Crosse's inability to comply with the Public Records

Law. In the event that Contracting Party decides not to retain its records for a period of seven (7) years, then it shall provide written notice to La Crosse whereupon La Crosse shall take custody of said records assuming such records are not already maintained by La Crosse. This provision shall survive the termination of this Agreement.

37. CONSTRUCTION. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

38. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

39. COMPLIANCE WITH LAW. The parties shall comply in all material respects with applicable federal, state and local laws, regulations and ordinances.

40. FORCE MAJEURE. Neither Party shall be responsible for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

41. GOOD STANDING. Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

42. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

43. EXECUTION OF AGREEMENT. Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

44. COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

45. SURVIVAL. All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination.

46. COMPLIANCE WITH LAW. Contracting Party agrees to abide by applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

47. RELIANCE. Contracting Party has the right to reasonably rely on information provided by or through La Crosse.

Revised:
06.21.19

Agreement for Professional Services – Amendment 4

This Agreement is effective as of August 1, 2022, between City of La Crosse (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: Intersection design revisions at the River Bend Drive and River Point Court Intersection.

Client's Authorized Representative: Ms. Andrea Trane

Address: 400 La Crosse Street
La Crosse, WI 54601

Telephone: 608.789.8321 **email:** tranea@cityoflacrosse.org

Project Manager: Jeremy Tomesh, PE

Address: 329 Jay Street
La Crosse, WI 54601

Telephone: 608.498.4947 **email:** jtomesh@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the General Conditions of the Agreement for Professional Services (General Conditions Rev. 07.14.16), which is incorporated in the original agreement effective July 1, 2021.

This scope of work amends the Agreement for Professional Services, effective July 1, 2021, for the project described as "River Point District Phase II (Street A) – Design and Bidding Services". The purpose of this amendment is to move the River Point Court intersection 100-ft. west and make necessary updates to the plans, plat, and electronic files for construction.

Task 1: Intersection Revision

- Continued attendance at staff meetings
- Provide the proposed revisions to the design:
 - Redesign street profiles, intersection grading, and curb ramps.
 - Redesign stormwater management. Revise drainage areas and ensure tank is still sized appropriately.
 - Redesign lighting layout and review photometry for adequate intersection lighting.
 - Redesign storm sewer to account for changes in contributing area to each trunkline.
 - Redesign sewer, and water mains and service layout and ensure there are no horizontal or vertical conflicts and that appropriate spacing is maintained.
 - Redesign landscaping plan including "river concept" in pavers, planter, colored concrete intersection, tree and soil cell layout, and plantings.
 - Review impacted bid items and quantities
- Provide the proposed revisions to the plans:
 - Revise stormwater management plan
 - Update curb ramp and intersection details
 - Revise pavement marking, signing, and jointing plans
 - Revise erosion control plan
 - Revise grading plan
 - Revise sewer and water plan and profile sheets
 - Revise storm and street plan and profile sheets
 - Revise landscaping plans
 - Revise lighting plans
 - Update cross sections

- Coordinate updates to previously issued permits:
 - WisDNR – Construction Notice of Intent
 - WisDNR – Sewer Extension
 - WisDNR – Water Extension
- Revise the preliminary plat
 - Review impacts to the lots south of River Bend Rd. in this area (impacts to Outlot 6 as River Point Court was planned to go south and cul-de-sac)
- Provide Contractor with revised cad files

Total: \$34,400 (See Exhibit 1 for details of level of effort)

Task 2: Correction to contract total

- During the drafting of Amendment 2, the calculation for the contract total was incorrectly summarized, with the total amount was listed for \$1,000 more than what the calculated amount should have been. Therefore, an adjustment of \$1,000 will be made.

Subtotal: -\$1,000

Schedule: Complete the work by September 30, 2022 for incorporation into a “Released for Construction” plan set.

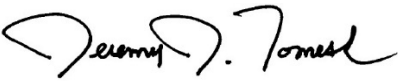
Payment: The estimated fee for this amendment is subject to a not-to-exceed amount of \$34,400.00 including expenses and equipment, plus an adjustment for -\$1,000.00 for a new contract total of \$579,990.00. The payment method, basis, frequency and other special conditions are set forth in the original agreement.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
None.

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Short Elliott Hendrickson Inc.

City of La Crosse

By: 
 Jeremy Tomesh, PE
 Title: Principal | Client Service Manager

By: _____
 Title: _____

EXHIBIT 1

Design Services

TASK	Labor												Expenses					
	Project Man.	Design Eng	Design Eng	Design Eng	Design Eng	Design Eng	Design Eng	Design Eng	Design Eng	Landscape Arch	Admin Assist.	Accounting	CAD	Mtgs	Comp Hours	Special Fee	Reimb Exp	Mileage
	jt	cr	ds	eh	tl	ps	rm	jk	cb	lb	js	sa						
I. Task 1 Redesign Intersection																		
1.1 Project Management \$3,626	8	6								2	3				19			
1.2 Meetings \$1,551	2	2	2		2										8			
1.3 Revise Site Stormwater Plan \$3,898				15	6										21			
1.4 Revise Storm Sewer Sizing \$1,278							8								8			
1.5 Redraw Geometrics and Redesign Cor \$2,582					4	12									16			
1.6 Redesign Sewer and Water \$4,904		6			4							24			34			
1.7 Redesign Curb Ramps \$1,627					4	6									10			
1.8 Redesign Jointing Plan \$955						6									6			
1.9 Update Typical Sections and Details \$1,105					2							6			8			
1.10 Redesign Lighting, Photometry, Wiring \$5,830								36							36			
1.11 Redesign Landscaping \$888									6						6			
1.12 Revise CAD Files to Contractor \$1,105					2							6			8			
1.13 Revise Preliminary Plat \$2,051												16			16			
1.14 Publish Revised Plans \$769												6			6			
1.15 Resubmit Necessary Permits \$1,541		8													8			
1.16 Revise Quantities \$0															0			
1.16 QA/QC \$750			4												4			
Subtotal Task I \$34,460	10	22	6	15	24	24	8	36	6	2	3	58	0	214	0	0	0	

	\$0	10	22	6	15	24	24	8	36	6	2	3	58	0	214	\$0	\$0	0
COST PER STAFF		\$2,220	\$4,113	\$1,091	\$2,807	\$3,896	\$3,686	\$1,234	\$5,629	\$854	\$244	\$378	\$7,110	\$0	\$1,198	\$0	\$0	\$0
TOTAL	\$34,460																	
TOTAL (ROUNDED)	\$34,400																	



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0219

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving Electrical Underground Distribution Easement.

RESOLUTION

BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the Electrical Underground Distribution Easement between the City of La Crosse and Northern States Power Company.

BE IT FURTHER RESOLVED that the Mayor and the City Clerk are hereby authorized to execute the same.

BE IT FURTHER RESOLVED that City staff is hereby directed to take any and all steps necessary to effectuate this resolution.

**ELECTRICAL UNDERGROUND
DISTRIBUTION EASEMENT**

Name City of La Crosse.

The undersigned, hereinafter called "Grantor", hereby grants to Northern States Power Company, a Wisconsin corporation, hereinafter referred to as "NSP", this Electrical Underground Distribution Easement ("Easement") as set forth below.

RECITALS

A. Grantor owns real property in La Crosse County, Wisconsin described as follows:

Except for the rights of access, the rights granted herein shall be limited to the attached Exhibit A.

(the "Property")

B. NSP wishes to locate within the Property the facilities described as follows:

The necessary cables, wires, supports, conduits, vaults, pedestals, manholes, fixtures, devices, and other facilities and appurtenances necessary for the purposes of conducting electric energy, light, and communication impulses.

(the "Facilities")

C. Grantor agrees to grant to NSP, its successors and assigns, the right, privilege and easement to construct, operate, maintain, use, rebuild or remove the Facilities over, under and upon the following described portion of the Property:

Except for the rights of access, the rights granted herein shall be limited to the attached Exhibit A.

(the "Easement Area")

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to NSP a perpetual, non-exclusive easement to construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, patrol, inspect, mark, improve, enlarge, and maintain the Facilities described above within the Easement Area. Grantor also grants to NSP the full right and authority to (1) reasonably access the Easement Area and the Facilities over and across the Property for the purpose of maintaining, replacing and constructing the Facilities; (2) the right of reasonable temporary use by NSP of the Property adjacent to the Easement Area during construction, repair or replacement of the Facilities; and (3) to cut, remove, prune or otherwise control, all trees, brush and other vegetation on or overhanging the Easement Area. Grantor agrees that it will not perform any act on the Easement Area which will interfere with or endanger the Facilities. Grantor shall not locate any structure or obstruction, nor plant any trees, shrubs, bushes or plants of any kind, nor change the ground elevation within the Easement Area without the express written consent of NSP.

After installation of the Facilities or after the exercise of any of the rights granted herein, NSP agrees to restore the Property and the Easement Area to as near their original condition as is reasonably possible and remove therefrom all debris, spoils, and equipment resulting from the use of the Property and the Easement Area.

Grantor covenants with NSP, its successors and assigns, that Grantor is the owner of the above described Property and has the right to sell and convey an easement in the manner and form aforesaid.

Grantor agrees to execute and deliver to NSP, at NSP's cost, without additional compensation, any additional documents needed to correct the legal description of the Easement Area to conform to the right of way actually occupied by the Facilities.

RETURN TO: NSP

Siting & Land Rights, JD Armstrong
1414 W. Hamilton Ave., PO Box 8
Eau Claire WI 54702-0008

PIN: 17-20254-10

It is mutually understood and agreed that this instrument covers all agreements and stipulations between the parties and that no representation or statements, verbal or written, have been made modifying, adding to or changing the terms hereof.

The rights granted herein may be exercised at any time subsequent to the execution of this document and said rights shall continue until such time as NSP, its successors and assigns have notified Grantor, its successors or assigns, that NSP has abandoned and relinquishes its easement rights. Following such notification by NSP, Grantor, its successors or assigns may require by written notification that NSP remove all of its Facilities from the Easement Area at NSP's expense, or if no notification is given, then NSP may decide to abandon such Facilities in place. NSP shall deliver a recordable release of easement to be recorded at the expense of Grantor or its successor or assigns.

All provisions of this Easement, including the benefits and burdens, shall be deemed to run with title to the Property and shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties hereto as fully as upon themselves.

IN WITNESS WHEREOF, Grantor has executed this Easement as of this ____ day of _____, 2022.

Grantor(s): City of La Crosse

Name:
Its:

Name:
Its:

STATE OF _____)
) ss.
COUNTY OF _____)

Personally came before me, this ____ day of _____, 2022, the above _____ and _____ to me known to be the _____ and _____ of said Corporation and acknowledged that they executed the foregoing instrument as such officers as the deed of said Corporation, by its authority.

Name:
Notary Public, State of _____
My Commission Expires: _____

This instrument drafted by JD Armstrong, an employee of Xcel Energy Services, Inc:

925584

VCL 673 PAGE 763

517669

MAR 23 1982

RECORDED

AT 9:30 A. M.
CHARLES R. WHALEY, JR.
REGISTER OF DEEDS
La Crosse County, Wis

RETURN TO

EXCEPTION

THIS INDENTURE, Made by City of La Crosse, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, grantor of La Crosse County, Wisconsin, hereby quit-claims to Board of Regents of the University of Wisconsin System, a Wisconsin corporation, grantee of Dane County, Wisconsin, for the sum of One and 00/100 (\$1.00) Dollar the following tract of land in La Crosse County, State of Wisconsin:

A parcel of land located in N 1/2 of NE 1/4, Section 32 and in the NW 1/4 of NW 1/4, Section 33 all in T 16 N, R 7 W, City of La Crosse, La Crosse County, Wisconsin, more particularly described as follows:

Commencing at the East Quarter Corner of said Section 32, a limestone monument; thence along the east line of said Section 32, N 01° 47' 30" W 1330.43 feet to the southeast corner of said N 1/2, NE 1/4, a three inch iron pipe; thence along the south line of said N 1/2, NE 1/4, S 89° 52' 00" W 1496.00 feet to a 1-1/2 inch iron pipe; thence parallel with the east line of said Section 32, N 01° 47' 30" W 130.05 feet to a 1-1/2 inch iron pipe in the north line of Gorder Road; thence along said north line, N 89° 52' 00" E 1496.00 feet to a 1-1/2 inch iron pipe in the east line of said Section 32; thence continuing along the north line of Gorder Road, parallel with the south line of the said NW 1/4, NW 1/4 to the west line of East Avenue North extended; thence along said west line extended, southerly to the south line of said NW 1/4, NW 1/4; thence along the south line of said NW 1/4, NW 1/4 to the point of beginning, said parcel containing 4.76 acres more or less.

TAX EXEMPT PER SECTION 77.25(2), WIS. STATS.

Said parcel subject to any easements of record.

In Witness Whereof, the said grantor has caused these presents to be signed by Patrick Zielke, its Mayor, and countersigned by Aubrey Kroner, its City Clerk, at La Crosse, Wisconsin, and its corporate seal to be hereunto affixed, this March day of March, A. D., 19 82.

SIGNED AND SEALED IN PRESENCE OF

CITY OF LA CROSSE

Patrick Zielke Corporate Name
Patrick Zielke, Mayor
COUNTERSIGNED
Aubrey Kroner
Aubrey Kroner, City Clerk

STATE OF WISCONSIN,

La Crosse County, } ss.

Personally came before me, this March day of March, A. D., 19 82, Patrick Zielke, Mayor and Aubrey Kroner, City Clerk, of the above named municipal Corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such Mayor and City Clerk of said municipal Corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said Corporation, by its authority.



Patrick J. Houlihan
Notary Public, La Crosse County, Wis.
My Commission Expires (1-) Permanent

This instrument drafted by Patrick J. Houlihan, City Attorney
City of La Crosse, Wisconsin



NORTHERN STATES POWER
WISCONSIN

EXHIBIT A SHEET 1 OF 2 SHEETS



Scale: 1"=200'

Certificate of Survey
Location: City of La Crosse, La Crosse County, Wisconsin
Grantor: City of La Crosse
See sheet 2 of 2 for descriptions.

STATE HIGHWAY NO. 35 (LANG DRIVE)

N1/4 NE1/4 SEC. 32

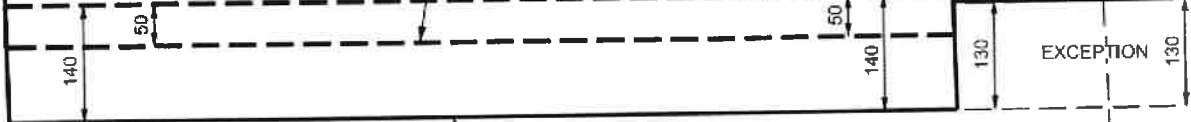
NW1/4 NE1/4
SECTION 32

EAST R.O.W. LINE
STATE HIGHWAY NO. 35
(LANG DRIVE)

WEST LINE
NW1/4 NE1/4
SECTION 32

EAST LINE
NW1/4 NE1/4
SECTION 32

EASEMENT



SOUTH LINE
NW1/4 NE1/4
SECTION 32

SW1/4 NE1/4
SECTION 32



I HEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT
WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION
AND THAT THIS SURVEY IS CORRECT TO THE BEST OF MY
KNOWLEDGE AND BELIEF AND THAT I AM A LICENSED LAND
SURVEYOR UNDER THE LAWS OF THE STATE OF WISCONSIN.

Peter D. Gitzen

PETER D. GITZEN

LIC. NO. S-2911

DATE 10/30/2022

DISTRIBUTION
PARCEL: CITY OF LACROSSE
SEC. 32, T.16N., R.7W., 4TH P.M.
CO.: LA CROSSE



NORTHERN STATES POWER
WISCONSIN

EXHIBIT A SHEET 2 OF 2 SHEETS

Certificate of Survey

Location: City of La Crosse, La Crosse County, Wisconsin

Grantor: City of La Crosse

"Property":

N1/2 of NE1/4 Section 32, Township 16 North, Range 7 West, Except the North (N) 125 feet thereof, La Crosse County, Wisconsin.

ALSO EXCEPT: A parcel of land located in N1/2 of NE1/4, Section 32 and in the NW1/4 of NW1/4, Section 33 in Township 16 North, Range 7 West, City of La Crosse, La Crosse County, Wisconsin, more particularly described as follows:

Commencing at the East Quarter Corner of said Section 32, a limestone monument; thence along the east line of said Section 32, N 01° 47' 30" W 1330.43 feet to the southeast corner of said N1/2 NE1/4, a three inch iron pipe; thence along the south line of said N1/2 of NE1/4, S 89° 52' 00" W 1496.00 feet to a 1-1/2 inch iron pipe; thence parallel with the east line of said Section 32, N 01° 47' 30" W 130.05 feet to a 1-1/2 inch iron pipe in the north line of Gorder Road; thence along said north line, N 89° 52' 00" E 1496.00 feet to a 1-1/2 inch iron pipe in the east line of said Section 32; thence continuing along the north line of Gorder Road, parallel with the south line of the said NW1/4 of NW1/4 to the west line of East Avenue North extended; thence along said west line extended, southerly to the south line of said NW1/4 of NW1/4; thence along the south line of said NW1/4 of NW1/4 to the point of beginning.

"Easement Area":

An easement over, under and across that part of the herein before described "Property" which lies within the North 50.00 feet of the South 140.00 feet of the NW1/4 of NE1/4 Section 32, Township 16 North, Range 7 West, La Crosse County, Wisconsin.

Containing 1.35 acres, more or less.

DISTRIBUTION
PARCEL: CITY OF LACROSSE
SEC. 32, T.16N., R.7W., 4TH P.M.
CO.: LA CROSSE

Xcel Energy
RIGHT-OF-WAY COMPENSATION WORKSHEET

Project: Electrical Underground 3 Phase Primary Installation and Associated Easement

Owner/Grantor: City of La Crosse.

Address: La Crosse, WI

Parcel PID for project and easement location:

17-20254--10

all in the City of La Crosse, La Crosse County, Wisconsin

AREA CALCULATIONS-

LAND TYPES:	<u>T</u> illable Ag.	Non-Tillable Ag.	<u>W</u> ooded Ag.	<u>R</u> esidential	<u>C</u> ommercial/Industrial
TYPE	LENGTH	WIDTH	AREA	ACREAGE	
Undeveloped/Wetland		see easement exhibit	58,806 ft ²	1.35	

COMPENSATION CALCULATIONS -Basis is Similiar Taxed FMV

AREA	BASIS	ADJ%	COMPENSATION
1.35 ac	x \$300.00/ac	x 20%	= \$81.00
Adjust for Xcel Energy \$500 WI Minimum Easement Compensation			= (+419.00)
TOTAL EASEMENT COMPENSATION			<u>\$500.00</u>

Accepted: (s) _____

Date: _____

(s) _____

Date: _____



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0220

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving increased CIP costs for Riverside South Toilet Rooms project.

RESOLUTION

WHEREAS, the Capital Improvement Projects (CIP) 2022-2026 includes #552, appropriating GOB and Donation funds as a biennial project for Riverside South Toilet Project; and

WHEREAS, Resolution 23-0076 is awarding a contract, with additional contingency, based on Fowler & Hammer, Inc's bid of \$602,630.00; and

WHEREAS, the approved GOB & Donations Funds from CIP 2022-2026 #552 include funds of \$500,000, and an additional \$120,000 is needed for construction; and

WHEREAS, per the City Code of Ordinances Sec. 2-359.a Project implementation. It shall be the responsibility of the Board of Public Works to ensure that all projects enumerated and funded in the adopted annual Capital Improvement Budget are designed, bid, purchased and constructed. The adoption of the Capital Improvement Budget by the Common Council shall be authority for the expenditure by a department for the projects and purposes identified within the Capital Improvement Budget in the amounts assigned to the project and by the sources identified in the Capital Improvement Budget. Any changes to the projects; whether in scope, amount or funding source; in the Council adopted Capital Improvement Budget will require action by resolution of the Common Council to effect such change.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the sum of \$120,000 be designated from Riverside Park Improvement Account (2904270) to the Riverside South Toilet Rooms Project.

BE IT FURTHER RESOLVED that City of La Crosse staff are hereby authorized to effectuate this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0205

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Amended Resolution approving development agreement for The Driftless Apartments and Townhomes.

RESOLUTION

WHEREAS, the developer proposes to be the first development in the River Point District (specifically located at Zone D) that the City of La Crosse is targeting for redevelopment, helping to catalyze additional development in this area; and

WHEREAS, the proposed project aims to serve the community by creating 120 units of affordable/workforce housing units for both seniors and individuals/families to serve a mix of age groups, and along with increasing the tax base, this project will provide needed, quality, safe affordable housing, helping to enhance stability for lower income La Crosse area seniors and families; and

WHEREAS, City staff and the City's consultant Ehlers reviewed the Tax Incremental Financing application and found that this project fulfilled the requirements of the application, including demonstrating a financing need for assistance.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves The Driftless Apartments Revised development agreement dated ~~2-22-23~~ 3-2-23.

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse that it hereby authorizes the City Attorney, Director of Finance, Director of Planning and Development, Mayor and City Clerk to execute said agreement.

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse that it hereby approves a loan to The Driftless Apartments in the amount of \$550,000, which would be made through TID 18 funds. The terms of the loan will be approved by the Economic and Community Development Commission prior to issuance.

BE IT FURTHER RESOLVED that City staff is hereby authorized to take any and all steps necessary to effectuate this resolution.

23-0205

**CERTIFIED COPY OF RESOLUTION ADOPTED AT A
REGULAR MEETING OF THE ECONOMIC AND COMMUNITY DEVELOPMENT
COMMISSION
OF THE CITY OF LA CROSSE, WISCONSIN**

STATE OF WISCONSIN)
) ss.
County of La Crosse, City of La Crosse)

I HEREBY CERTIFY that I am the duly appointed, qualified secretary of the Economic and Community Development Commission of the City of La Crosse and State of Wisconsin; that the following is a true and correct copy of a Resolution adopted at the regular meeting of the Economic and Community Development Commission of the City of La Crosse, State of Wisconsin, held on the twenty second day of February, 2023 at four o'clock, p.m., in the Council Chambers at La Crosse City Hall, 400 La Crosse Street, in said City; and that the same has been duly recorded in the minutes of said Commission and has never been rescinded or revoked.

BE IT RESOLVED: Resolution approving development agreement for The Driftless Apartments and Townhomes be RECOMMENDED TO BE ADOPTED AS AMENDED to the Finance & Personnel Committee. The amendment makes the following changes:
-Language added to reflect 85% maximum of increment provision.
-The construction timeline was updated to align with the projected timing of River Point District infrastructure construction timelines.
-Updated guaranty of minimum construction costs.

IN WITNESS WHEREOF, I have hereunto signed my name at La Crosse, Wisconsin, this twenty second day of February 2023.



Linzi Washtock, Planning and Development Assistant
Recording Secretary, Economic and Community Development Commission
City of La Crosse, Wisconsin

Amended Resolution approving development agreement for The Driftless Apartments and Townhomes.

RESOLUTION

WHEREAS, the developer proposes to be the first development in the River Point District (specifically located at Zone D) that the City of La Crosse is targeting for redevelopment, helping to catalyze additional development in this area; and

WHEREAS, the proposed project aims to serve the community by creating 120 units of affordable/workforce housing units for both seniors and individuals/families to serve a mix of age groups, and along with increasing the tax base, this project will provide needed, quality, safe affordable housing, helping to enhance stability for lower income La Crosse area seniors and families; and

WHEREAS, City staff and the City's consultant Ehlers reviewed the Tax Incremental Financing application and found that this project fulfilled the requirements of the application, including demonstrating a financing need for assistance.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves The Driftless Apartments Revised development agreement dated 2-22-23.

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse that it hereby authorizes the City Attorney, Director of Finance, Director of Planning and Development, Mayor and City Clerk to execute said agreement.

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse that it hereby approves a loan to The Driftless Apartments in the amount of \$550,000, which would be made through TID 18 funds. The terms of the loan will be approved by the Economic and Community Development Commission prior to issuance.

BE IT FURTHER RESOLVED that City staff is hereby authorized to take any and all steps necessary to effectuate this resolution.

Resolution approving development agreement for The Driftless Apartments and Townhomes.

RESOLUTION

WHEREAS, the developer proposes to be the first development in the River Point District (specifically located at Zone D) that the City of La Crosse is targeting for redevelopment, helping to catalyze additional development in this area; and

WHEREAS, the proposed project aims to serve the community by creating 120 units of affordable/workforce housing units for both seniors and individuals/families to serve a mix of age groups, and along with increasing the tax base, this project will provide needed, quality, safe affordable housing, helping to enhance stability for lower income La Crosse area seniors and families; and

WHEREAS, City staff and the City's consultant Ehlers reviewed the Tax Incremental Financing application and found that this project fulfilled the requirements of the application, including demonstrating a financing need for assistance.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves The Driftless Apartments development agreement.

BE IT FURTHER RESOLVED by the Common Council of the City of La Crosse that it hereby authorizes the City Attorney, Director of Finance, Director of Planning and Development, Mayor and City Clerk to execute said agreement.

BE IT FURTHER RESOLVED that City staff is hereby authorized to take any and all steps necessary to effectuate this resolution.

**MSP – THE DRIFTLESS APARTMENTS
DEVELOPMENT AGREEMENT**

This MSP – The Driftless Apartments Development Agreement (hereafter "Agreement") is made by and among the **City of La Crosse**, Wisconsin, a Wisconsin municipal corporation with offices located at 400 La Crosse Street, La Crosse, Wisconsin, 54601 ("City"), and **The Driftless Apartments, LLC**, a Wisconsin limited liability company with principal offices located at ~~450 East Gilman Street, Madison, Wisconsin 53703-1482~~ 1295 Northland Drive, Suite 270, Mendota Heights, MN 55120 ("**Developer**").

WITNESSETH:

Whereas, Developer proposes to own, develop and improve a currently underutilized property into 120 units of affordable / workforce housing units, defined below as the "Project," within the City of La Crosse on property Developer intends to own, all of which property is more particularly described in **Exhibit A** ("Real Estate");

Whereas, the Real Estate is located within the boundaries of Tax Incremental District No. 18 ("TID #18") and the City of La Crosse Redevelopment District No. _____.

Whereas, the goals for the Real Estate include encouraging private residential development and improvements and undertaking public improvements that promote desirable and sustainable uses, which further serve the needs of the community and visitors as well as fulfilling the aesthetic character standards of the City;

~~**Whereas**, the City finds it necessary to further redevelop the Real Estate to an area of the City within Tax Incremental District No. 18, ("TID #18"), in order to further redevelop an area of the City, reduce underutilized property, grow the tax base and stimulate commercial and residential activity as well as provide for a place of employment and residence for citizens of the State and the City;~~

Whereas, Section 66.1105, Wis. Stat., empowers cities to assist redevelopment projects by lending or contributing funds as well as performing other actions of a character which the City is authorized to perform for other general purposes;

Whereas, the City has found and determined that: (1) the economic vitality of the Real Estate is essential to the economic health of the City and other taxing jurisdictions within the City; (2) the proposed development of the Real Estate through the construction of the Project is an integral part of the residential needs of City residents, local businesses and the surrounding area; ~~and~~ (3) the benefits to be gained by the City as a result of the Project are greater than the costs to the City under this Agreement; (4) the Real Estate is in a blighted area and that the Project is likely to enhance significantly the value of the Real Estate and the other property within TID #18 in accordance with Section 66.1105(4)(gm)(4)(a)-(b) of the Wisconsin Statutes; and (5) the Project serves the purpose of carrying on redevelopment and assisting in a redevelopment project in connection with the implementation of the Project Plan (defined below);

Whereas, the Developer and the City agree that the Real Estate's development and improvement shall (1) result in an economic and aesthetic benefit to the City and the surrounding area, including, without limitation, growth

This space is reserved for recording data

Return to

City Attorney
400 La Crosse Street
La Crosse WI 54601

Parcel Identification Number/Tax Key Number

in the tax base and job creation; and (2) be secured for the future benefit of the citizens and the community through the construction and development of the Project all in accordance with the Master Plan to be prepared by the Developer and approved by the City Plan Commission;

Whereas, the City desires the Project to proceed for the reasons set forth above and ultimately to provide increased tax revenues for the City and various taxing jurisdictions authorized to levy taxes within TID #18;

Whereas, in order to induce Developer to undertake the Project, the City has offered a Contribution agreed to the Developer to reimburse the Developer pay for certain project costs included in the project plan of TID #18 as described in the (“TID Project Plan for TID #18, approved by the Common Council”) ~~through the use of the City, existing municipal funds and as amended from time to time or the use of borrowed funds and to provide other assistance to time (the “Project Plan”); Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement;~~

Whereas, the City finds and determines that certain cash grant payments as detailed in this Agreement are necessary and convenient to the implementation of the TID Project Plan;

Whereas, Developer declares that “but for” this Agreement, it would not undertake the Project to the extent of the investment proposed and the City has determined that the amount of the Contribution is the amount determined by the City to be necessary to induce the Project;

Whereas, the City and Developer wish to set forth in this Agreement their respective commitments, understandings, rights and obligations in connection with the Project as more fully described herein and to further provide for the implementation of the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein exchanged, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

ARTICLE I PURPOSE; LAND; DEFINITIONS; EXHIBITS

1.1. Land Affected. The parties acknowledge that the Project will encompass and/or affect the following real property, all of which shall be within the boundaries of TID #18:

The Real Estate, described on **Exhibit A**, and certain public streets and rights-of-way serving the same.

1.2. Purpose of the Agreement. In order to cause the Project to occur and to induce Developer to undertake the Project, to eliminate blight, promote community development, industry and job creation and to expand and enhance the tax base and stimulate residential activity within the City, the City intends to undertake certain project costs and public improvements, if any, necessary for the Project, all as set forth in this Agreement. The City intends to recover its costs through payments received under this Agreement including increased tax revenues generated by the Real Estate. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed. Developer and the City plan to work together to undertake the Project on the Real Estate all as more fully described herein and in the Master Plan and as approved by the City Plan Commission.

1.3. Certain Definitions. In addition to the words and phrases elsewhere defined in this Agreement, the following words and phrases, when having an initial capital letter, shall have the following meanings:

- a. "Agreement" means this MSP – The Driftless Apartments Development Agreement by and between the City and the Developer, as amended and supplemented from time to time.
- b. "City" means the City of La Crosse, Wisconsin, a Wisconsin municipal corporation.
- c. "Construction Schedule" means the construction timetable set forth on **Exhibit F**.
- d. "Contribution" means the contribution or cash grant that is made through this Agreement to incent Developer to undertake the development and assist the Project and for which the Monetary Obligation is incurred.
- e. "Developer" means The Driftless Apartments, LLC, a Wisconsin limited liability company.
- f. "Master Plan" means the Master Plan for the Real Estate prepared by the Developer and approved by the City Plan Commission as well as all subsequent revisions thereto that are prepared by Developer and approved by the City Plan Commission.
- g. "Monetary Obligation" means a limited and conditional monetary obligation of the Tax Increment generated from the Project in a maximum aggregate amount of Four Million Nine Two Hundred Forty-Two Thousand Dollars (\$4,92200,000.00), that is incurred, in one or more installments, and that is payable over the time not to exceed the duration of the TID #18; more specifically:
 - (1) Calculation. Effective September 1, 2025, the City shall be obligated to pay a Contribution calculated as the Tax Increment resulting from an increase in real property tax base from the Project not to exceed the lesser of: (a) an aggregate Four Million Nine Two Hundred Forty-Two Thousand Dollars (\$4,92200,000.00), or (b) eighty-five percent (85%) of the actual Tax Increment resulting from an increase in the real property tax base from the Project for tax years 2024-2047 as further defined in Section 3.1 of this Agreement. The difference, if any, between the actual Tax Increment resulting from an increase in the real property tax base from the Project for any tax year for which a Contribution would be paid and the aggregate maximum Four Million Nine Two Hundred Forty-Two Thousand Dollars (\$4,92200,000.00), shall be retained by the City.
 - (2) Disbursement Date. After determining compliance with this Agreement and the actual applicable Tax Increment, the City shall make its Contribution of the Monetary Obligation annually on or before September 1 until payment of the maximum amounts defined herein or until closure of TID #18 by law, whichever occurs first.
 - (3) Conditions. The City's obligation to make Contributions on the Monetary Obligations is conditioned on:
 - (a) The determination by the City Assessor of compliance with the tax guarantee in Section 2.6(b) of this Agreement;
 - (b) The timely payment of taxes when due by Developer;
 - (c) Substantial Completion of the Project in accordance with the

Master Plan, Project Cost Breakdown and Construction Schedule;

- (d) Submission by Developer of verifiable costs, invoices, lien waivers, proof of financing costs and any other supporting documentation as requested by the Finance Director and Economic and Community Development Commission. Said submissions shall be in form and content acceptable to the Finance Director and Economic Development Commission and demonstrate Substantial Completion and payments for costs for which reimbursement is being requested in accordance with Section 3.1 and the other provisions of this Agreement;
 - (e) Continued compliance with the provisions of this Agreement by Developer and any other agreement between the Developer and City; and
 - (f) The use of the Contribution for eligible project costs under the Tax Incremental Law; and
 - (g) Continued compliance with any and all applicable federal, state and local laws, regulations and ordinances by Developer.
- (4) Example Exhibit. An example of the annual Contribution payments ~~Monetary Obligation~~ is attached as **Exhibit G**.
- (5) Not General Obligation. For purposes of the Tax Increment Law, this Agreement is an evidence of indebtedness; that is, it fully evidences the City's obligation to pay the Monetary Obligation. No negotiable instrument is being prepared to separately evidence the Monetary Obligation. The Monetary Obligation shall not, however, be included in the computation of the City's constitutional debt limitation, because the Monetary Obligation is limited and conditional, and no taxes have been or will be levied for its payment or pledged to its payment. Nothing in this Agreement shall be deemed to change the nature of the City's obligation from a limited and conditional obligation to a general obligation. No Tax Increments are pledged to the payment of the Monetary Obligation. In the event of an interpretation of this Agreement that would require the City's obligation to change from a limited and conditional obligation to that of a general obligation, then the City's Contribution and/or Monetary Obligation shall be subject to annual appropriation by the City Council.
- (6) No Acceleration. Notwithstanding any other provision of this Agreement, Developer has no right to accelerate the payment of the Monetary Obligation. The only remedy of Developer in the event of nonpayment shall be legal proceedings to collect the amount of the Monetary Obligation that is due and payable. Developer may only institute legal proceedings after filing a claim with the City and complying with any other applicable provisions of this Agreement.
- (7) Limitations. The City has no obligation to make payments of the

Monetary Obligation in excess of the amount of the Tax Increments that have been collected, and allocated from the Project in TID #18 under the Tax Increment Law and the provisions of this Agreement. The City has no obligation to make payments of the Monetary Obligation if this Agreement terminates. In the event Developer fails to comply with any provision of this Agreement, the City may withhold any Contribution that is due and payable and may further seek the recovery of any Contribution that has already been paid or disbursed, which shall become immediately due and payable.

(8) Administration. The parties acknowledge and agree that the City incurs continuing administrative and professional service costs under this Agreement. Notwithstanding any provision of this Agreement, the City shall retain fifteen percent (15%) of any Contribution to be made to Developer as calculated herein to offset said costs.

- h. "Plans and Specifications" means the plans and specifications developed for the Project.
- i. "Project" means the development and improvement of the Real Estate by constructing 120 units of affordable / workforce housing on the Real Estate all as described in more detail on **Exhibit B** and in accordance with the Master Plan. Subject to the terms and conditions of this Agreement, uses for the Project shall be determined by zoning. The term, "Project," excludes personal property and land.
- j. "Project Cost Breakdown" means the minimum construction costs of the Project and consists of the cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, construction, financing, contingency and all other direct and indirect costs of construction of the Project, all as described in more detail on **Exhibit E** and in accordance with the Master Plan.
- k. "Public Improvements" means the public infrastructure improvements, if any, to be constructed by the City in connection with the Project, which are set forth on **Exhibit D**.
- l. "Real Estate" means the real property described in **Exhibit A**.
- m. "Signature Date" has the same meaning as provided in Section 8.22 of this Agreement.
- n. "Substantial Completion" means the completion of the improvements to the Real Estate pursuant to the Plans and Specifications, (except for punch list items, exterior painting, and landscaping) and the issuance by the Project architect of a certificate of substantial completion and the issuance of a certificate of occupancy from the City. Subject to unavoidable delays beyond the control of the Developer, any such incomplete items shall be fully completed within a reasonable time after the date of Substantial Completion, but not to exceed ninety (90) days thereafter except site improvements such as landscaping shall be completed no later than two hundred forty (240) days after the date of Substantial Completion if weather or other conditions beyond the control of Developer prevent completion of the same.
- o. "Tax Increment" means the tax increment or increase in real property taxes received by the City with respect to the Real Estate and the Project which is generated by TID #18. For purposes of calculating the Tax Increment for the Real Estate, the base value of the

Real Estate for 2023 is zero since it is currently owned by the City or Redevelopment Authority which is generated by TID #18.

- p. "Tax Incremental Law" means Section 66.1105, Wis. Stats., as amended and superseded.
 - q. "TID #18" means the Tax Incremental Financing District Number 18 of the City of La Crosse.
 - r. "TID Project Plan" means the plan, created in accordance with the Tax Incremental Law, for the financial development or redevelopment of TID #18, including all approved amendments thereto.
- 1.4. **Exhibits.** The following exhibits are hereby attached to and incorporated into this Agreement:
- a. **Exhibit A.** Real Estate
 - b. **Exhibit B.** Description of Project
 - c. **Exhibit C.** Restrictive Covenant
 - d. **Exhibit D.** Description of Public Improvements
 - e. **Exhibit E.** Project Cost Breakdown
 - f. **Exhibit F.** Construction Schedule
 - g. **Exhibit G.** Monetary Obligation Example

ARTICLE II DEVELOPER OBLIGATIONS

2.1. **Acquire the Real Estate.** Prior to ~~May 1~~ July 15, 2023, Developer shall acquire fee simple title to the Real Estate.

2.2. **Develop the Real Estate.** Developer agrees to develop and improve the Real Estate by undertaking the Project, all in accordance with the Master Plan, the Project Cost Breakdown and the Construction Schedule.

- a. **Site Preparation.** Developer shall prepare the Real Estate for construction of the Project, including, without limitation, any necessary demolition or other removal of improvements or preparation currently located on the Real Estate.
- b. **Construction Schedule.** Developer shall commence or cause other entities to commence construction on the Project, as described in **Exhibit B**, on or before ~~May 1~~ July 31, 2023, with Substantial Completion on or before ~~September 1~~ December 31, 2024, all in accordance with the Construction Schedule set forth on **Exhibit F**.
- c. **Guaranty of Minimum Construction Costs.** Developer agrees that the buildings and improvements associated with the Project shall have an aggregate minimum construction cost of not less than ~~Twenty-Two~~ One Million ~~Eight~~ Nine Hundred ~~Ninety~~ Thousand Dollars

~~(\$22,800,000.00~~ \$21,9920,000,000). The Project Cost Breakdown is provided on **Exhibit E**.

- d. **Rights of Access.** Developer shall permit the representatives of the City to have access to the Project at all reasonable times during and following the construction when the City deems access necessary to ensure compliance with the terms and conditions of this Agreement including, but not limited to, access for inspection of all work being performed in connection with the Project as set forth in the Master Plan. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Agreement.
- e. **Property for Public Streets and Public Improvements.** Developer shall dedicate and/or transfer or convey all public streets, public rights-of-way and all necessary public sewer and water utilities within the Real Estate, as depicted in the Master Plan, as finalized, to the City at no cost to the City.
- f. **Master Plan.** Prior to obtaining any building or other permits and/or commencing any construction or development on the Real Estate, Developer shall submit a Master Plan setting forth all the details of construction and development to the City Plan Commission for review and approval. Said Master Plan shall conform in all material respects to the provisions of this Agreement, all applicable federal, state and local laws, ordinances, rules and regulations and shall include preliminary and final building, site and operational Plans and Specifications, including, without limitation: (1) building plans and specifications; (2) architectural plans, renderings and specifications; (3) building material plans and specifications; (4) preliminary and final site plans; (5) landscaping plans; (6) stormwater and erosion control plans; (7) lighting plans; (8) traffic and circulation plans for pedestrians, bicyclists, transit riders, truck and delivery vehicles, and automobiles; (9) signage plans and specifications; (10) water and sewer plans; and (11) any other preliminary or final plans, specifications or other requirements as determined by the City Planner. The City Planner may determine, in his sole and absolute discretion, whether one or more of the above requirements is applicable to the Project's Master Plan.

2.3. Local Subcontractors. It is agreed by Developer that Developer shall engage local subcontractors, workers as well as local suppliers for material. The term subcontractor is as defined in Section 66.0901(1)(d), Wis. Stat. The word, "local," shall mean that the subcontractors and suppliers of material have their principal place of business within the City of La Crosse or within a seventy-five (75) mile radius of the City of La Crosse, Wisconsin. The Developer further agrees to provide to the City Engineer a list of all subcontractors and it further agrees that eighty percent (80%) of all work performed by subcontractors for construction shall be performed by subcontractors located within the City or seventy-five (75) miles of the City of La Crosse. In determining whether the eighty percent (80%) threshold has been met, the parties shall measure based upon the dollar values of said work. If Developer does not meet this requirement, it may request a waiver from the City Engineer providing reasons for the request of the same. This Section does not apply to fixtures, furnishings and equipment.

2.4. Compliance with Planning and Zoning; Use. Developer, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental or non-governmental entity in connection with the Project. Any conditions imposed on Developer to obtain any approval, permit or license must be acceptable to the City. Developer will not initiate, approve, consent to or participate in any change or modification of the zoning in effect for the Real Estate or any portion thereof, without the City's prior written consent. No property within the Real Estate shall be used for any use other than as set forth in the Master Plan and this Agreement and as approved by the City, including any conditions attendant with such approval, unless such use is further approved by the City under its normal zoning, review and approval procedures.

2.5. Maintenance and Repair. Developer agrees that at all times after construction of the Project, it will keep and maintain the Real Estate and the Project in good condition and repair.

2.6. Taxes. It is understood that the land, improvements and personal property resulting from the Project shall be subject to property taxes. Developer shall pay when due all federal, state and local taxes in connection with the Real Estate and all operating expenses in connection with the Real Estate and Project.

- a. **Annual PILOT.** In the event that some or all of the Real Estate or personal property is or becomes exempt from general property taxes under Chapter 70, Wis. Stat., as amended or superseded, or by any other statute, provision or reason, then Developer (or its successors or assigns) shall make an annual payment to the City in lieu of taxes (“Annual PILOT”) for the services, improvements or facilities furnished to the Real Estate by the City and other taxing jurisdictions. The amount of the Annual PILOT shall be computed and determined by the City Assessor by multiplying the fair market value (using tax assessment definitions, rules and procedures) of the tax-exempt portion of such property by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. Developer or the then current owner of the tax-exempt property, its successors or assigns shall pay the Annual PILOT within sixty (60) days of receipt. Developer shall have the right to appeal the determination of the City Assessor to the City Council. Any appeal shall specifically state the reasons, in writing, why the amount due as provided by the City Assessor is in error. The parties agree that the Annual PILOT shall survive for a period of twenty (20) years or the life of the TID #18, whichever is longer. Notwithstanding, the Developer or its successors shall not be responsible for any Annual PILOT resulting from the Real Estate or a portion thereof becoming tax exempt due to the use of eminent domain by the United States or some other governmental entity.
- b. **Guarantee.** As an additional inducement and in consideration for the City entering into this Agreement, Developer guarantees faithful performance and compliance with all the terms, covenants, conditions and obligations to be kept and performed by Developer contained in this Agreement, including, without limitation, the obligation that the Project shall have an assessed value of not less than Nine Million ~~Six~~ Six Hundred Thousand Dollars (\$9,600,000.00) beginning in tax year 2025 and for a period of twenty (20) years or the life of TID #18, whichever is longer. Developer agrees that this minimum assessed value on the Project shall remain a lien on the Real Estate and shall run with the land for a period of twenty (20) years or the life of TID #18, whichever is longer.
- c. **Deficiency PILOT.** In the event the assessed value of the Project is less than Nine Million Six Hundred Thousand Dollars (\$9,600,000.00) as of January 1, 2025 or for any tax year thereafter for a period of twenty (20) years or the life of TID #18, whichever is longer, then the Developer or the then current owner, or its successors or assigns agrees to pay a Deficiency PILOT to the City within sixty (60) days of receipt. Said Deficiency PILOT shall be calculated by first determining the difference between the guaranteed assessed value of the Project as provided in Section 2.6(b) of this Agreement less the actual assessed value of the Project for the tax year at issue, and multiplying said difference by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. This requirement shall be a lien running with the land for a period of twenty (20) years or the life of TID #18, whichever is longer.
- d. **Special Charge.** In the event there is a lack of compliance for payment of the Annual PILOT or Deficiency PILOT, then the City, in addition to any other remedy available at law or in equity, may levy a special charge or assessment under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property for the delinquent amount as calculated

herein to enable the City to enforce performance of the Developer's obligations. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy and amount of the special charge or assessment.

2.7. Transfer or Sale of Real Estate.

- a. **Notice of Intent to Transfer.** No property within the Real Estate may be sold, transferred, or otherwise conveyed unless the Developer first provides to the City written notice of intent to transfer the property at least forty-five (45) days before the sale, transfer or conveyance is to occur. This Section shall not apply to nor restrict a transfer to Developer's financing entity, e.g. placing a mortgage on the Real Estate, nor a foreclosure pursuant thereto, nor a residential or commercial lease agreement for individual residential living units, individual commercial lease spaces, parking spaces and any single-family residence to be owned in fee title simple by the purchaser, nor public dedications or easements granted in connection with this Agreement or the operation of the Project.
- b. **No Transfer to Exempt Entities.** No property within the Real Estate may be sold, transferred or conveyed to, or leased or owned by any entity or used in any manner which would render any part of the Real Estate exempt from property taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement satisfactory to the Economic Development Commission, or its successor, providing for payments in lieu of taxes to the City.
- c. **Assignees and Transferees Bound by Agreement.** Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this Agreement, which shall run with the land and be binding upon all such assignees, purchasers and transferees. The Developer shall not sell or transfer any portion of the Real Estate to any entity unless and until the Developer has provided the City with written evidence satisfactory to the Economic Development Commission, or its successor, that such assignee or entity has agreed in writing to be bound by the terms of this Agreement. Any such sale, transfer or conveyance of any portions of the Real Estate shall not relieve the Developer of its obligations hereunder.
- d. **The Developer shall have the right to collateral assign this Agreement and its payment rights in and to the Contribution to its lenders and the City agrees to consent thereto.**
- de. **Subdivision.** Property within the Real Estate shall not be further subdivided without approval of the City.
- ef. **Restrictive Covenant.** Developer shall place a restrictive covenant on the Real Estate prohibiting the Real Estate from being exempt from property taxes in substantially the same form as **Exhibit C**. Likewise, Developer shall place a restrictive covenant on any condominium unit or townhome prohibiting it from being exempt from property taxes in substantially the same form as **Exhibit C**.

2.8. **Easements.** Developer shall grant the City or any public utility such easements as reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other need necessary to effectuate development of the Real Estate in accordance with the Master Plan at no cost to the City.

2.9. Insurance. For a period of twenty (20) years or the life of TID #18, whichever is longer, Developer ~~its successors shall maintain, and assigns in ownership shall require that any purchasers or transferees of any portion~~ of the Real Estate shall maintain, insurance in such amounts and against such risks both generally and specifically with respect to the Real Estate, as are customarily insured against in developments of like size, kind and character, including customary builders risk insurance during construction and customary casualty, property and liability insurance, with deductibles in accordance with reasonable industry practice. Notwithstanding, ~~Developer, its successors and assigns, shall carry casualty insurance for the Project at not less than the replacement value and further agrees and covenants to apply, and to require any purchasers or transferees of any portion of the Real Estate to apply,~~ any and all insurance proceeds to rebuild the Project (subject to the rights of Developer's mortgage lenders), maintain the Project and Real Estate and to name the City as an additional insured to the extent of this covenant provided in this Section. Developer shall provide to the City certificates of all such insurance. ~~Any lender who holds a lien on the Project shall agree to these obligations to rebuild the Project.~~

2.10. Indemnity. Developer shall indemnify and hold harmless the City, its officers, employees and authorized representatives, ("Indemnified Party"), from and against any and all liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, costs, and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Party on account of this Agreement, unless such claims, causes of action, or demands: (a) relate to the Indemnified Party failing to perform its obligations to Developer; or (b) arise out of any willful misconduct of the Indemnified Party. At the Indemnified Party's request, Developer shall appear for and defend the Indemnified Party, at Developer's expense, in any action or proceeding to which the Indemnified Party may be made a party by reason of any of the foregoing.

2.11. Utilities.

- a. **Other Utilities.** Developer shall be responsible for, pay for and cause electrical power, telephone facilities, cable TV lines, and natural gas facilities to be installed in such a manner as to make proper and adequate service available to each building in the Project, as described in the Master Plan. Plans indicating the proposed location of each such utility to service the Project shall be shown on the Master Plan and construction plans to be provided to the City Plan Commission for approval prior to the installation of the utility.
- b. **Water and Sewer.** Developer shall be solely responsible for and shall pay all costs of connecting water and sewer service from the public streets, alley, right of way, or other approved infrastructure to the buildings within the Real Estate.

2.12. Restrictions. Developer agrees to neither use nor allow a third-party to use the Real Estate for adult entertainment, pawnshops, mini-warehouses, car title loan business, payday lenders, tattoo parlors, and/or off-premise signs for a period of twenty (20) years or the life of TID #18, whichever is longer. "Payday lenders" and "car title loan business" shall exclude banks and credit unions. This shall be a deed restriction against the Real Estate and shall run with the land.

2.13. Record Retention. Developer understands and acknowledges that the City is subject to the Public Records Law of the State of Wisconsin. As such, Developer agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years. Likewise, Developer agrees to assist the City in complying with any public records request that it receives pertaining to this Agreement. Additionally, Developer agrees to indemnify and hold the City, its officers, employees and authorized representatives harmless for any liability, including without limitation, reasonable attorney fees relating to or in any way arising from Developer's actions or omissions which contribute to the Indemnified Party's inability to comply with the Public Records Law. In the event Developer decides not to retain its records for a period of seven (7)

years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive termination of this Agreement.

2.14. Repair and/or Replacement of Infrastructure. Developer shall repair and/or replace any damaged City infrastructure or other City property that may occur as a result of the Project, including, without limitation, sidewalks, landscaping, asphalt and light poles. Said repair and/or replacement shall be to the satisfaction of the Board of Public Works.

ARTICLE III CITY OBLIGATIONS

3.1. Project Assistance. Developer has requested and the City may be required to make Contributions to Developer up to an aggregate maximum Four Million Nine Two Hundred Forty-Two Thousand Dollars (\$4,942200,000.00). More specifically,

- a. **Cash Grant Based on Improvements.** The Developer has requested a cash grant from TID #18 of up to an amount of Four Million Nine Two Hundred Forty-Two Thousand Dollars (\$4,942200,000.00), subject to change based on the provisions of this Agreement, with funds to be made available upon verification of the Tax Increment increase as defined herein. The City shall disburse its Contribution as required by its Monetary Obligation to Developer in accordance with this Agreement.
- b. **Illustrative Example.** An illustrative example of the payment of cash grants is attached as **Exhibit G**.

3.2. Certificate of Completion. Upon completion of the improvements by the Developer and review of the improvements by the City, the City shall provide the Developer, upon request, with an appropriate recordable instrument certifying that the improvements have been made in accordance with this Agreement and the Master Plan, and any amendment or modifications thereto.

3.3. Assistance with Zoning Changes. If necessary, the City Planning Department shall initiate the process in accordance with the City's zoning code to attempt to provide appropriate zoning for the Real Property being developed by Developer so that the zoning for the Project is in accordance with the City's comprehensive plan for the area.

3.4. City Performance Subject to Required Government Approvals. ~~The execution Developer acknowledges that various of this agreement by the specific undertakings of the City does not ensure that Developer has received all required described in this Article III may require~~ approvals from the City Council (and other City bodies) and other public bodies, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City's agreements under this Article III are conditioned upon the obtaining of all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain them on a timely basis.

3.5. Subsequent Phases. Any subsequent development of the Real Estate will be addressed in a separate development agreement.

3.6. Public Improvements. Subject to annual appropriation, the City shall, at its sole cost and expense, construct the Public Improvements identified in **Exhibit D**.

ARTICLE IV

CONDITIONS PRECEDENT TO CITY OBLIGATIONS

The City's obligations under this Agreement are conditioned upon the provisions contained herein. If all conditions contained in this Article are satisfied, or if the City waives in writing said conditions, on or before December 31, 2023, then the conditions shall be deemed satisfied. Otherwise, the City, at its option, in its absolute and sole discretion, may at any time thereafter terminate this Agreement by giving notice in writing thereof to Developer. In such event, this Agreement shall be terminated and no party shall have any further liability or obligation to the other hereunder. All submissions given by Developer to the City to satisfy the conditions contained in this Article must be satisfactory in form and content to the City.

4.1. Existence. Developer shall have provided a certified copy of Developer's formation documents and a good standing certificate issued by the appropriate governmental authority of the state of Developer's incorporation.

4.2. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions, which resolutions shall provide that Developer has been duly authorized to enter into this Agreement and all other agreements, documents and contracts required to be executed in connection with the transactions which are the subject of this Agreement.

4.3. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts. Developer shall not be in material default under the terms of any other agreement or instrument to which Developer is a party or an obligor. Developer shall be in material compliance with all provisions of this Agreement.

4.4. Financing Commitment. Developer shall obtain and provide to the City: (1) a written financial commitment from a conventional lender, (2) written construction contract to construct and finance the Project, (3) other written proof of financial resources to construct the Project, or (4) any combination thereof. Said documents shall demonstrate sufficient funds for the construction, furnishing, equipping and installation of the Project in an amount not less than Twenty-Two Million Six Hundred Forty Thousand Dollars (\$22,640,000.00). Said documents shall be acceptable in all respects to City, in the sole and absolute discretion of the Finance Director and Economic Development Commission, or the Commission's successor. Developer shall have closed the loan, or be prepared to close the loan, which is the subject of the financing commitment and in connection therewith, Developer shall have provided copies of the documents to be executed in connection with the construction loan to the City.

4.5. Plans and Specifications. Developer shall have provided the Master Plan, which Master Plan must be acceptable in all respects to the City and shall have been approved by the City Plan Commission with input, if any, from the Board of Public Works.

4.6. Survey. Developer shall provide an ALTA survey of the Real Estate certified to the City by a Wisconsin registered land surveyor, showing the location of all improvements now prior to commencing construction and to be located thereon after said improvements are built pursuant to the Master Plan, all easements, pathways, exterior boundary lines, walkways, private and public streets, adjoining public streets and alleys, utilities, exits and entrances, all curbs, gutters, sidewalks, medians and lighting. The survey must show a state of facts acceptable to the Board of Public Works.

4.7. Insurance. Developer shall have delivered to the City certificates of all insurance required under this Agreement showing the City as a named insured. Said insurance shall not be cancelled, non-renewed nor have any material changes without providing thirty (30) days advanced written notice to the City.

4.8. Intentional Omitted. ~~Amendment of TID #18 and TID Project Plan.~~ ~~The amendment of TID #18 and TID Project Plan shall be approved by the appropriate governmental entities, if necessary.~~

4.9. Financial Statements. Developer shall present (but not leave a copy) to the City's Finance Director of the most recent audited financial statements prepared by a certified public accountant for Developer and any successors or assigns or transferees of Developer and each of the members of any of the foregoing and each member of the Board of Directors (or equivalent) of any of the foregoing. The financial statements must show a financial condition acceptable to the City, in the judgment of the City's Finance Director, to be sufficient to carry out the duties of this Agreement. The financial statements must be in form and content acceptable to the City, in the judgment of the City's Finance Director. In the event the financial statements are in unacceptable form and content, the City's Finance Director may identify alternative financial records for production by Developer.

4.10. Acquisition of Real Estate. The Developer shall have acquired fee simple title to the Real Estate no later than ~~July 15~~^{May 4}, 2023 in accordance with Section 2.1 of this Agreement. If this condition is not met, then this Agreement shall terminate without further action of the City or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligation to the other hereunder

4.11. Approvals and Permits. The Developer shall at its expense have obtained all approvals and permits necessary to undertake the Project on the Real Estate, including but not limited to, site plan review, zoning approvals, and any other local, state or federal approvals or permits.

4.12. Compliance with Law. Developer shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

4.13. Compliance with Agreements. Developer shall be in compliance with this Agreement and all other agreements it may have with the City.

ARTICLE V CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATIONS

Developer's obligations under this Agreement are conditioned upon the following:

5.1. Acquisition of Real Estate and Financing. No later than ~~July 15~~^{May 4}, 2023, the Developer shall have acquired fee simple title to the Real Estate in accordance with Section 2.1 of this Agreement, and ~~obtained shall have secured all financing needed for the Developer to carry out this Project on or before December 31, 2023.~~ If this condition is not met, then this Agreement shall terminate without further action of the City or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligation to the other hereunder

~~**5.2. Amendment of TID #18 and TID Project Plan.** The amendment of TID #18 and TID Project Plan shall be approved by the appropriate governmental entities, if necessary.~~

ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer represents and warrants to and covenants with the City, and the City represents and warrants to and covenants with Developer as respectively follows:

6.1. Financial Statements / No Material Change. All copies of financial statements, documents, contracts and agreements which Developer has furnished to the City, or its agents are true and correct. There has been no material change in the business operations of Developer since the date of the last financial statement furnished to the City except pursuant to the conduct of its ordinary business.

6.2. Taxes. Developer has paid, and shall pay when due, all federal, state and local taxes, and shall promptly prepare and file returns for accrued taxes. If necessary, Developer shall pay when due all payments in lieu of taxes and special charges required under the terms of this Agreement.

6.3. Compliance with Zoning. Developer covenants that the Real Estate, upon completion of the Project, will conform and comply in all respects with applicable federal, state, local and other laws, rules, regulations and ordinance, including, without limitation, zoning and land division laws, building codes and environmental laws.

6.4. Payment. All work performed and/or materials furnished for the Project, other than the Public Improvements, shall be fully paid for by Developer.

6.5. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

6.6. Good Standing. Developer is a limited liability company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Developer is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

6.7. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary corporate action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally. The City represents and warrants to Developer that it has the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by City under this Agreement.

6.8. No Conflict. The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's Articles of Organization or Operating Agreement or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer.

6.9. No Litigation. There is no litigation or proceeding pending or threatened against or affecting Developer or the Project or any guarantor that would adversely affect the Project, Developer or any guarantor or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

6.10. Certification of Costs. Developer covenants the Project Cost Breakdown accurately reflects all costs of the Project (other than costs associated with the Public Improvements, if any) that will be incurred by Developer in the completion and construction of the Project, and the City shall be entitled to rely on the Project Cost Breakdown submitted by Developer. Developer knows of no circumstances presently existing or reasonably likely to occur which would or could result in a material adverse variation or deviation from the Project Cost Breakdown.

6.11. No Default. No default, or event which with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.

6.12. Fees and Commissions. The City shall not be liable for any broker fees or commissions incurred by the Developer in connection with any transactions contemplated by this Agreement.

6.13. Transfer; Financing Accommodation.

- a. No Assignment.** Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber, nor will Developer, its successors, assigns or transferees agree to or permit the transfer, assignment, conveyance or encumbrance of the Project or any of the Real Estate except as provided in Sections 2.7 and 8.1 of this Agreement.
- b. No Transfer.** The principals, shareholders, members, managers and/or partners of Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber their respective interests in Developer, its successors, assigns or transferees, as the case may be, if such anticipated transfer, assignment, conveyance or encumbrance would result in the original members of the Developer having less than majority voting control of the Developer, without providing written notification thereof to the City at least forty-five (45) days prior to the date the proposed transfer, assignment, conveyance or encumbrance is to take effect. Any attempt to so act shall be void and have no effect. Notwithstanding the foregoing, the City acknowledges that from and after the date hereof, the Developer will admit a tax credit investor (the "Investor Member") as a member of Developer, neither the admission of the investor, the withdrawal, removal, replacement, and/or addition of the Managing Member of Developer or the Investor Member of the Developer pursuant to the terms of Borrower's Operating Agreement, nor the withdrawal, replacement, and/or addition of any of Investor Member's general partners or members, nor the transfer of the Investor Member's Interest in the Developer, shall require the consent of the City or constitute a default under this Agreement.
- ~~b~~c. No Subordination.** The City shall not subordinate any interest it has in this Agreement for any reason, unless it is determined to be in the best interests of the City. Any requests for subordination shall be submitted, in writing, explaining why the request is in the best interests of the City. Said request shall be received by the City not less than forty-five (45) days prior to any City Council action on said request. Said subordination may only be approved by the City Council.
- ~~e~~d. Developer Financing.** Notwithstanding this Section 6.13, Developer may transfer, assign or encumber the Real Estate in order to secure financing for the acquisition of the Real Estate and/or for construction of the Project. Said lender may place a lien and/or mortgage on the Real Estate, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgage and/or loan may be transferred or assigned by lender in a secondary market without prior City Council approval. In the event of a foreclosure against Developer by lender or a deed transfer in lieu of foreclosure, lender shall have the right (but not the obligation) to assume the duties, obligations and rights of Developer under this Agreement and the Monetary Obligation. In such a circumstance, lender may transfer or assign this Agreement and its accompanying duties, obligations and rights, to another developer without prior City Council approval. In any circumstance, lender shall provide reasonable notice to City of such actions. This Section shall survive any foreclosure proceeding.

6.14. Commencement and Completion. Developer shall commence and complete construction of the Project in accordance with Section 2.2 above.

6.15. Compliance with Plans. Developer will cause the Project to be constructed materially in accordance with the Master Plan and will promptly correct any defects in construction or deviations from the Master Plan.

6.16. No Changes. Developer shall not, without City's prior written consent: (i) ~~consent to any amendments to any documents delivered to City pursuant to this Agreement;~~ (ii) approve any material changes in the Project or the Master Plan or permit any work to be done pursuant to any changes; or (ii) modify or amend the Project Cost Breakdown to less than the guaranteed minimum construction cost in Section 2.2(c) of this Agreement.

6.17. Inspection of Project. Developer shall permit City, its inspectors and/or its construction consultant, at all reasonable times and at no cost: (a) to inspect the Project and all matters relating to the development thereof, and (b) on reasonable notice, to inspect all of Developer's books and records pertaining to the Project. City assumes no obligation to Developer for the sufficiency or adequacy of such inspections, it being acknowledged that such inspections are made for the sole and separate benefit of City. The fact that City may make such inspections shall in no way relieve Developer from its duty to independently ascertain that the construction of the Project and Developer's compliance with this Agreement is being completed in accordance with the approved Master Plan and the terms and conditions of this Agreement.

6.18. Notification. Developer shall:

- a. As soon as possible and in any event within five (5) business days after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Developer with respect thereto.
- b. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Developer contained in this Agreement to be untrue.
- c. Notify City and provide copies, immediately upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Developer or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Developer or any guarantor under any environmental laws, rules, regulations or ordinances or which seeks damages or civil, criminal or punitive penalties from or against Developer or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

6.19. Unrelated Activity. It is the intention of Developer and City that the sole business of Developer shall be the construction, ownership and operation of the Project, and Developer shall take no action inconsistent with such intention, including without limitation the acquisition by Developer of real or personal property unrelated to the Project, investment by Developer in the assets or stock of any other person, joining by Developer with any other person in any partnership or joint venture, or the creation or incurring of indebtedness by Developer unrelated to the Project.

6.20. Intentionally Omitted. No Indebtedness. ~~Except in the ordinary course of business and except for funds borrowed to provide the financing for the purchase of the Real Estate or the construction of the Project, Developer shall not incur, create, assume, permit to exist, guarantee, endorse or otherwise become directly or indirectly or contingently responsible or liable for any indebtedness. "Indebtedness" shall mean any liability or obligation of Developer: (a) for borrowed money or for the deferred purchase price of property or services (excluding trade obligations incurred in the ordinary course of business); (b) as lessee under leases that have been or should be capitalized according to generally accepted accounting principles; (c) evidenced by notes, bonds, debentures or similar obligations; (d) under any guaranty or endorsement (other than in connection with the deposit~~

~~and collection of checks in the ordinary course of business), and other contingent obligations to purchase, provide funds for payment, supply funds to invest in any entity, or otherwise assure a creditor against loss; or (c) secured by any security interest or lien on assets of Developer, whether or not the obligations secured have been assumed by Developer.~~

6.21. Correction of Defects. Developer shall, upon demand of City (and City may rely on the advice of its inspector and shall not be liable for any errors in such advice), correct any material defect, structural or otherwise, in the Project or any departure from the Master Plan.

6.22. Not for Speculation. Developer represents and warrants that its acquisition of the Real Estate and its undertakings pursuant to this Agreement shall be for the sole and express purpose of the redevelopment of the Real Estate consistent with the Master Plan and the terms and conditions of this Agreement and are not for the speculation in land holdings.

ARTICLE VII DEFAULT

7.1 Developer's Default.

- a. Remedies.** In the event (i) any representation or warranty of Developer herein or in any agreement or certificate delivered pursuant hereto shall prove to have been false in any material respect when made or (ii) of Developer's default hereunder which is not cured within thirty (30) days after written notice thereof to Developer and Developer's investor member (the foregoing being "Events of Default"), the City shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the City shall have the following specific rights and remedies:
- (1) With respect to matters that are capable of being corrected by the City, the City may at its option enter upon the Real Estate for the purpose of correcting the default and the City's reasonable costs in correcting same, plus interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City immediately upon demand;
 - (2) Injunctive relief;
 - (3) Action for specific performance;
 - (4) Action for money damages;
 - (5) Termination of Contribution payments until such time as the Event of Default is cured.
 - ~~(6) Repayment by Developer of any incentives and damages via special assessment or special charge under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment, however, they still retain their right to object to the accuracy of the amount of the special charge or assessment;~~
 - (7) Any other remedy in this Agreement.
- b. Reimbursement.** Any amounts expended by the City in enforcing this Agreement and the obligations of Developer hereunder, including reasonable attorney's fees, and any

amounts expended by the City in curing a default on behalf of Developer, together with interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City upon demand and shall constitute a lien against the Real Estate until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

- c. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- d. **Failure to Enforce Not a Waiver.** Failure of the City to enforce any provision contained herein shall not be deemed a waiver of the City's rights to enforce such provision or any other provision in the event of a subsequent default.
- e. **Investor Member.** Developer's Investor Member shall have the right (but not the obligation) to cure any breaches or Events of Default by Developer hereunder and City agrees to accept such cure as if made by Developer.

7.2 City's Default.

- a. **Remedies.** In the event of the City's default hereunder which is not cured within sixty (60) days after written notice thereof to the City, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer shall have the following specific rights and remedies:
 - (1) Injunctive relief;
 - (2) Action for specific performance; and
 - (3) Action for money damages.
- b. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- c. **Failure to Enforce Not a Waiver.** Failure of Developer to enforce any provision contained herein shall not be deemed a waiver of Developer's rights to enforce such provision or any other provision in the event of a subsequent default.

7.3. Mediation of Disputes Required. Unless the parties agree otherwise, prior to litigation and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. The parties shall split the costs of mediation equally. In the event of impasse at mediation, the aggrieved party may then commence an action. However, the parties shall be bound to agree to alternative dispute resolution as ordered by the Court.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.1. Assignment. Except as provided in Sections 2.7 and 6.13, Developer may not assign its rights or obligations under this Agreement without the prior written consent of the City. Developer shall provide not less than forty-five (45) days advance written notice of any intended assignment. Furthermore, notwithstanding anything to the contrary, the following shall not require the consent of the City and shall not be deemed an Event of Default: (a) transfer by the Investor Member of its membership interest in Borrower to a limited partnership or limited liability

company affiliated with Investor Member; (b) the transfer of a partner, member or other ownership interest in the Investor Member; or (c) transfers in accordance with Section 2.7 or 6.13.

8.2. Nondiscrimination. In the performance of work under this Agreement, Developer agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

8.3. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

8.4. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, pandemic, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause; provided however that any such event of Force Majeure shall not be the basis of a delay of more than ninety (90) days.

8.5. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties, and indemnifications contained herein shall survive the termination or expiration of this Agreement.

8.6. Implementation Schedule and Time of the Essence. All phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum ninety (90) days. The Economic Development Commission, or its successor, shall otherwise oversee the day-to-day operations of this Agreement.

8.7. Notices. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: (a) when personally delivered; (b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or (c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Attn: City Clerk
 City of La Crosse
 400 La Crosse Street
 La Crosse, Wisconsin 54601

with a copy to: Attn: City Planner
 City of La Crosse
 400 La Crosse Street
 La Crosse, Wisconsin 54601

To the Developer: Attn: Managing Member

The Driftless Apartments, LLC
150 East Gilman Street
Madison, WI 53703-1482

To Investor Member To be provided to City by Developer.

In the event Developer does not provide contact information to the City, then the City is not required to provide any notice or opportunity to cure to the Investor Member notwithstanding any other provision of this Agreement.

8.8. Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin and shall be deemed to have been drafted through the combined efforts of parties of equal bargaining strength. Any action at law or in equity relating to this Agreement shall be instituted exclusively in the courts of the State of Wisconsin and venued in La Crosse County. Each party waives its right to change venue.

8.9. Conflict of Interest. Developer shall avoid all conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. Developer is familiar with the City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Section 2-133 of the City of La Crosse Municipal Code. Developer agrees not to offer any City officer or designated employee any gift prohibited by said Code. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Developer. In addition to any other remedies the City may have in law or equity, the City may immediately terminate this Agreement for such breach. No member, officer or employee of the City shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such member, officer or employee participate in any decision relating to this Agreement.

8.10. Execution in Counterparts. This Agreement may be executed in several counterparts, each which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

8.11. Disclaimer Relationships. Developer acknowledges and agrees that nothing contained in this Agreement or any contract between Developer and the City or any act by the City or any third parties shall be deemed or construed by any of the parties or by third persons to create any relationship or third party beneficiary, principal or agent limited or general partnership or joint venture or of any association or relationship involving the City. It is understood and agreed that Developer, in the performance of the work and services of these Project shall not act as an agent or employee of the City and neither the Developer nor its officers, employees, agents, licensees, sublicensees, subcontractors shall obtain any rights to retirement benefits or the benefits which accrue to the City's employees and Developer hereby expressly waives any claim it may have to any such rights. Each party shall be responsible for its own separate debts, obligations and other liabilities.

8.12. Severability. Should any part, term, portion or provision of this Agreement or the application thereof to any person or circumstance be in conflict with any state or federal law or otherwise be rendered unenforceable, it shall be deemed severable and shall not affect the remaining provisions, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.

8.13. Termination. Except for Sections 2.10 (Indemnity), 2.6(a) (Annual PILOT), 2.7(e) (Restrictive Covenant), 2.13 (Record Retention) and ~~8.5 (Survival)~~, which shall survive the termination of this Agreement, this Agreement and all obligations hereunder, shall terminate after twenty (20) years or the life of TID #18, whichever is longer. This Agreement may also be terminated as provided in Article IV (Conditions Precedent to City), Article V (Conditions Precedent to Developer Obligations) and Section 8.9 (Conflict of Interest) hereof.

8.14. Memorandum of Agreement. Promptly upon full execution of this Agreement and prior to the recording of any mortgage or other security instrument against any portion of the Real Estate, the Developer agrees that the City may record this Agreement, or a memorandum thereof, with the Register of Deeds for La Crosse County, Wisconsin. Any such memorandum shall be in form and substance reasonably acceptable to the City and the Developer.

8.15. Covenants Running with Land. All of the covenants, obligations and promises of Developer set forth herein shall be deemed to encumber the Development and run with the land described in **Exhibit A** and shall bind any successor, assignee or transferee of Developer until such time as this Agreement is terminated.

8.16. Amendments. No agreement or understanding changing, modifying or extending this Agreement shall be binding upon either party unless in writing, approved and executed by the City and Developer.

8.17. Time Computation. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

8.18. JURY TRIAL. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

8.19. Construction. This Contract shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. The headings, table of contents and captions contained in the Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require. In the event that any of the provisions, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected.

8.20. Incorporation of Proceedings and Exhibits. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City, including but not limited to adopted or approved plans or specifications on file with the City and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Developer whether or not herein enumerated.

8.21. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, the specific action of the City shall be deemed controlling.

8.22. Execution of Agreement. Developer shall sign, execute and deliver this Agreement to the City on or before the close of regular City Hall business hours seven (7) business days after its final adoption by the City,

whichever occurs later. Developer's failure to sign, execute and cause this Agreement to be received by the City within said time period shall render the Agreement null and void, unless otherwise authorized by the City. After Developer has signed, executed and delivered the Agreement, the City shall sign and execute the Agreement. The final signature date of the City shall be the signature date of Agreement ("Signature Date").

IN WITNESS HEREOF, the parties have executed and delivered this Agreement effective the date set forth next to the City's signature below.

Dated this ____ day of ____, 2023

Dated this ____ day of ____, 2023

The Driftless Apartments, LLC

City of La Crosse

Milo Pinkerton, ~~Manager~~ ~~Sole Owner / Member~~

Mitch Reynolds, Mayor

_____, _____

Nikki Elsen, City Clerk

Subscribed and sworn to before me this
____ day of ____, 2023.

Subscribed and sworn to before me this
____ day of ____, 2023.

Notary Public, State of Wisconsin
My Commission: _____

Notary Public, State of Wisconsin
My Commission: _____

This Document Was Drafted By:
Stephen F. Matty, City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, Wisconsin 54601
608.789.7511

MSP – THE DRIFTLESS APARTMENTS DEVELOPMENT AGREEMENT

This MSP – The Driftless Apartments Development Agreement (hereafter "Agreement") is made by and among the **City of La Crosse**, Wisconsin, a Wisconsin municipal corporation with offices located at 400 La Crosse Street, La Crosse, Wisconsin, 54601 ("**City**"), and **The Driftless Apartments, LLC**, a Wisconsin limited liability company with principal offices located at 150 East Gilman Street, Madison, Wisconsin 53703-1482 ("**Developer**").

WITNESSETH:

Whereas, Developer proposes to own, develop and improve a currently underutilized property into 120 units of affordable / workforce housing units, defined below as the "Project," within the City of La Crosse on property Developer intends to own, all of which property is more particularly described in **Exhibit A** ("Real Estate");

Whereas, the goals for the Real Estate include encouraging private residential development and improvements and undertaking public improvements that promote desirable and sustainable uses, which further serve the needs of the community and visitors as well as fulfilling the aesthetic character standards of the City;

Whereas, the City finds it necessary to further redevelop an area of the City within Tax Incremental District No. 18, ("TID #18"), in order to further redevelop an area of the City, reduce underutilized property, grow the tax base and stimulate commercial and residential activity as well as provide for a place of employment and residence for citizens of the State and the City;

Whereas, Section 66.1105, Wis. Stat., empowers cities to assist redevelopment projects by lending or contributing funds as well as performing other actions of a character which the City is authorized to perform for other general purposes;

Whereas, the City has found and determined that: (1) the economic vitality of the Real Estate is essential to the economic health of the City and other taxing jurisdictions within the City; (2) the proposed development of the Real Estate through the construction of the Project is an integral part of the residential needs of City residents, local businesses and the surrounding area; and (3) the benefits to be gained by the City as a result of the Project are greater than the costs to the City under this Agreement;

Whereas, the Developer and the City agree that the Real Estate's development and improvement shall (1) result in an economic and aesthetic benefit to the City and the surrounding area, including, without limitation, growth in the tax base and job creation; and (2) be secured for the future benefit of the citizens and the community through the construction and development of the Project all in accordance with the Master Plan to be prepared by the Developer and approved by the City Plan Commission;

Whereas, the City desires the Project to proceed for the reasons set forth above and ultimately to provide increased tax revenues for the City and various taxing jurisdictions authorized to levy taxes within TID #18;

This space is reserved for recording data

Return to

City Attorney
400 La Crosse Street
La Crosse WI 54601

Parcel Identification Number/Tax Key Number

Whereas, in order to induce Developer to undertake the Project, the City has agreed to pay for certain costs included in the project plan of TID #18 ("TID Project Plan") through the use of existing municipal funds and/or the use of borrowed funds and to provide other assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement;

Whereas, the City finds and determines that certain cash grant payments as detailed in this Agreement are necessary and convenient to the implementation of the TID Project Plan;

Whereas, Developer declares that "but for" this Agreement, it would not undertake the Project to the extent of the investment proposed;

Whereas, the City and Developer wish to set forth in this Agreement their respective commitments, understandings, rights and obligations in connection with the Project as more fully described herein and to further provide for the implementation of the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein exchanged, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

ARTICLE I PURPOSE; LAND; DEFINITIONS; EXHIBITS

1.1. Land Affected. The parties acknowledge that the Project will encompass and/or affect the following real property, all of which shall be within the boundaries of TID #18:

The Real Estate, described on **Exhibit A**, and certain public streets and rights-of-way serving the same.

1.2. Purpose of the Agreement. In order to cause the Project to occur and to induce Developer to undertake the Project, to promote community development, industry and job creation and to expand and enhance the tax base and stimulate residential activity within the City, the City intends to undertake certain project costs and public improvements, if any, necessary for the Project, all as set forth in this Agreement. The City intends to recover its costs through payments received under this Agreement including increased tax revenues generated by the Real Estate. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed. Developer and the City plan to work together to undertake the Project on the Real Estate all as more fully described herein and in the Master Plan and as approved by the City Plan Commission.

1.3. Certain Definitions. In addition to the words and phrases elsewhere defined in this Agreement, the following words and phrases, when having an initial capital letter, shall have the following meanings:

- a.** "Agreement" means this MSP – The Driftless Apartments Development Agreement by and between the City and the Developer, as amended and supplemented from time to time.
- b.** "City" means the City of La Crosse, Wisconsin, a Wisconsin municipal corporation.
- c.** "Construction Schedule" means the construction timetable set forth on **Exhibit F**.
- d.** "Contribution" means the contribution or cash grant that is made through this Agreement to induce Developer to undertake the development and assist the Project and for which the Monetary Obligation is incurred.

- e. "Developer" means The Driftless Apartments, LLC, a Wisconsin limited liability company.
- f. "Master Plan" means the Master Plan for the Real Estate prepared by the Developer and approved by the City Plan Commission as well as all subsequent revisions thereto that are prepared by Developer and approved by the City Plan Commission.
- g. "Monetary Obligation" means a limited and conditional monetary obligation of the Tax Increment generated from the Project in a maximum aggregate amount of Four Million Two Hundred Thousand Dollars (\$4,200,000.00), that is incurred, in one or more installments, and that is payable over the time not to exceed the duration of the TID #18; more specifically:
 - (1) Calculation. Effective September 1, 2025, the City shall be obligated to pay a Contribution calculated as the Tax Increment resulting from an increase in real property tax base from the Project not to exceed the lesser of: (a) an aggregate Four Million Two Hundred Thousand Dollars (\$4,200,000.00), or (b) eighty-five percent (85%) of the actual Tax Increment resulting from an increase in the real property tax base from the Project for tax years 2024-2047 as further defined in Section 3.1 of this Agreement. The difference, if any, between the actual Tax Increment resulting from an increase in the real property tax base from the Project for any tax year for which a Contribution would be paid and the aggregate maximum Four Million Two Hundred Thousand Dollars (\$4,200,000.00), shall be retained by the City.
 - (2) Disbursement Date. After determining compliance with this Agreement and the actual applicable Tax Increment, the City shall make its Contribution of the Monetary Obligation annually on or before September 1 until payment of the maximum amounts defined herein or until closure of TID #18 by law, whichever occurs first.
 - (3) Conditions. The City's obligation to make Contributions on the Monetary Obligations is conditioned on:
 - (a) The determination by the City Assessor of compliance with the tax guarantee in Section 2.6(b) of this Agreement;
 - (b) The timely payment of taxes when due by Developer;
 - (c) Substantial Completion of the Project in accordance with the Master Plan, Project Cost Breakdown and Construction Schedule;
 - (d) Submission by Developer of verifiable costs, invoices, lien waivers, proof of financing costs and any other supporting documentation as requested by the Finance Director and Economic Development Commission. Said submissions shall be in form and content acceptable to the Finance Director and Economic Development Commission and demonstrate Substantial Completion and payments for costs for which reimbursement is being requested in accordance with Section 3.1

and the other provisions of this Agreement;

- (e) Continued compliance with the provisions of this Agreement by Developer and any other agreement between the Developer and City; and
 - (f) The use of the Contribution for eligible project costs under the Tax Incremental Law; and
 - (g) Continued compliance with any and all applicable federal, state and local laws, regulations and ordinances by Developer.
- (4) **Example Exhibit.** An example of the Monetary Obligation is attached as **Exhibit G**.
- (5) **Not General Obligation.** For purposes of the Tax Increment Law, this Agreement is an evidence of indebtedness; that is, it fully evidences the City's obligation to pay the Monetary Obligation. No negotiable instrument is being prepared to separately evidence the Monetary Obligation. The Monetary Obligation shall not, however, be included in the computation of the City's constitutional debt limitation, because the Monetary Obligation is limited and conditional, and no taxes have been or will be levied for its payment or pledged to its payment. Nothing in this Agreement shall be deemed to change the nature of the City's obligation from a limited and conditional obligation to a general obligation. No Tax Increments are pledged to the payment of the Monetary Obligation. In the event of an interpretation of this Agreement that would require the City's obligation to change from a limited and conditional obligation to that of a general obligation, then the City's Contribution and/or Monetary Obligation shall be subject to annual appropriation by the City Council.
- (6) **No Acceleration.** Notwithstanding any other provision of this Agreement, Developer has no right to accelerate the payment of the Monetary Obligation. The only remedy of Developer in the event of nonpayment shall be legal proceedings to collect the amount of the Monetary Obligation that is due and payable. Developer may only institute legal proceedings after filing a claim with the City and complying with any other applicable provisions of this Agreement.
- (7) **Limitations.** The City has no obligation to make payments of the Monetary Obligation in excess of the amount of the Tax Increments that have been collected, and allocated from the Project in TID #18 under the Tax Increment Law and the provisions of this Agreement. The City has no obligation to make payments of the Monetary Obligation if this Agreement terminates. In the event Developer fails to comply with any provision of this Agreement, the City may withhold any Contribution that is due and payable and may further seek the recovery of any Contribution that has already been paid or disbursed, which shall become immediately due and payable.
- (8) Administration. The parties acknowledge and agree that the City incurs

continuing administrative and professional service costs under this Agreement. Notwithstanding any provision of this Agreement, the City shall retain fifteen percent (15%) of any Contribution to be made to Developer as calculated herein to offset said costs.

- h. "Plans and Specifications" means the plans and specifications developed for the Project.
 - i. "Project" means the development and improvement of the Real Estate by constructing 120 units of affordable / workforce housing on the Real Estate all as described in more detail on **Exhibit B** and in accordance with the Master Plan. Subject to the terms and conditions of this Agreement, uses for the Project shall be determined by zoning. The term, "Project," excludes personal property and land.
 - j. "Project Cost Breakdown" means the minimum construction costs of the Project and consists of the cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, construction, financing, contingency and all other direct and indirect costs of construction of the Project, all as described in more detail on **Exhibit E** and in accordance with the Master Plan.
 - k. "Public Improvements" means the public infrastructure improvements, if any, to be constructed by the City in connection with the Project, which are set forth on **Exhibit D**.
 - l. "Real Estate" means the real property described in **Exhibit A**.
 - m. "Signature Date" has the same meaning as provided in Section 8.22 of this Agreement.
 - n. "Substantial Completion" means the completion of the improvements to the Real Estate pursuant to the Plans and Specifications, (except for punch list items, exterior painting, and landscaping) and the issuance by the Project architect of a certificate of substantial completion and the issuance of a certificate of occupancy from the City. Subject to unavoidable delays beyond the control of the Developer, any such incomplete items shall be fully completed within a reasonable time after the date of Substantial Completion, but not to exceed ninety (90) days thereafter except site improvements such as landscaping shall be completed no later than two hundred forty (240) days after the date of Substantial Completion if weather or other conditions beyond the control of Developer prevent completion of the same.
 - o. "Tax Increment" means the tax increment or increase in real property taxes received by the City with respect to the Real Estate which is generated by TID #18.
 - p. "Tax Incremental Law" means Section 66.1105, Wis. Stats., as amended and superseded.
 - q. "TID #18" means the Tax Incremental Financing District Number 18 of the City of La Crosse.
 - r. "TID Project Plan" means the plan, created in accordance with the Tax Incremental Law, for the financial development or redevelopment of TID #18, including all approved amendments thereto.
- 1.4. **Exhibits.** The following exhibits are hereby attached to and incorporated into this Agreement:

- a. **Exhibit A.** Real Estate
- b. **Exhibit B.** Description of Project
- c. **Exhibit C.** Restrictive Covenant
- d. **Exhibit D.** Description of Public Improvements
- e. **Exhibit E.** Project Cost Breakdown
- f. **Exhibit F.** Construction Schedule
- g. **Exhibit G.** Monetary Obligation Example

ARTICLE II DEVELOPER OBLIGATIONS

2.1. Acquire the Real Estate. Prior to ~~May 1~~ July 15, 2023, Developer shall acquire fee simple title to the Real Estate.

2.2. Develop the Real Estate. Developer agrees to develop and improve the Real Estate by undertaking the Project, all in accordance with the Master Plan, the Project Cost Breakdown and the Construction Schedule.

- a. **Site Preparation.** Developer shall prepare the Real Estate for construction of the Project, including, without limitation, any necessary demolition or other removal of improvements or preparation currently located on the Real Estate.
- b. **Construction Schedule.** Developer shall commence or cause other entities to commence construction on the Project, as described in **Exhibit B**, on or before ~~May 1~~ July 17, 2023 with Substantial Completion on or before ~~September 1~~ December 15, 2024, all in accordance with the Construction Schedule set forth on **Exhibit F**.
- c. **Guaranty of Minimum Construction Costs.** Developer agrees that the buildings and improvements associated with the Project shall have an aggregate minimum construction cost of not less than ~~Twenty-Two~~ One Million Eight Nine Hundred Ninety Thousand Dollars (~~\$22,800,000.00~~ \$21,990,000). The Project Cost Breakdown is provided on **Exhibit E**.
- d. **Rights of Access.** Developer shall permit the representatives of the City to have access to the Project at all reasonable times during and following the construction when the City deems access necessary to ensure compliance with the terms and conditions of this Agreement including, but not limited to, access for inspection of all work being performed in connection with the Project as set forth in the Master Plan. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Agreement.
- e. **Property for Public Streets and Public Improvements.** Developer shall dedicate and/or transfer or convey all public streets, public rights-of-way and all necessary public sewer and water utilities within the Real Estate, as depicted in the Master Plan, as finalized, to the City at no cost to the City.

- f. **Master Plan.** Prior to obtaining any building or other permits and/or commencing any construction or development on the Real Estate, Developer shall submit a Master Plan setting forth all the details of construction and development to the City Plan Commission for review and approval. Said Master Plan shall conform in all material respects to the provisions of this Agreement, all applicable federal, state and local laws, ordinances, rules and regulations and shall include preliminary and final building, site and operational Plans and Specifications, including, without limitation: (1) building plans and specifications; (2) architectural plans, renderings and specifications; (3) building material plans and specifications; (4) preliminary and final site plans; (5) landscaping plans; (6) stormwater and erosion control plans; (7) lighting plans; (8) traffic and circulation plans for pedestrians, bicyclists, transit riders, truck and delivery vehicles, and automobiles; (9) signage plans and specifications; (10) water and sewer plans; and (11) any other preliminary or final plans, specifications or other requirements as determined by the City Planner. The City Planner may determine, in his sole and absolute discretion, whether one or more of the above requirements is applicable to the Project's Master Plan.

2.3. Local Subcontractors. It is agreed by Developer that Developer shall engage local subcontractors, workers as well as local suppliers for material. The term subcontractor is as defined in Section 66.0901(1)(d), Wis. Stat. The word, "local," shall mean that the subcontractors and suppliers of material have their principal place of business within the City of La Crosse or within a seventy-five (75) mile radius of the City of La Crosse, Wisconsin. The Developer further agrees to provide to the City Engineer a list of all subcontractors and it further agrees that eighty percent (80%) of all work performed by subcontractors for construction shall be performed by subcontractors located within the City or seventy-five (75) miles of the City of La Crosse. In determining whether the eighty percent (80%) threshold has been met, the parties shall measure based upon the dollar values of said work. If Developer does not meet this requirement, it may request a waiver from the City Engineer providing reasons for the request of the same. This Section does not apply to fixtures, furnishings and equipment.

2.4. Compliance with Planning and Zoning; Use. Developer, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental or non-governmental entity in connection with the Project. Any conditions imposed on Developer to obtain any approval, permit or license must be acceptable to the City. Developer will not initiate, approve, consent to or participate in any change or modification of the zoning in effect for the Real Estate or any portion thereof, without the City's prior written consent. No property within the Real Estate shall be used for any use other than as set forth in the Master Plan and this Agreement and as approved by the City, including any conditions attendant with such approval, unless such use is further approved by the City under its normal zoning, review and approval procedures.

2.5. Maintenance and Repair. Developer agrees that at all times after construction of the Project, it will keep and maintain the Real Estate and the Project in good condition and repair.

2.6. Taxes. It is understood that the land, improvements and personal property resulting from the Project shall be subject to property taxes. Developer shall pay when due all federal, state and local taxes in connection with the Real Estate and all operating expenses in connection with the Real Estate and Project.

- a. **Annual PILOT.** In the event that some or all of the Real Estate or personal property is or becomes exempt from general property taxes under Chapter 70, Wis. Stat., as amended or superseded, or by any other statute, provision or reason, then Developer shall make an annual payment to the City in lieu of taxes ("Annual PILOT") for the services, improvements or facilities furnished to the Real Estate by the City and other taxing jurisdictions. The amount of the Annual PILOT shall be computed and determined by the City Assessor by multiplying the fair market value (using tax assessment definitions, rules and procedures) of the tax-exempt portion of such property by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. Developer or the then

current owner of the tax-exempt property, its successors or assigns shall pay the Annual PILOT within sixty (60) days of receipt. Developer shall have the right to appeal the determination of the City Assessor to the City Council. Any appeal shall specifically state the reasons, in writing, why the amount due as provided by the City Assessor is in error. The parties agree that the Annual PILOT shall survive for a period of twenty (20) years or the life of the TID #18, whichever is longer. Notwithstanding, the Developer or its successors shall not be responsible for any Annual PILOT resulting from the Real Estate or a portion thereof becoming tax exempt due to the use of eminent domain by the United States or some other governmental entity.

- b. **Guarantee.** As an additional inducement and in consideration for the City entering into this Agreement, Developer guarantees faithful performance and compliance with all the terms, covenants, conditions and obligations to be kept and performed by Developer contained in this Agreement, including, without limitation, the obligation that the Project shall have an assessed value of not less than Nine Million six Hundred Thousand Dollars (\$9,600,000.00) beginning in tax year 2025 and for a period of twenty (20) years or the life of TID #18, whichever is longer. Developer agrees that this minimum assessed value on the Project shall remain a lien on the Real Estate and shall run with the land for a period of twenty (20) years or the life of TID #18, whichever is longer.
- c. **Deficiency PILOT.** In the event the assessed value of the Project is less than Nine Million Six Hundred Thousand Dollars (\$9,600,000.00) as of January 1, 2025 or for any tax year thereafter for a period of twenty (20) years or the life of TID #18, whichever is longer, then the Developer or the then current owner, or its successors or assigns agrees to pay a Deficiency PILOT to the City within sixty (60) days of receipt. Said Deficiency PILOT shall be calculated by first determining the difference between the guaranteed assessed value of the Project as provided in Section 2.6(b) of this Agreement less the actual assessed value of the Project for the tax year at issue, and multiplying said difference by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. This requirement shall be a lien running with the land for a period of twenty (20) years or the life of TID #18, whichever is longer.
- d. **Special Charge.** In the event there is a lack of compliance for payment of the Annual PILOT or Deficiency PILOT, then the City, in addition to any other remedy available at law or in equity, may levy a special charge or assessment under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property for the delinquent amount as calculated herein to enable the City to enforce performance of the Developer's obligations. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy and amount of the special charge or assessment.

2.7. Transfer or Sale of Real Estate.

- a. **Notice of Intent to Transfer.** No property within the Real Estate may be sold, transferred, or otherwise conveyed unless the Developer first provides to the City written notice of intent to transfer the property at least forty-five (45) days before the sale, transfer or conveyance is to occur. This Section shall not apply to nor restrict a transfer to Developer's financing entity, e.g. placing a mortgage on the Real Estate nor a residential or commercial lease agreement for individual residential living units, individual commercial lease spaces, parking spaces and any single-family residence to be owned in fee title simple by the purchaser.

- b. **No Transfer to Exempt Entities.** No property within the Real Estate may be sold, transferred or conveyed to, or leased or owned by any entity or used in any manner which would render any part of the Real Estate exempt from property taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement satisfactory to the Economic Development Commission, or its successor, providing for payments in lieu of taxes to the City.
- c. **Assignees and Transferees Bound by Agreement.** Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this Agreement, which shall run with the land and be binding upon all such assignees, purchasers and transferees. The Developer shall not sell or transfer any portion of the Real Estate to any entity unless and until the Developer has provided the City with written evidence satisfactory to the Economic Development Commission, or its successor, that such assignee or entity has agreed in writing to be bound by the terms of this Agreement. Any such sale, transfer or conveyance of any portions of the Real Estate shall not relieve the Developer of its obligations hereunder.
- d. **Subdivision.** Property within the Real Estate shall not be further subdivided without approval of the City.
- e. **Restrictive Covenant.** Developer shall place a restrictive covenant on the Real Estate prohibiting the Real Estate from being exempt from property taxes in substantially the same form as **Exhibit C**. Likewise, Developer shall place a restrictive covenant on any condominium unit or townhome prohibiting it from being exempt from property taxes in substantially the same form as **Exhibit C**.

2.8. Easements. Developer shall grant the City or any public utility such easements as reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other need necessary to effectuate development of the Real Estate in accordance with the Master Plan at no cost to the City.

2.9. Insurance. For a period of twenty (20) years or the life of TID #18, whichever is longer, Developer shall maintain, and shall require that any purchasers or transferees of any portion of the Real Estate maintain, insurance in such amounts and against such risks both generally and specifically with respect to the Real Estate, as are customarily insured against in developments of like size, kind and character, including customary builders risk insurance during construction and customary casualty, property and liability insurance, with deductibles in accordance with reasonable industry practice. Notwithstanding, Developer shall carry casualty insurance for the Project at not less than the replacement value and further agrees and covenants to apply, and to require any purchasers or transferees of any portion of the Real Estate to apply, any and all insurance proceeds to rebuild the Project, maintain the Project and Real Estate and to name the City as an additional insured to the extent of this covenant provided in this Section. Developer shall provide to the City certificates of all such insurance. Any lender who holds a lien on the Project shall agree to these obligations to rebuild the Project.

2.10. Indemnity. Developer shall indemnify and hold harmless the City, its officers, employees and authorized representatives, ("Indemnified Party"), from and against any and all liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, costs, and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Party on account of this Agreement, unless such claims, causes of action, or demands: (a) relate to the Indemnified Party failing to perform its obligations to Developer; or (b) arise out of any willful misconduct of the Indemnified Party. At the Indemnified Party's request, Developer shall

appear for and defend the Indemnified Party, at Developer's expense, in any action or proceeding to which the Indemnified Party may be made a party by reason of any of the foregoing.

2.11. Utilities.

- a. **Other Utilities.** Developer shall be responsible for, pay for and cause electrical power, telephone facilities, cable TV lines, and natural gas facilities to be installed in such a manner as to make proper and adequate service available to each building in the Project, as described in the Master Plan. Plans indicating the proposed location of each such utility to service the Project shall be shown on the Master Plan and construction plans to be provided to the City Plan Commission for approval prior to the installation of the utility.
- b. **Water and Sewer.** Developer shall be solely responsible for and shall pay all costs of connecting water and sewer service from the public streets, alley, right of way, or other approved infrastructure to the buildings within the Real Estate.

2.12. Restrictions. Developer agrees to neither use nor allow a third-party to use the Real Estate for adult entertainment, pawnshops, mini-warehouses, car title loan business, payday lenders, tattoo parlors, and/or off-premise signs for a period of twenty (20) years or the life of TID #18, whichever is longer. "Payday lenders" and "car title loan business" shall exclude banks and credit unions. This shall be a deed restriction against the Real Estate and shall run with the land.

2.13. Record Retention. Developer understands and acknowledges that the City is subject to the Public Records Law of the State of Wisconsin. As such, Developer agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years. Likewise, Developer agrees to assist the City in complying with any public records request that it receives pertaining to this Agreement. Additionally, Developer agrees to indemnify and hold the City, its officers, employees and authorized representatives harmless for any liability, including without limitation, reasonable attorney fees relating to or in any way arising from Developer's actions or omissions which contribute to the Indemnified Party's inability to comply with the Public Records Law. In the event Developer decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive termination of this Agreement.

2.14. Repair and/or Replacement of Infrastructure. Developer shall repair and/or replace any damaged City infrastructure or other City property that may occur as a result of the Project, including, without limitation, sidewalks, landscaping, asphalt and light poles. Said repair and/or replacement shall be to the satisfaction of the Board of Public Works.

ARTICLE III CITY OBLIGATIONS

3.1. Project Assistance. Developer has requested and the City may be required to make Contributions to Developer up to an aggregate maximum Four Million Two Hundred Thousand Dollars (\$4,200,000.00). More specifically,

- a. **Cash Grant Based on Improvements.** The Developer has requested a cash grant from TID #18 of up to an amount of Four Million Two Hundred Thousand Dollars (\$4,200,000.00), subject to change based on the provisions of this Agreement, with funds to be made available upon verification of the Tax Increment increase as defined herein. The City shall disburse its Contribution as required by

its Monetary Obligation to Developer in accordance with this Agreement.

- b. **Illustrative Example.** An illustrative example of the payment of cash grants is attached as **Exhibit G**.

3.2. Certificate of Completion. Upon completion of the improvements by the Developer and review of the improvements by the City, the City shall provide the Developer, upon request, with an appropriate recordable instrument certifying that the improvements have been made in accordance with this Agreement and the Master Plan, and any amendment or modifications thereto.

3.3. Assistance with Zoning Changes. If necessary, the City Planning Department shall initiate the process in accordance with the City's zoning code to attempt to provide appropriate zoning for the Real Property being developed by Developer so that the zoning for the Project is in accordance with the City's comprehensive plan for the area.

3.4. City Performance Subject to Required Government Approvals. The Developer acknowledges that various of the specific undertakings of the City described in this Article III may require approvals from the City Council (and other City bodies) and other public bodies, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City's agreements under this Article III are conditioned upon the obtaining of all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain them on a timely basis.

3.5. Subsequent Phases. Any subsequent development of the Real Estate will be addressed in a separate development agreement.

3.6. Public Improvements. Subject to annual appropriation, the City shall, at its sole cost and expense, construct the Public Improvements identified in **Exhibit D**.

ARTICLE IV CONDITIONS PRECEDENT TO CITY OBLIGATIONS

The City's obligations under this Agreement are conditioned upon the provisions contained herein. If all conditions contained in this Article are satisfied, or if the City waives in writing said conditions, on or before December 31, 2023, then the conditions shall be deemed satisfied. Otherwise, the City, at its option, in its absolute and sole discretion, may at any time thereafter terminate this Agreement by giving notice in writing thereof to Developer. In such event, this Agreement shall be terminated and no party shall have any further liability or obligation to the other hereunder. All submissions given by Developer to the City to satisfy the conditions contained in this Article must be satisfactory in form and content to the City.

4.1. Existence. Developer shall have provided a certified copy of Developer's formation documents and a good standing certificate issued by the appropriate governmental authority of the state of Developer's incorporation.

4.2. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions, which resolutions shall provide that Developer has been duly authorized to enter into this Agreement and all other agreements, documents and contracts required to be executed in connection with the transactions which are the subject of this Agreement.

4.3. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts. Developer shall not be in material default under the terms of any other agreement or instrument to

which Developer is a party or an obligor. Developer shall be in material compliance with all provisions of this Agreement.

4.4. Financing Commitment. Developer shall obtain and provide to the City: (1) a written financial commitment from a conventional lender, (2) written construction contract to construct and finance the Project, (3) other written proof of financial resources to construct the Project, or (4) any combination thereof. Said documents shall demonstrate sufficient funds for the construction, furnishing, equipping and installation of the Project in an amount not less than Twenty-Two Million Six Hundred Forty Thousand Dollars (\$22,640,000.00). Said documents shall be acceptable in all respects to City, in the sole and absolute discretion of the Finance Director and Economic Development Commission, or the Commission's successor. Developer shall have closed the loan, or be prepared to close the loan, which is the subject of the financing commitment and in connection therewith, Developer shall have provided copies of the documents to be executed in connection with the construction loan to the City.

4.5. Plans and Specifications. Developer shall have provided the Master Plan, which Master Plan must be acceptable in all respects to the City and shall have been approved by the City Plan Commission with input, if any, from the Board of Public Works.

4.6. Survey. Developer shall provide an ALTA survey of the Real Estate certified to the City by a Wisconsin registered land surveyor, showing the location of all improvements now prior to commencing construction and to be located thereon after said improvements are built pursuant to the Master Plan, all easements, pathways, exterior boundary lines, walkways, private and public streets, adjoining public streets and alleys, utilities, exits and entrances, all curbs, gutters, sidewalks, medians and lighting. The survey must show a state of facts acceptable to the Board of Public Works.

4.7. Insurance. Developer shall have delivered to the City certificates of all insurance required under this Agreement showing the City as a named insured. Said insurance shall not be cancelled, non-renewed nor have any material changes without providing thirty (30) days advanced written notice to the City.

4.8. Amendment of TID #18 and TID Project Plan. The amendment of TID #18 and TID Project Plan shall be approved by the appropriate governmental entities, if necessary.

4.9. Financial Statements. Developer shall present (but not leave a copy) to the City's Finance Director of the most recent audited financial statements prepared by a certified public accountant for Developer and any successors or assigns or transferees of Developer and each of the members of any of the foregoing and each member of the Board of Directors (or equivalent) of any of the foregoing. The financial statements must show a financial condition acceptable to the City, in the judgment of the City's Finance Director, to be sufficient to carry out the duties of this Agreement. The financial statements must be in form and content acceptable to the City, in the judgment of the City's Finance Director. In the event the financial statements are in unacceptable form and content, the City's Finance Director may identify alternative financial records for production by Developer.

4.10. Acquisition of Real Estate. The Developer shall have acquired fee simple title to the Real Estate no later than May 1, 2023 in accordance with Section 2.1 of this Agreement. If this condition is not met, then this Agreement shall terminate without further action of the City or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligation to the other hereunder

4.11. Approvals and Permits. The Developer shall at its expense have obtained all approvals and permits necessary to undertake the Project on the Real Estate, including but not limited to, site plan review, zoning approvals, and any other local, state or federal approvals or permits.

4.12. Compliance with Law. Developer shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

4.13. Compliance with Agreements. Developer shall be in compliance with this Agreement and all other agreements it may have with the City.

ARTICLE V CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATIONS

Developer's obligations under this Agreement are conditioned upon the following:

5.1. Acquisition of Real Estate. No later than May 1, 2023, the Developer shall have acquired fee simple title to the Real Estate in accordance with Section 2.1 of this Agreement, and shall have secured all financing needed for Developer to carry out this Project. If this condition is not met, then this Agreement shall terminate without further action of the City or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligation to the other hereunder

5.2. Amendment of TID #18 and TID Project Plan. The amendment of TID #18 and TID Project Plan shall be approved by the appropriate governmental entities, if necessary.

ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer represents and warrants to and covenants with the City, and the City represents and warrants to and covenants with Developer as respectively follows:

6.1. Financial Statements / No Material Change. All copies of financial statements, documents, contracts and agreements which Developer has furnished to the City, or its agents are true and correct. There has been no material change in the business operations of Developer since the date of the last financial statement furnished to the City except pursuant to the conduct of its ordinary business.

6.2. Taxes. Developer has paid, and shall pay when due, all federal, state and local taxes, and shall promptly prepare and file returns for accrued taxes. If necessary, Developer shall pay when due all payments in lieu of taxes and special charges required under the terms of this Agreement.

6.3. Compliance with Zoning. Developer covenants that the Real Estate, upon completion of the Project, will conform and comply in all respects with applicable federal, state, local and other laws, rules, regulations and ordinance, including, without limitation, zoning and land division laws, building codes and environmental laws.

6.4. Payment. All work performed and/or materials furnished for the Project, other than the Public Improvements, shall be fully paid for by Developer.

6.5. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

6.6. Good Standing. Developer is a limited liability company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Developer is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

6.7. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all

necessary corporate action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally. The City represents and warrants to Developer that it has the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by City under this Agreement.

6.8. No Conflict. The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's Articles of Organization or Operating Agreement or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer.

6.9. No Litigation. There is no litigation or proceeding pending or threatened against or affecting Developer or the Project or any guarantor that would adversely affect the Project, Developer or any guarantor or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

6.10. Certification of Costs. Developer covenants the Project Cost Breakdown accurately reflects all costs of the Project (other than costs associated with the Public Improvements, if any) that will be incurred by Developer in the completion and construction of the Project, and the City shall be entitled to rely on the Project Cost Breakdown submitted by Developer. Developer knows of no circumstances presently existing or reasonably likely to occur which would or could result in a material adverse variation or deviation from the Project Cost Breakdown.

6.11. No Default. No default, or event which with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.

6.12. Fees and Commissions. The City shall not be liable for any broker fees or commissions incurred by the Developer in connection with any transactions contemplated by this Agreement.

6.13. Financing Accommodation.

- a. **No Assignment.** Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber, nor will Developer, its successors, assigns or transferees agree to or permit the transfer, assignment, conveyance or encumbrance of the Project or any of the Real Estate except as provided in Sections 2.7 and 8.1 of this Agreement. The principals, shareholders, members, managers and/or partners of Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber their respective interests in Developer, its successors, assigns or transferees, as the case may be, if such anticipated transfer, assignment, conveyance or encumbrance would result in the original members of the Developer having less than majority voting control of the Developer, without providing written notification thereof to the City at least forty-five (45) days prior to the date the proposed transfer, assignment, conveyance or encumbrance is to take effect. Any attempt to so act shall be void and have no effect.
- b. **No Subordination.** The City shall not subordinate any interest it has in this Agreement for any reason, unless it is determined to be in the best interests of the City. Any requests for subordination shall be submitted, in writing, explaining why the request is in the best interests of the City. Said request shall be received by the City not less than forty-five (45) days prior to any City Council action on said request. Said subordination may only be approved by the City Council.

- c. **Developer Financing.** Notwithstanding this Section 6.13, Developer may transfer, assign or encumber the Real Estate in order to secure financing for the acquisition of the Real Estate and/or for construction of the Project. Said lender may place a lien and/or mortgage on the Real Estate, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgage and/or loan may be transferred or assigned by lender in a secondary market without prior City Council approval. In the event of a foreclosure against Developer by lender or a deed transfer in lieu of foreclosure, lender shall assume the duties, obligations and rights of Developer under this Agreement. In such a circumstance, lender may transfer or assign this Agreement and its accompanying duties, obligations and rights, to another developer without prior City Council approval. In any circumstance, lender shall provide reasonable notice to City of such actions. This Section shall survive any foreclosure proceeding.

6.14. Commencement and Completion. Developer shall commence and complete construction of the Project in accordance with Section 2.2 above.

6.15. Compliance with Plans. Developer will cause the Project to be constructed in accordance with the Master Plan and will promptly correct any defects in construction or deviations from the Master Plan.

6.16. No Changes. Developer shall not, without City's prior written consent: (i) consent to any amendments to any documents delivered to City pursuant to this Agreement; (ii) approve any changes in the Project or the Master Plan or permit any work to be done pursuant to any changes; (iii) modify or amend the Project Cost Breakdown.

6.17. Inspection of Project. Developer shall permit City, its inspectors and/or its construction consultant, at all reasonable times and at no cost: (a) to inspect the Project and all matters relating to the development thereof, and (b) on reasonable notice, to inspect all of Developer's books and records pertaining to the Project. City assumes no obligation to Developer for the sufficiency or adequacy of such inspections, it being acknowledged that such inspections are made for the sole and separate benefit of City. The fact that City may make such inspections shall in no way relieve Developer from its duty to independently ascertain that the construction of the Project and Developer's compliance with this Agreement is being completed in accordance with the approved Master Plan and the terms and conditions of this Agreement.

6.18. Notification. Developer shall:

- a. As soon as possible and in any event within five (5) business days after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Developer with respect thereto.
- b. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Developer contained in this Agreement to be untrue.
- c. Notify City and provide copies, immediately upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Developer or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Developer or any guarantor under any environmental laws, rules, regulations or ordinances or which seeks damages or civil, criminal or punitive penalties from or against Developer or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

6.19. Unrelated Activity. It is the intention of Developer and City that the sole business of Developer shall be the construction, ownership and operation of the Project, and Developer shall take no action inconsistent with such intention, including without limitation the acquisition by Developer of real or personal property unrelated to the Project, investment by Developer in the assets or stock of any other person, joining by Developer with any other person in any partnership or joint venture, or the creation or incurring of indebtedness by Developer unrelated to the Project.

6.20. No Indebtedness. Except in the ordinary course of business and except for funds borrowed to provide the financing for the purchase of the Real Estate or the construction of the Project, Developer shall not incur, create, assume, permit to exist, guarantee, endorse or otherwise become directly or indirectly or contingently responsible or liable for any indebtedness. "Indebtedness" shall mean any liability or obligation of Developer: (a) for borrowed money or for the deferred purchase price of property or services (excluding trade obligations incurred in the ordinary course of business); (b) as lessee under leases that have been or should be capitalized according to generally accepted accounting principles; (c) evidenced by notes, bonds, debentures or similar obligations; (d) under any guaranty or endorsement (other than in connection with the deposit and collection of checks in the ordinary course of business), and other contingent obligations to purchase, provide funds for payment, supply funds to invest in any entity, or otherwise assure a creditor against loss; or (e) secured by any security interest or lien on assets of Developer, whether or not the obligations secured have been assumed by Developer.

6.21. Correction of Defects. Developer shall, upon demand of City (and City may rely on the advice of its inspector and shall not be liable for any errors in such advice), correct any material defect, structural or otherwise, in the Project or any departure from the Master Plan.

6.22. Not for Speculation. Developer represents and warrants that its acquisition of the Real Estate and its undertakings pursuant to this Agreement shall be for the sole and express purpose of the redevelopment of the Real Estate consistent with the Master Plan and the terms and conditions of this Agreement and are not for the speculation in land holdings.

ARTICLE VII DEFAULT

7.1 Developer's Default.

- a. Remedies.** In the event (i) any representation or warranty of Developer herein or in any agreement or certificate delivered pursuant hereto shall prove to have been false in any material respect when made or (ii) of Developer's default hereunder which is not cured within thirty (30) days after written notice thereof to Developer, the City shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the City shall have the following specific rights and remedies:
- (1) With respect to matters that are capable of being corrected by the City, the City may at its option enter upon the Real Estate for the purpose of correcting the default and the City's reasonable costs in correcting same, plus interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City immediately upon demand;
 - (2) Injunctive relief;
 - (3) Action for specific performance;
 - (4) Action for money damages;

- (5) Repayment by Developer of any incentives and damages via special assessment or special charge under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy of the amount of the special charge or assessment;
 - (6) Any other remedy in this Agreement.
- b. **Reimbursement.** Any amounts expended by the City in enforcing this Agreement and the obligations of Developer hereunder, including reasonable attorney's fees, and any amounts expended by the City in curing a default on behalf of Developer, together with interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City upon demand and shall constitute a lien against the Real Estate until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.
 - c. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
 - d. **Failure to Enforce Not a Waiver.** Failure of the City to enforce any provision contained herein shall not be deemed a waiver of the City's rights to enforce such provision or any other provision in the event of a subsequent default.

7.2 City's Default.

- a. **Remedies.** In the event of the City's default hereunder which is not cured within sixty (60) days after written notice thereof to the City, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer shall have the following specific rights and remedies:
 - (1) Injunctive relief;
 - (2) Action for specific performance; and
 - (3) Action for money damages.
- b. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- c. **Failure to Enforce Not a Waiver.** Failure of Developer to enforce any provision contained herein shall not be deemed a waiver of Developer's rights to enforce such provision or any other provision in the event of a subsequent default.

7.3. Mediation of Disputes Required. Unless the parties agree otherwise, prior to litigation and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. The parties shall split the costs of mediation equally. In the event of impasse at mediation, the aggrieved party may then commence an action. However, the parties shall be bound to agree to alternative dispute resolution as ordered by the Court.

**ARTICLE VIII
MISCELLANEOUS PROVISIONS**

8.1. Assignment. Except as provided in Sections 2.7 and 6.13, Developer may not assign its rights or obligations under this Agreement without the prior written consent of the City. Developer shall provide not less than forty-five (45) days advance written notice of any intended assignment.

8.2. Nondiscrimination. In the performance of work under this Agreement, Developer agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

8.3. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

8.4. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, pandemic, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause; provided however that any such event of Force Majeure shall not be the basis of a delay of more than ninety (90) days.

8.5. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties, and indemnifications contained herein shall survive the termination or expiration of this Agreement.

8.6. Implementation Schedule and Time of the Essence. All phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum ninety (90) days. The Economic Development Commission, or its successor, shall otherwise oversee the day-to-day operations of this Agreement.

8.7. Notices. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: (a) when personally delivered; (b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or (c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Attn: City Clerk
 City of La Crosse
 400 La Crosse Street
 La Crosse, Wisconsin 54601

with a copy to: Attn: City Planner
 City of La Crosse

400 La Crosse Street
La Crosse, Wisconsin 54601

To the Developer: Attn: Managing Member
The Driftless Apartments, LLC
150 East Gilman Street
Madison, WI 53703-1482

8.8. Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin and shall be deemed to have been drafted through the combined efforts of parties of equal bargaining strength. Any action at law or in equity relating to this Agreement shall be instituted exclusively in the courts of the State of Wisconsin and venued in La Crosse County. Each party waives its right to change venue.

8.9. Conflict of Interest. Developer shall avoid all conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. Developer is familiar with the City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Section 2-133 of the City of La Crosse Municipal Code. Developer agrees not to offer any City officer or designated employee any gift prohibited by said Code. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Developer. In addition to any other remedies the City may have in law or equity, the City may immediately terminate this Agreement for such breach. No member, officer or employee of the City shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such member, officer or employee participate in any decision relating to this Agreement.

8.10. Execution in Counterparts. This Agreement may be executed in several counterparts, each which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

8.11. Disclaimer Relationships. Developer acknowledges and agrees that nothing contained in this Agreement or any contract between Developer and the City or any act by the City or any third parties shall be deemed or construed by any of the parties or by third persons to create any relationship or third party beneficiary, principal or agent limited or general partnership or joint venture or of any association or relationship involving the City. It is understood and agreed that Developer, in the performance of the work and services of these Project shall not act as an agent or employee of the City and neither the Developer nor its officers, employees, agents, licensees, sublicensees, subcontractors shall obtain any rights to retirement benefits or the benefits which accrue to the City's employees and Developer hereby expressly waives any claim it may have to any such rights. Each party shall be responsible for its own separate debts, obligations and other liabilities.

8.12. Severability. Should any part, term, portion or provision of this Agreement or the application thereof to any person or circumstance be in conflict with any state or federal law or otherwise be rendered unenforceable, it shall be deemed severable and shall not affect the remaining provisions, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.

8.13. Termination. Except for Sections 2.10 (Indemnity), 2.6(a) (Annual PILOT), 2.7(e) (Restrictive Covenant), 2.13 (Record Retention) and 8.5 (Survival), which shall survive the termination of this Agreement, this Agreement and all obligations hereunder, shall terminate after twenty (20) years or the life of TID #18, whichever is longer. This Agreement may also be terminated as provided in Article IV (Conditions Precedent to City), Article V (Conditions Precedent to Developer Obligations) and Section 8.9 (Conflict of Interest) hereof.

8.14. Memorandum of Agreement. Promptly upon full execution of this Agreement and prior to the recording of any mortgage or other security instrument against any portion of the Real Estate, the Developer agrees that the City may record this Agreement, or a memorandum thereof, with the Register of Deeds for La

Crosse County, Wisconsin. Any such memorandum shall be in form and substance reasonably acceptable to the City and the Developer.

8.15. Covenants Running with Land. All of the covenants, obligations and promises of Developer set forth herein shall be deemed to encumber the Development and run with the land described in **Exhibit A** and shall bind any successor, assignee or transferee of Developer until such time as this Agreement is terminated.

8.16. Amendments. No agreement or understanding changing, modifying or extending this Agreement shall be binding upon either party unless in writing, approved and executed by the City and Developer.

8.17. Time Computation. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

8.18. JURY TRIAL. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

8.19. Construction. This Contract shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. The headings, table of contents and captions contained in the Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require. In the event that any of the provisions, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected.

8.20. Incorporation of Proceedings and Exhibits. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City, including but not limited to adopted or approved plans or specifications on file with the City and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Developer whether or not herein enumerated.

8.21. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, the specific action of the City shall be deemed controlling.

8.22. Execution of Agreement. Developer shall sign, execute and deliver this Agreement to the City on or before the close of regular City Hall business hours seven (7) days after its final adoption by the City, whichever occurs later. Developer's failure to sign, execute and cause this Agreement to be received by the City within said time period shall render the Agreement null and void, unless otherwise authorized by the City. After Developer has

signed, executed and delivered the Agreement, the City shall sign and execute the Agreement. The final signature date of the City shall be the signature date of Agreement (“Signature Date”).

IN WITNESS HEREOF, the parties have executed and delivered this Agreement effective the date set forth next to the City’s signature below.

Dated this ____ day of ____, 2023

Dated this ____ day of ____, 2023

The Driftless Apartments, LLC

City of La Crosse

Milo Pinkerton, Sole Owner / Member

Mitch Reynolds, Mayor

_____, _____

Nikki Eisen, City Clerk

Subscribed and sworn to before me this
____ day of ____, 2023.

Subscribed and sworn to before me this
____ day of ____, 2023.

Notary Public, State of Wisconsin
My Commission: _____

Notary Public, State of Wisconsin
My Commission: _____

This Document Was Drafted By:
Stephen F. Matty, City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, Wisconsin 54601
608.789.7511

MSP – THE DRIFTLESS APARTMENTS DEVELOPMENT AGREEMENT

This MSP – The Driftless Apartments Development Agreement (hereafter "Agreement") is made by and among the **City of La Crosse**, Wisconsin, a Wisconsin municipal corporation with offices located at 400 La Crosse Street, La Crosse, Wisconsin, 54601 ("**City**"), and **The Driftless Apartments, LLC**, a Wisconsin limited liability company with principal offices located at 150 East Gilman Street, Madison, Wisconsin 53703-1482 ("**Developer**").

WITNESSETH:

Whereas, Developer proposes to own, develop and improve a currently underutilized property into 120 units of affordable / workforce housing units, defined below as the "Project," within the City of La Crosse on property Developer intends to own, all of which property is more particularly described in **Exhibit A** ("Real Estate");

Whereas, the goals for the Real Estate include encouraging private residential development and improvements and undertaking public improvements that promote desirable and sustainable uses, which further serve the needs of the community and visitors as well as fulfilling the aesthetic character standards of the City;

Whereas, the City finds it necessary to further redevelop an area of the City within Tax Incremental District No. 18, ("TID #18"), in order to further redevelop an area of the City, reduce underutilized property, grow the tax base and stimulate commercial and residential activity as well as provide for a place of employment and residence for citizens of the State and the City;

Whereas, Section 66.1105, Wis. Stat., empowers cities to assist redevelopment projects by lending or contributing funds as well as performing other actions of a character which the City is authorized to perform for other general purposes;

Whereas, the City has found and determined that: (1) the economic vitality of the Real Estate is essential to the economic health of the City and other taxing jurisdictions within the City; (2) the proposed development of the Real Estate through the construction of the Project is an integral part of the residential needs of City residents, local businesses and the surrounding area; and (3) the benefits to be gained by the City as a result of the Project are greater than the costs to the City under this Agreement;

Whereas, the Developer and the City agree that the Real Estate's development and improvement shall (1) result in an economic and aesthetic benefit to the City and the surrounding area, including, without limitation, growth in the tax base and job creation; and (2) be secured for the future benefit of the citizens and the community through the construction and development of the Project all in accordance with the Master Plan to be prepared by the Developer and approved by the City Plan Commission;

Whereas, the City desires the Project to proceed for the reasons set forth above and ultimately to provide increased tax revenues for the City and various taxing jurisdictions authorized to levy taxes within TID #18;

This space is reserved for recording data

Return to

City Attorney
400 La Crosse Street
La Crosse WI 54601

Parcel Identification Number/Tax Key Number

Whereas, in order to induce Developer to undertake the Project, the City has agreed to pay for certain costs included in the project plan of TID #18 ("TID Project Plan") through the use of existing municipal funds and/or the use of borrowed funds and to provide other assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement;

Whereas, the City finds and determines that certain cash grant payments as detailed in this Agreement are necessary and convenient to the implementation of the TID Project Plan;

Whereas, Developer declares that "but for" this Agreement, it would not undertake the Project to the extent of the investment proposed;

Whereas, the City and Developer wish to set forth in this Agreement their respective commitments, understandings, rights and obligations in connection with the Project as more fully described herein and to further provide for the implementation of the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein exchanged, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

ARTICLE I PURPOSE; LAND; DEFINITIONS; EXHIBITS

1.1. Land Affected. The parties acknowledge that the Project will encompass and/or affect the following real property, all of which shall be within the boundaries of TID #18:

The Real Estate, described on **Exhibit A**, and certain public streets and rights-of-way serving the same.

1.2. Purpose of the Agreement. In order to cause the Project to occur and to induce Developer to undertake the Project, to promote community development, industry and job creation and to expand and enhance the tax base and stimulate residential activity within the City, the City intends to undertake certain project costs and public improvements, if any, necessary for the Project, all as set forth in this Agreement. The City intends to recover its costs through payments received under this Agreement including increased tax revenues generated by the Real Estate. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed. Developer and the City plan to work together to undertake the Project on the Real Estate all as more fully described herein and in the Master Plan and as approved by the City Plan Commission.

1.3. Certain Definitions. In addition to the words and phrases elsewhere defined in this Agreement, the following words and phrases, when having an initial capital letter, shall have the following meanings:

- a. "Agreement" means this MSP – The Driftless Apartments Development Agreement by and between the City and the Developer, as amended and supplemented from time to time.
- b. "City" means the City of La Crosse, Wisconsin, a Wisconsin municipal corporation.
- c. "Construction Schedule" means the construction timetable set forth on **Exhibit F**.
- d. "Contribution" means the contribution or cash grant that is made through this Agreement to induce Developer to undertake the development and assist the Project and for which the Monetary Obligation is incurred.

- e. "Developer" means The Driftless Apartments, LLC, a Wisconsin limited liability company.
- f. "Master Plan" means the Master Plan for the Real Estate prepared by the Developer and approved by the City Plan Commission as well as all subsequent revisions thereto that are prepared by Developer and approved by the City Plan Commission.
- g. "Monetary Obligation" means a limited and conditional monetary obligation of the Tax Increment generated from the Project in a maximum aggregate amount of Four Million Two Hundred Thousand Dollars (\$4,200,000.00), that is incurred, in one or more installments, and that is payable over the time not to exceed the duration of the TID #18; more specifically:
 - (1) Calculation. Effective September 1, 2025, the City shall be obligated to pay a Contribution calculated as the Tax Increment resulting from an increase in real property tax base from the Project not to exceed the lesser of: (a) an aggregate Four Million Two Hundred Thousand Dollars (\$4,200,000.00), or (b) the actual Tax Increment resulting from an increase in the real property tax base from the Project for tax years 2024-2047 as further defined in Section 3.1 of this Agreement. The difference, if any, between the actual Tax Increment resulting from an increase in the real property tax base from the Project for any tax year for which a Contribution would be paid and the aggregate maximum Four Million Two Hundred Thousand Dollars (\$4,200,000.00), shall be retained by the City.
 - (2) Disbursement Date. After determining compliance with this Agreement and the actual applicable Tax Increment, the City shall make its Contribution of the Monetary Obligation annually on or before September 1 until payment of the maximum amounts defined herein or until closure of TID #18 by law, whichever occurs first.
 - (3) Conditions. The City's obligation to make Contributions on the Monetary Obligations is conditioned on:
 - (a) The determination by the City Assessor of compliance with the tax guarantee in Section 2.6(b) of this Agreement;
 - (b) The timely payment of taxes when due by Developer;
 - (c) Substantial Completion of the Project in accordance with the Master Plan, Project Cost Breakdown and Construction Schedule;
 - (d) Submission by Developer of verifiable costs, invoices, lien waivers, proof of financing costs and any other supporting documentation as requested by the Finance Director and Economic Development Commission. Said submissions shall be in form and content acceptable to the Finance Director and Economic Development Commission and demonstrate Substantial Completion and payments for costs for which reimbursement is being requested in accordance with Section 3.1 and the other provisions of this Agreement;

- (e) Continued compliance with the provisions of this Agreement by Developer and any other agreement between the Developer and City; and
 - (f) The use of the Contribution for eligible project costs under the Tax Incremental Law; and
 - (g) Continued compliance with any and all applicable federal, state and local laws, regulations and ordinances by Developer.
 - (4) Example Exhibit. An example of the Monetary Obligation is attached as **Exhibit G**.
 - (5) Not General Obligation. For purposes of the Tax Increment Law, this Agreement is an evidence of indebtedness; that is, it fully evidences the City's obligation to pay the Monetary Obligation. No negotiable instrument is being prepared to separately evidence the Monetary Obligation. The Monetary Obligation shall not, however, be included in the computation of the City's constitutional debt limitation, because the Monetary Obligation is limited and conditional, and no taxes have been or will be levied for its payment or pledged to its payment. Nothing in this Agreement shall be deemed to change the nature of the City's obligation from a limited and conditional obligation to a general obligation. No Tax Increments are pledged to the payment of the Monetary Obligation. In the event of an interpretation of this Agreement that would require the City's obligation to change from a limited and conditional obligation to that of a general obligation, then the City's Contribution and/or Monetary Obligation shall be subject to annual appropriation by the City Council.
 - (6) No Acceleration. Notwithstanding any other provision of this Agreement, Developer has no right to accelerate the payment of the Monetary Obligation. The only remedy of Developer in the event of nonpayment shall be legal proceedings to collect the amount of the Monetary Obligation that is due and payable. Developer may only institute legal proceedings after filing a claim with the City and complying with any other applicable provisions of this Agreement.
 - (7) Limitations. The City has no obligation to make payments of the Monetary Obligation in excess of the amount of the Tax Increments that have been collected, and allocated from the Project in TID #18 under the Tax Increment Law and the provisions of this Agreement. The City has no obligation to make payments of the Monetary Obligation if this Agreement terminates. In the event Developer fails to comply with any provision of this Agreement, the City may withhold any Contribution that is due and payable and may further seek the recovery of any Contribution that has already been paid or disbursed, which shall become immediately due and payable.
- h.** "Plans and Specifications" means the plans and specifications developed for the Project.

- i. "Project" means the development and improvement of the Real Estate by constructing 120 units of affordable / workforce housing on the Real Estate all as described in more detail on **Exhibit B** and in accordance with the Master Plan. Subject to the terms and conditions of this Agreement, uses for the Project shall be determined by zoning. The term, "Project," excludes personal property and land.
 - j. "Project Cost Breakdown" means the minimum construction costs of the Project and consists of the cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, construction, financing, contingency and all other direct and indirect costs of construction of the Project, all as described in more detail on **Exhibit E** and in accordance with the Master Plan.
 - k. "Public Improvements" means the public infrastructure improvements, if any, to be constructed by the City in connection with the Project, which are set forth on **Exhibit D**.
 - l. "Real Estate" means the real property described in **Exhibit A**.
 - m. "Signature Date" has the same meaning as provided in Section 8.22 of this Agreement.
 - n. "Substantial Completion" means the completion of the improvements to the Real Estate pursuant to the Plans and Specifications, (except for punch list items, exterior painting, and landscaping) and the issuance by the Project architect of a certificate of substantial completion and the issuance of a certificate of occupancy from the City. Subject to unavoidable delays beyond the control of the Developer, any such incomplete items shall be fully completed within a reasonable time after the date of Substantial Completion, but not to exceed ninety (90) days thereafter except site improvements such as landscaping shall be completed no later than two hundred forty (240) days after the date of Substantial Completion if weather or other conditions beyond the control of Developer prevent completion of the same.
 - o. "Tax Increment" means the tax increment or increase in real property taxes received by the City with respect to the Real Estate which is generated by TID #18.
 - p. "Tax Incremental Law" means Section 66.1105, Wis. Stats., as amended and superseded.
 - q. "TID #18" means the Tax Incremental Financing District Number 18 of the City of La Crosse.
 - r. "TID Project Plan" means the plan, created in accordance with the Tax Incremental Law, for the financial development or redevelopment of TID #18, including all approved amendments thereto.
- 1.4. Exhibits.** The following exhibits are hereby attached to and incorporated into this Agreement:
- a. **Exhibit A.** Real Estate
 - b. **Exhibit B.** Description of Project
 - c. **Exhibit C.** Restrictive Covenant
 - d. **Exhibit D.** Description of Public Improvements

- e. **Exhibit E.** Project Cost Breakdown
- f. **Exhibit F.** Construction Schedule
- g. **Exhibit G.** Monetary Obligation Example

ARTICLE II DEVELOPER OBLIGATIONS

2.1. **Acquire the Real Estate.** Prior to May 1, 2023, Developer shall acquire fee simple title to the Real Estate.

2.2. **Develop the Real Estate.** Developer agrees to develop and improve the Real Estate by undertaking the Project, all in accordance with the Master Plan, the Project Cost Breakdown and the Construction Schedule.

- a. **Site Preparation.** Developer shall prepare the Real Estate for construction of the Project, including, without limitation, any necessary demolition or other removal of improvements or preparation currently located on the Real Estate.
- b. **Construction Schedule.** Developer shall commence or cause other entities to commence construction on the Project, as described in **Exhibit B**, on or before May 1, 2023 with Substantial Completion on or before September 1, 2024, all in accordance with the Construction Schedule set forth on **Exhibit F**.
- c. **Guaranty of Minimum Construction Costs.** Developer agrees that the buildings and improvements associated with the Project shall have an aggregate minimum construction cost of not less than Twenty-Two, Eight Hundred Thousand Dollars (\$22,800,000). The Project Cost Breakdown is provided on **Exhibit E**.
- d. **Rights of Access.** Developer shall permit the representatives of the City to have access to the Project at all reasonable times during and following the construction when the City deems access necessary to ensure compliance with the terms and conditions of this Agreement including, but not limited to, access for inspection of all work being performed in connection with the Project as set forth in the Master Plan. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Agreement.
- e. **Property for Public Streets and Public Improvements.** Developer shall dedicate and/or transfer or convey all public streets, public rights-of-way and all necessary public sewer and water utilities within the Real Estate, as depicted in the Master Plan, as finalized, to the City at no cost to the City.
- f. **Master Plan.** Prior to obtaining any building or other permits and/or commencing any construction or development on the Real Estate, Developer shall submit a Master Plan setting forth all the details of construction and development to the City Plan Commission for review and approval. Said Master Plan shall conform in all material respects to the provisions of this Agreement, all applicable federal, state and local laws, ordinances, rules and regulations and shall include preliminary and final building, site and operational Plans

and Specifications, including, without limitation: (1) building plans and specifications; (2) architectural plans, renderings and specifications; (3) building material plans and specifications; (4) preliminary and final site plans; (5) landscaping plans; (6) stormwater and erosion control plans; (7) lighting plans; (8) traffic and circulation plans for pedestrians, bicyclists, transit riders, truck and delivery vehicles, and automobiles; (9) signage plans and specifications; (10) water and sewer plans; and (11) any other preliminary or final plans, specifications or other requirements as determined by the City Planner. The City Planner may determine, in his sole and absolute discretion, whether one or more of the above requirements is applicable to the Project's Master Plan.

2.3. Local Subcontractors. It is agreed by Developer that Developer shall engage local subcontractors, workers as well as local suppliers for material. The term subcontractor is as defined in Section 66.0901(1)(d), Wis. Stat. The word, "local," shall mean that the subcontractors and suppliers of material have their principal place of business within the City of La Crosse or within a seventy-five (75) mile radius of the City of La Crosse, Wisconsin. The Developer further agrees to provide to the City Engineer a list of all subcontractors and it further agrees that eighty percent (80%) of all work performed by subcontractors for construction shall be performed by subcontractors located within the City or seventy-five (75) miles of the City of La Crosse. In determining whether the eighty percent (80%) threshold has been met, the parties shall measure based upon the dollar values of said work. If Developer does not meet this requirement, it may request a waiver from the City Engineer providing reasons for the request of the same. This Section does not apply to fixtures, furnishings and equipment.

2.4. Compliance with Planning and Zoning; Use. Developer, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental or non-governmental entity in connection with the Project. Any conditions imposed on Developer to obtain any approval, permit or license must be acceptable to the City. Developer will not initiate, approve, consent to or participate in any change or modification of the zoning in effect for the Real Estate or any portion thereof, without the City's prior written consent. No property within the Real Estate shall be used for any use other than as set forth in the Master Plan and this Agreement and as approved by the City, including any conditions attendant with such approval, unless such use is further approved by the City under its normal zoning, review and approval procedures.

2.5. Maintenance and Repair. Developer agrees that at all times after construction of the Project, it will keep and maintain the Real Estate and the Project in good condition and repair.

2.6. Taxes. It is understood that the land, improvements and personal property resulting from the Project shall be subject to property taxes. Developer shall pay when due all federal, state and local taxes in connection with the Real Estate and all operating expenses in connection with the Real Estate and Project.

- a. Annual PILOT.** In the event that some or all of the Real Estate or personal property is or becomes exempt from general property taxes under Chapter 70, Wis. Stat., as amended or superseded, or by any other statute, provision or reason, then Developer shall make an annual payment to the City in lieu of taxes ("Annual PILOT") for the services, improvements or facilities furnished to the Real Estate by the City and other taxing jurisdictions. The amount of the Annual PILOT shall be computed and determined by the City Assessor by multiplying the fair market value (using tax assessment definitions, rules and procedures) of the tax-exempt portion of such property by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. Developer or the then current owner of the tax-exempt property, its successors or assigns shall pay the Annual PILOT within sixty (60) days of receipt. Developer shall have the right to appeal the determination of the City Assessor to the City Council. Any appeal shall specifically state the reasons, in writing, why the amount due as provided by the City Assessor is in error. The parties agree that the Annual PILOT shall survive for a period of twenty (20) years or the life of the TID #18, whichever is longer. Notwithstanding, the Developer or its

successors shall not be responsible for any Annual PILOT resulting from the Real Estate or a portion thereof becoming tax exempt due to the use of eminent domain by the United States or some other governmental entity.

- b. **Guarantee.** As an additional inducement and in consideration for the City entering into this Agreement, Developer guarantees faithful performance and compliance with all the terms, covenants, conditions and obligations to be kept and performed by Developer contained in this Agreement, including, without limitation, the obligation that the Project shall have an assessed value of not less than Nine Million six Hundred Thousand Dollars (\$9,600,000.00) beginning in tax year 2025 and for a period of twenty (20) years or the life of TID #18, whichever is longer. Developer agrees that this minimum assessed value on the Project shall remain a lien on the Real Estate and shall run with the land for a period of twenty (20) years or the life of TID #18, whichever is longer.
- c. **Deficiency PILOT.** In the event the assessed value of the Project is less than Nine Million Six Hundred Thousand Dollars (\$9,600,000.00) as of January 1, 2025 or for any tax year thereafter for a period of twenty (20) years or the life of TID #18, whichever is longer, then the Developer or the then current owner, or its successors or assigns agrees to pay a Deficiency PILOT to the City within sixty (60) days of receipt. Said Deficiency PILOT shall be calculated by first determining the difference between the guaranteed assessed value of the Project as provided in Section 2.6(b) of this Agreement less the actual assessed value of the Project for the tax year at issue, and multiplying said difference by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. This requirement shall be a lien running with the land for a period of twenty (20) years or the life of TID #18, whichever is longer.
- d. **Special Charge.** In the event there is a lack of compliance for payment of the Annual PILOT or Deficiency PILOT, then the City, in addition to any other remedy available at law or in equity, may levy a special charge or assessment under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property for the delinquent amount as calculated herein to enable the City to enforce performance of the Developer's obligations. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy and amount of the special charge or assessment.

2.7. Transfer or Sale of Real Estate.

- a. **Notice of Intent to Transfer.** No property within the Real Estate may be sold, transferred, or otherwise conveyed unless the Developer first provides to the City written notice of intent to transfer the property at least forty-five (45) days before the sale, transfer or conveyance is to occur. This Section shall not apply to nor restrict a transfer to Developer's financing entity, e.g. placing a mortgage on the Real Estate nor a residential or commercial lease agreement for individual residential living units, individual commercial lease spaces, parking spaces and any single-family residence to be owned in fee title simple by the purchaser.
- b. **No Transfer to Exempt Entities.** No property within the Real Estate may be sold, transferred or conveyed to, or leased or owned by any entity or used in any manner which would render any part of the Real Estate exempt from property taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement satisfactory to the Economic Development Commission, or its successor, providing for payments in lieu of taxes to the City.

- c. **Assignees and Transferees Bound by Agreement.** Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this Agreement, which shall run with the land and be binding upon all such assignees, purchasers and transferees. The Developer shall not sell or transfer any portion of the Real Estate to any entity unless and until the Developer has provided the City with written evidence satisfactory to the Economic Development Commission, or its successor, that such assignee or entity has agreed in writing to be bound by the terms of this Agreement. Any such sale, transfer or conveyance of any portions of the Real Estate shall not relieve the Developer of its obligations hereunder.
- d. **Subdivision.** Property within the Real Estate shall not be further subdivided without approval of the City.
- e. **Restrictive Covenant.** Developer shall place a restrictive covenant on the Real Estate prohibiting the Real Estate from being exempt from property taxes in substantially the same form as **Exhibit C**. Likewise, Developer shall place a restrictive covenant on any condominium unit or townhome prohibiting it from being exempt from property taxes in substantially the same form as **Exhibit C**.

2.8. Easements. Developer shall grant the City or any public utility such easements as reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other need necessary to effectuate development of the Real Estate in accordance with the Master Plan at no cost to the City.

2.9. Insurance. For a period of twenty (20) years or the life of TID #18, whichever is longer, Developer shall maintain, and shall require that any purchasers or transferees of any portion of the Real Estate maintain, insurance in such amounts and against such risks both generally and specifically with respect to the Real Estate, as are customarily insured against in developments of like size, kind and character, including customary builders risk insurance during construction and customary casualty, property and liability insurance, with deductibles in accordance with reasonable industry practice. Notwithstanding, Developer shall carry casualty insurance for the Project at not less than the replacement value and further agrees and covenants to apply, and to require any purchasers or transferees of any portion of the Real Estate to apply, any and all insurance proceeds to rebuild the Project, maintain the Project and Real Estate and to name the City as an additional insured to the extent of this covenant provided in this Section. Developer shall provide to the City certificates of all such insurance. Any lender who holds a lien on the Project shall agree to these obligations to rebuild the Project.

2.10. Indemnity. Developer shall indemnify and hold harmless the City, its officers, employees and authorized representatives, ("Indemnified Party"), from and against any and all liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, costs, and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Party on account of this Agreement, unless such claims, causes of action, or demands: (a) relate to the Indemnified Party failing to perform its obligations to Developer; or (b) arise out of any willful misconduct of the Indemnified Party. At the Indemnified Party's request, Developer shall appear for and defend the Indemnified Party, at Developer's expense, in any action or proceeding to which the Indemnified Party may be made a party by reason of any of the foregoing.

2.11. Utilities.

- a. **Other Utilities.** Developer shall be responsible for, pay for and cause electrical power, telephone facilities, cable TV lines, and natural gas facilities to be installed in such a

manner as to make proper and adequate service available to each building in the Project, as described in the Master Plan. Plans indicating the proposed location of each such utility to service the Project shall be shown on the Master Plan and construction plans to be provided to the City Plan Commission for approval prior to the installation of the utility.

- b. **Water and Sewer.** Developer shall be solely responsible for and shall pay all costs of connecting water and sewer service from the public streets, alley, right of way, or other approved infrastructure to the buildings within the Real Estate.

2.12. Restrictions. Developer agrees to neither use nor allow a third-party to use the Real Estate for adult entertainment, pawnshops, mini-warehouses, car title loan business, payday lenders, tattoo parlors, and/or off-premise signs for a period of twenty (20) years or the life of TID #18, whichever is longer. "Payday lenders" and "car title loan business" shall exclude banks and credit unions. This shall be a deed restriction against the Real Estate and shall run with the land.

2.13. Record Retention. Developer understands and acknowledges that the City is subject to the Public Records Law of the State of Wisconsin. As such, Developer agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years. Likewise, Developer agrees to assist the City in complying with any public records request that it receives pertaining to this Agreement. Additionally, Developer agrees to indemnify and hold the City, its officers, employees and authorized representatives harmless for any liability, including without limitation, reasonable attorney fees relating to or in any way arising from Developer's actions or omissions which contribute to the Indemnified Party's inability to comply with the Public Records Law. In the event Developer decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive termination of this Agreement.

2.14. Repair and/or Replacement of Infrastructure. Developer shall repair and/or replace any damaged City infrastructure or other City property that may occur as a result of the Project, including, without limitation, sidewalks, landscaping, asphalt and light poles. Said repair and/or replacement shall be to the satisfaction of the Board of Public Works.

ARTICLE III CITY OBLIGATIONS

3.1. Project Assistance. Developer has requested and the City may be required to make Contributions to Developer up to an aggregate maximum Four Million Two Hundred Thousand Dollars (\$4,200,000.00). More specifically,

- a. **Cash Grant Based on Improvements.** The Developer has requested a cash grant from TID #18 of up to an amount of Four Million Two Hundred Thousand Dollars (\$4,200,000.00), subject to change based on the provisions of this Agreement, with funds to be made available upon verification of the Tax Increment increase as defined herein. The City shall disburse its Contribution as required by its Monetary Obligation to Developer in accordance with this Agreement.
- b. **Illustrative Example.** An illustrative example of the payment of cash grants is attached as **Exhibit G**.

3.2. Certificate of Completion. Upon completion of the improvements by the Developer and review of the improvements by the City, the City shall provide the Developer, upon request, with an appropriate recordable

instrument certifying that the improvements have been made in accordance with this Agreement and the Master Plan, and any amendment or modifications thereto.

3.3. Assistance with Zoning Changes. If necessary, the City Planning Department shall initiate the process in accordance with the City's zoning code to attempt to provide appropriate zoning for the Real Property being developed by Developer so that the zoning for the Project is in accordance with the City's comprehensive plan for the area.

3.4. City Performance Subject to Required Government Approvals. The Developer acknowledges that various of the specific undertakings of the City described in this Article III may require approvals from the City Council (and other City bodies) and other public bodies, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City's agreements under this Article III are conditioned upon the obtaining of all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain them on a timely basis.

3.5. Subsequent Phases. Any subsequent development of the Real Estate will be addressed in a separate development agreement.

3.6. Public Improvements. Subject to annual appropriation, the City shall, at its sole cost and expense, construct the Public Improvements identified in **Exhibit D**.

ARTICLE IV CONDITIONS PRECEDENT TO CITY OBLIGATIONS

The City's obligations under this Agreement are conditioned upon the provisions contained herein. If all conditions contained in this Article are satisfied, or if the City waives in writing said conditions, on or before December 31, 2023, then the conditions shall be deemed satisfied. Otherwise, the City, at its option, in its absolute and sole discretion, may at any time thereafter terminate this Agreement by giving notice in writing thereof to Developer. In such event, this Agreement shall be terminated and no party shall have any further liability or obligation to the other hereunder. All submissions given by Developer to the City to satisfy the conditions contained in this Article must be satisfactory in form and content to the City.

4.1. Existence. Developer shall have provided a certified copy of Developer's formation documents and a good standing certificate issued by the appropriate governmental authority of the state of Developer's incorporation.

4.2. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions, which resolutions shall provide that Developer has been duly authorized to enter into this Agreement and all other agreements, documents and contracts required to be executed in connection with the transactions which are the subject of this Agreement.

4.3. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts. Developer shall not be in material default under the terms of any other agreement or instrument to which Developer is a party or an obligor. Developer shall be in material compliance with all provisions of this Agreement.

4.4. Financing Commitment. Developer shall obtain and provide to the City: (1) a written financial commitment from a conventional lender, (2) written construction contract to construct and finance the Project, (3) other written proof of financial resources to construct the Project, or (4) any combination thereof. Said documents shall demonstrate sufficient funds for the construction, furnishing, equipping and installation of the Project in an amount not less than twenty-two million, six hundred forty thousand Dollars (\$22,640,000). Said documents shall be acceptable in all respects to City, in the sole and absolute discretion of the Finance Director and Economic

Development Commission, or the Commission's successor. Developer shall have closed the loan, or be prepared to close the loan, which is the subject of the financing commitment and in connection therewith, Developer shall have provided copies of the documents to be executed in connection with the construction loan to the City.

4.5. Plans and Specifications. Developer shall have provided the Master Plan, which Master Plan must be acceptable in all respects to the City and shall have been approved by the City Plan Commission with input, if any, from the Board of Public Works.

4.6. Survey. Developer shall provide an ALTA survey of the Real Estate certified to the City by a Wisconsin registered land surveyor, showing the location of all improvements now prior to commencing construction and to be located thereon after said improvements are built pursuant to the Master Plan, all easements, pathways, exterior boundary lines, walkways, private and public streets, adjoining public streets and alleys, utilities, exits and entrances, all curbs, gutters, sidewalks, medians and lighting. The survey must show a state of facts acceptable to the Board of Public Works.

4.7. Insurance. Developer shall have delivered to the City certificates of all insurance required under this Agreement showing the City as a named insured. Said insurance shall not be cancelled, non-renewed nor have any material changes without providing thirty (30) days advanced written notice to the City.

4.8. Amendment of TID #18 and TID Project Plan. The amendment of TID #18 and TID Project Plan shall be approved by the appropriate governmental entities, if necessary.

4.9. Financial Statements. Developer shall present (but not leave a copy) to the City's Finance Director of the most recent audited financial statements prepared by a certified public accountant for Developer and any successors or assigns or transferees of Developer and each of the members of any of the foregoing and each member of the Board of Directors (or equivalent) of any of the foregoing. The financial statements must show a financial condition acceptable to the City, in the judgment of the City's Finance Director, to be sufficient to carry out the duties of this Agreement. The financial statements must be in form and content acceptable to the City, in the judgment of the City's Finance Director. In the event the financial statements are in unacceptable form and content, the City's Finance Director may identify alternative financial records for production by Developer.

4.10. Acquisition of Real Estate. The Developer shall have acquired fee simple title to the Real Estate no later than May 1, 2023 in accordance with Section 2.1 of this Agreement. If this condition is not met, then this Agreement shall terminate without further action of the City or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligation to the other hereunder

4.11. Approvals and Permits. The Developer shall at its expense have obtained all approvals and permits necessary to undertake the Project on the Real Estate, including but not limited to, site plan review, zoning approvals, and any other local, state or federal approvals or permits.

4.12. Compliance with Law. Developer shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

4.13. Compliance with Agreements. Developer shall be in compliance with this Agreement and all other agreements it may have with the City.

ARTICLE V CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATIONS

Developer's obligations under this Agreement are conditioned upon the following:

5.1. Acquisition of Real Estate. No later than May 1, 2023, the Developer shall have acquired fee simple title to the Real Estate in accordance with Section 2.1 of this Agreement, and shall have secured all financing needed for Developer to carry out this Project. If this condition is not met, then this Agreement shall terminate without further action of the City or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligation to the other hereunder

5.2. Amendment of TID #18 and TID Project Plan. The amendment of TID #18 and TID Project Plan shall be approved by the appropriate governmental entities, if necessary.

ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer represents and warrants to and covenants with the City, and the City represents and warrants to and covenants with Developer as respectively follows:

6.1. Financial Statements / No Material Change. All copies of financial statements, documents, contracts and agreements which Developer has furnished to the City, or its agents are true and correct. There has been no material change in the business operations of Developer since the date of the last financial statement furnished to the City except pursuant to the conduct of its ordinary business.

6.2. Taxes. Developer has paid, and shall pay when due, all federal, state and local taxes, and shall promptly prepare and file returns for accrued taxes. If necessary, Developer shall pay when due all payments in lieu of taxes and special charges required under the terms of this Agreement.

6.3. Compliance with Zoning. Developer covenants that the Real Estate, upon completion of the Project, will conform and comply in all respects with applicable federal, state, local and other laws, rules, regulations and ordinance, including, without limitation, zoning and land division laws, building codes and environmental laws.

6.4. Payment. All work performed and/or materials furnished for the Project, other than the Public Improvements, shall be fully paid for by Developer.

6.5. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

6.6. Good Standing. Developer is a limited liability company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Developer is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

6.7. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary corporate action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally. The City represents and warrants to Developer that it has the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by City under this Agreement.

6.8. No Conflict. The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's Articles of Organization or Operating Agreement or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer.

6.9. No Litigation. There is no litigation or proceeding pending or threatened against or affecting Developer or the Project or any guarantor that would adversely affect the Project, Developer or any guarantor or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

6.10. Certification of Costs. Developer covenants the Project Cost Breakdown accurately reflects all costs of the Project (other than costs associated with the Public Improvements, if any) that will be incurred by Developer in the completion and construction of the Project, and the City shall be entitled to rely on the Project Cost Breakdown submitted by Developer. Developer knows of no circumstances presently existing or reasonably likely to occur which would or could result in a material adverse variation or deviation from the Project Cost Breakdown.

6.11. No Default. No default, or event which with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.

6.12. Fees and Commissions. The City shall not be liable for any broker fees or commissions incurred by the Developer in connection with any transactions contemplated by this Agreement.

6.13. Financing Accommodation.

a. No Assignment. Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber, nor will Developer, its successors, assigns or transferees agree to or permit the transfer, assignment, conveyance or encumbrance of the Project or any of the Real Estate except as provided in Sections 2.7 and 8.1 of this Agreement. The principals, shareholders, members, managers and/or partners of Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber their respective interests in Developer, its successors, assigns or transferees, as the case may be, if such anticipated transfer, assignment, conveyance or encumbrance would result in the original members of the Developer having less than majority voting control of the Developer, without providing written notification thereof to the City at least forty-five (45) days prior to the date the proposed transfer, assignment, conveyance or encumbrance is to take effect. Any attempt to so act shall be void and have no effect.

b. No Subordination. The City shall not subordinate any interest it has in this Agreement for any reason, unless it is determined to be in the best interests of the City. Any requests for subordination shall be submitted, in writing, explaining why the request is in the best interests of the City. Said request shall be received by the City not less than forty-five (45) days prior to any City Council action on said request. Said subordination may only be approved by the City Council.

c. Developer Financing. Notwithstanding this Section 6.13, Developer may transfer, assign or encumber the Real Estate in order to secure financing for the acquisition of the Real Estate and/or for construction of the Project. Said lender may place a lien and/or mortgage on the Real Estate, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgage and/or loan may be transferred or assigned by lender in a secondary market without prior City Council approval. In the event

of a foreclosure against Developer by lender or a deed transfer in lieu of foreclosure, lender shall assume the duties, obligations and rights of Developer under this Agreement. In such a circumstance, lender may transfer or assign this Agreement and its accompanying duties, obligations and rights, to another developer without prior City Council approval. In any circumstance, lender shall provide reasonable notice to City of such actions. This Section shall survive any foreclosure proceeding.

6.14. Commencement and Completion. Developer shall commence and complete construction of the Project in accordance with Section 2.2 above.

6.15. Compliance with Plans. Developer will cause the Project to be constructed in accordance with the Master Plan and will promptly correct any defects in construction or deviations from the Master Plan.

6.16. No Changes. Developer shall not, without City's prior written consent: (i) consent to any amendments to any documents delivered to City pursuant to this Agreement; (ii) approve any changes in the Project or the Master Plan or permit any work to be done pursuant to any changes; (iii) modify or amend the Project Cost Breakdown.

6.17. Inspection of Project. Developer shall permit City, its inspectors and/or its construction consultant, at all reasonable times and at no cost: (a) to inspect the Project and all matters relating to the development thereof, and (b) on reasonable notice, to inspect all of Developer's books and records pertaining to the Project. City assumes no obligation to Developer for the sufficiency or adequacy of such inspections, it being acknowledged that such inspections are made for the sole and separate benefit of City. The fact that City may make such inspections shall in no way relieve Developer from its duty to independently ascertain that the construction of the Project and Developer's compliance with this Agreement is being completed in accordance with the approved Master Plan and the terms and conditions of this Agreement.

6.18. Notification. Developer shall:

- a. As soon as possible and in any event within five (5) business days after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Developer with respect thereto.
- b. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Developer contained in this Agreement to be untrue.
- c. Notify City and provide copies, immediately upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Developer or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Developer or any guarantor under any environmental laws, rules, regulations or ordinances or which seeks damages or civil, criminal or punitive penalties from or against Developer or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

6.19. Unrelated Activity. It is the intention of Developer and City that the sole business of Developer shall be the construction, ownership and operation of the Project, and Developer shall take no action inconsistent with such intention, including without limitation the acquisition by Developer of real or personal property unrelated to the Project, investment by Developer in the assets or stock of any other person, joining by Developer with any other person in any partnership or joint venture, or the creation or incurring of indebtedness by Developer unrelated to the Project.

6.20. No Indebtedness. Except in the ordinary course of business and except for funds borrowed to provide the financing for the purchase of the Real Estate or the construction of the Project, Developer shall not incur, create, assume, permit to exist, guarantee, endorse or otherwise become directly or indirectly or contingently responsible or liable for any indebtedness. "Indebtedness" shall mean any liability or obligation of Developer: (a) for borrowed money or for the deferred purchase price of property or services (excluding trade obligations incurred in the ordinary course of business); (b) as lessee under leases that have been or should be capitalized according to generally accepted accounting principles; (c) evidenced by notes, bonds, debentures or similar obligations; (d) under any guaranty or endorsement (other than in connection with the deposit and collection of checks in the ordinary course of business), and other contingent obligations to purchase, provide funds for payment, supply funds to invest in any entity, or otherwise assure a creditor against loss; or (e) secured by any security interest or lien on assets of Developer, whether or not the obligations secured have been assumed by Developer.

6.21. Correction of Defects. Developer shall, upon demand of City (and City may rely on the advice of its inspector and shall not be liable for any errors in such advice), correct any material defect, structural or otherwise, in the Project or any departure from the Master Plan.

6.22. Not for Speculation. Developer represents and warrants that its acquisition of the Real Estate and its undertakings pursuant to this Agreement shall be for the sole and express purpose of the redevelopment of the Real Estate consistent with the Master Plan and the terms and conditions of this Agreement and are not for the speculation in land holdings.

ARTICLE VII DEFAULT

7.1 Developer's Default.

- a. Remedies.** In the event (i) any representation or warranty of Developer herein or in any agreement or certificate delivered pursuant hereto shall prove to have been false in any material respect when made or (ii) of Developer's default hereunder which is not cured within thirty (30) days after written notice thereof to Developer, the City shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the City shall have the following specific rights and remedies:
- (1) With respect to matters that are capable of being corrected by the City, the City may at its option enter upon the Real Estate for the purpose of correcting the default and the City's reasonable costs in correcting same, plus interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City immediately upon demand;
 - (2) Injunctive relief;
 - (3) Action for specific performance;
 - (4) Action for money damages;
 - (5) Repayment by Developer of any incentives and damages via special assessment or special charge under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy of the amount of the special charge or assessment;

(6) Any other remedy in this Agreement.

- b. **Reimbursement.** Any amounts expended by the City in enforcing this Agreement and the obligations of Developer hereunder, including reasonable attorney's fees, and any amounts expended by the City in curing a default on behalf of Developer, together with interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City upon demand and shall constitute a lien against the Real Estate until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.
- c. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- d. **Failure to Enforce Not a Waiver.** Failure of the City to enforce any provision contained herein shall not be deemed a waiver of the City's rights to enforce such provision or any other provision in the event of a subsequent default.

7.2 City's Default.

- a. **Remedies.** In the event of the City's default hereunder which is not cured within sixty (60) days after written notice thereof to the City, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer shall have the following specific rights and remedies:
 - (1) Injunctive relief;
 - (2) Action for specific performance; and
 - (3) Action for money damages.
- b. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- c. **Failure to Enforce Not a Waiver.** Failure of Developer to enforce any provision contained herein shall not be deemed a waiver of Developer's rights to enforce such provision or any other provision in the event of a subsequent default.

7.3. Mediation of Disputes Required. Unless the parties agree otherwise, prior to litigation and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. The parties shall split the costs of mediation equally. In the event of impasse at mediation, the aggrieved party may then commence an action. However, the parties shall be bound to agree to alternative dispute resolution as ordered by the Court.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.1. Assignment. Except as provided in Sections 2.7 and 6.13, Developer may not assign its rights or obligations under this Agreement without the prior written consent of the City. Developer shall provide not less than forty-five (45) days advance written notice of any intended assignment.

8.2. Nondiscrimination. In the performance of work under this Agreement, Developer agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

8.3. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

8.4. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, pandemic, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause; provided however that any such event of Force Majeure shall not be the basis of a delay of more than ninety (90) days.

8.5. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties, and indemnifications contained herein shall survive the termination or expiration of this Agreement.

8.6. Implementation Schedule and Time of the Essence. All phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum ninety (90) days. The Economic Development Commission, or its successor, shall otherwise oversee the day-to-day operations of this Agreement.

8.7. Notices. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: (a) when personally delivered; (b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or (c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Attn: City Clerk
 City of La Crosse
 400 La Crosse Street
 La Crosse, Wisconsin 54601

with a copy to: Attn: City Planner
 City of La Crosse
 400 La Crosse Street
 La Crosse, Wisconsin 54601

To the Developer: Attn: Managing Member
 The Driftless Apartments, LLC
 150 East Gilman Street
 Madison, WI 53703-1482

8.8. Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin and shall be deemed to have been drafted through the combined efforts of parties of equal bargaining strength. Any action at law or in equity relating to this Agreement shall be instituted exclusively in the courts of the State of Wisconsin and venued in La Crosse County. Each party waives its right to change venue.

8.9. Conflict of Interest. Developer shall avoid all conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. Developer is familiar with the City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Section 2-133 of the City of La Crosse Municipal Code. Developer agrees not to offer any City officer or designated employee any gift prohibited by said Code. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Developer. In addition to any other remedies the City may have in law or equity, the City may immediately terminate this Agreement for such breach. No member, officer or employee of the City shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such member, officer or employee participate in any decision relating to this Agreement.

8.10. Execution in Counterparts. This Agreement may be executed in several counterparts, each which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

8.11. Disclaimer Relationships. Developer acknowledges and agrees that nothing contained in this Agreement or any contract between Developer and the City or any act by the City or any third parties shall be deemed or construed by any of the parties or by third persons to create any relationship or third party beneficiary, principal or agent limited or general partnership or joint venture or of any association or relationship involving the City. It is understood and agreed that Developer, in the performance of the work and services of these Project shall not act as an agent or employee of the City and neither the Developer nor its officers, employees, agents, licensees, sublicensees, subcontractors shall obtain any rights to retirement benefits or the benefits which accrue to the City's employees and Developer hereby expressly waives any claim it may have to any such rights. Each party shall be responsible for its own separate debts, obligations and other liabilities.

8.12. Severability. Should any part, term, portion or provision of this Agreement or the application thereof to any person or circumstance be in conflict with any state or federal law or otherwise be rendered unenforceable, it shall be deemed severable and shall not affect the remaining provisions, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.

8.13. Termination. Except for Sections 2.10 (Indemnity), 2.6(a) (Annual PILOT), 2.7(e) (Restrictive Covenant), 2.13 (Record Retention) and 8.5 (Survival), which shall survive the termination of this Agreement, this Agreement and all obligations hereunder, shall terminate after twenty (20) years or the life of TID #18, whichever is longer. This Agreement may also be terminated as provided in Article IV (Conditions Precedent to City), Article V (Conditions Precedent to Developer Obligations) and Section 8.9 (Conflict of Interest) hereof.

8.14. Memorandum of Agreement. Promptly upon full execution of this Agreement and prior to the recording of any mortgage or other security instrument against any portion of the Real Estate, the Developer agrees that the City may record this Agreement, or a memorandum thereof, with the Register of Deeds for La Crosse County, Wisconsin. Any such memorandum shall be in form and substance reasonably acceptable to the City and the Developer.

8.15. Covenants Running with Land. All of the covenants, obligations and promises of Developer set forth herein shall be deemed to encumber the Development and run with the land described in **Exhibit A** and shall bind any successor, assignee or transferee of Developer until such time as this Agreement is terminated.

8.16. Amendments. No agreement or understanding changing, modifying or extending this Agreement shall be binding upon either party unless in writing, approved and executed by the City and Developer.

8.17. Time Computation. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

8.18. JURY TRIAL. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

8.19. Construction. This Contract shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. The headings, table of contents and captions contained in the Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the contest may require. In the event that any of the provisions, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected.

8.20. Incorporation of Proceedings and Exhibits. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City, including but not limited to adopted or approved plans or specifications on file with the City and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Developer whether or not herein enumerated.

8.21. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, the specific action of the City shall be deemed controlling.

8.22. Execution of Agreement. Developer shall sign, execute and deliver this Agreement to the City on or before the close of regular City Hall business hours seven (7) days after its final adoption by the City, whichever occurs later. Developer's failure to sign, execute and cause this Agreement to be received by the City within said time period shall render the Agreement null and void, unless otherwise authorized by the City. After Developer has signed, executed and delivered the Agreement, the City shall sign and execute the Agreement. The final signature date of the City shall be the signature date of Agreement ("Signature Date").

IN WITNESS HEREOF, the parties have executed and delivered this Agreement effective the date set forth next to the City's signature below.

Dated this ____ day of ____, 2023

Dated this ____ day of ____, 2023

The Driftless Apartments, LLC

City of La Crosse

Milo Pinkerton, Sole Owner/Member

Mitch Reynolds, Mayor

_____, _____

Nikki Elsen, City Clerk

Subscribed and sworn to before me this
____ day of ____, 2023.

Subscribed and sworn to before me this
____ day of ____, 2023.

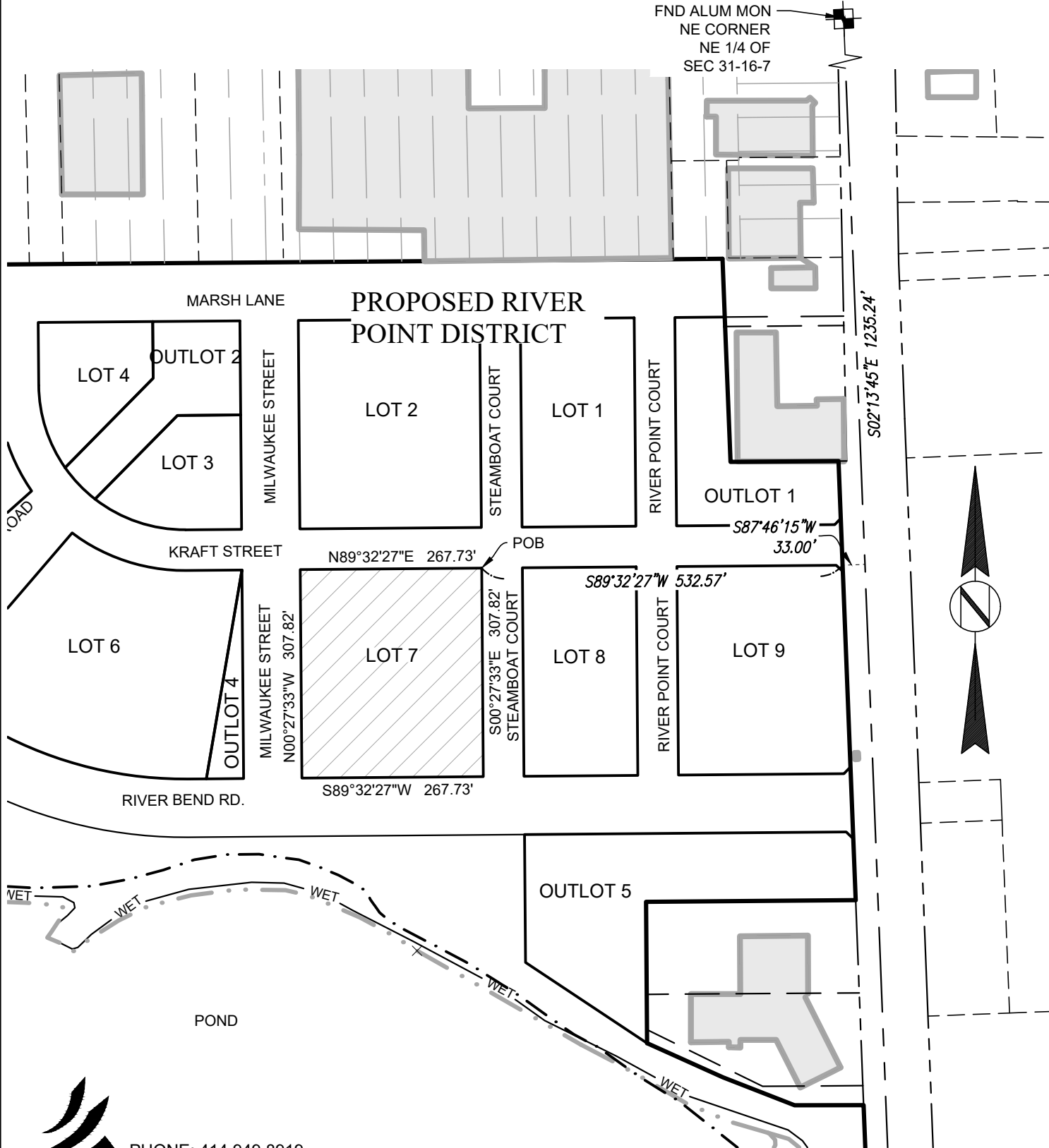
Notary Public, State of Wisconsin
My Commission: _____

Notary Public, State of Wisconsin
My Commission: _____

This Document Was Drafted By:
Stephen F. Matty, City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, Wisconsin 54601
608.789.7511

EXHIBIT A

PROPOSED LOT 7 OF RIVER POINT DISTRICT BEING PART OF GOVERNMENT LOT 1 AND PART OF GOVERNMENT LOT 2 LOCATED IN THE NORTHEAST 1/4, NORTHWEST 1/4, SOUTHEAST 1/4 AND SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWN 16 NORTH, RANGE 7 WEST IN THE CITY OF LA CROSSE, LA CROSSE COUNTY, WISCONSIN.



 PHONE: 414.949.8919
501 MAPLE AVENUE
DELAFIELD, WI 53018-9351
www.sehinc.com

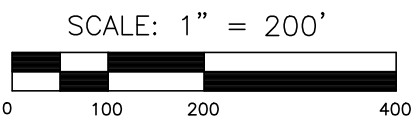


EXHIBIT A

Proposed Lot 7 of River Point District being part of Government Lot 1 and part of Government Lot 2, located in the Northeast 1/4, Northwest 1/4, Southeast 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 31, Town 16 North, Range 7 West in the City of La Crosse, La Crosse County Wisconsin bounded and described as follows:

Commencing at the Northeast corner of the Northeast 1/4 of Section 31, thence South 02°13'45" East along the East line of said Northeast 1/4 a distance of 1236.26 feet; thence South 87°46'15" West, 33.00 feet to the West line of Copeland Avenue, USH 53; thence South 89°32'27" West, 532.57 feet to the West line of proposed Steamboat Court and the point of beginning; thence South 00°27'33" East along said West line, 307.82 feet to the North line of proposed River Bend Road; thence South 89°32'27" West along said North line 267.73 feet to the East line of proposed Milwaukee Street; thence North 00°27'33" West along said East line 307.82 feet to the South line of proposed Kraft Street; thence North 89°32'27" East along said South line 267.73 feet to the point of beginning.

Containing 82,414 square feet, 1.89 acres



PHONE: 414.949.8919
501 MAPLE AVENUE
DELAFIELD, WI 53018-9351
www.sehinc.com

EXHIBIT A

Real Estate (legal description)

[attached]

Exhibit B

The Driftless Apartments and Townhomes - Project Description

The Driftless aims to serve the community by creating 120 units of affordable/workforce housing units for both seniors and individuals/families to serve a mix of age groups. This project would be the first development in the underutilized River Point District (specifically located at Zone D) that the City of La Crosse is targeting for redevelopment, helping to catalyze additional development in this area.

The design is modeled off a project we recently completed project in Wauwatosa, WI (River Parkway) which was awarded first place in the 2021 Senior Housing News Architecture and Design Awards for Affordable Housing. We further elevated the design working with the City to suit this location in the River Point District.

Along with increasing the tax base, this project will provide needed, quality, safe affordable housing, helping to enhance stability for lower income La Crosse area seniors and families. This underutilized site is also in a great location just north of Downtown with great access to transit and a grocery store right across the street.

As proposed, The Driftless is made up of five separate buildings. One building consists of four stories with 100 units of independent senior housing (age-restricted to 55+) above one story of structured parking. This independent senior building has a mix of one-bedroom and two-bedroom units. The remaining four two-story buildings consist of a total of 20 three-bedroom townhome style family units (non-age-restricted) with private entries and 12 structured parking spaces.

All 120 units will be affordable to residents at or below 80% County Median Income (CMI) and targeted toward such populations. Further, 24 of these units are set-aside as supportive service units at 30% CMI. We have a signed MOU with La Crosse County Veterans Service Commission and plan to reach out to Couleecap, Inc. as well to partner in providing supportive services and referrals for these 30% CMI units. Depending on the income level and unit size, net rental rates range from \$468/month to \$1,390/month.

- Common Amenities: onsite parking, community room, outdoor patio, on-site leasing office, storage, tot lot
- Unit Finishes: full-service kitchen with Energy Star stainless steel appliances, granite countertops, vinyl plank flooring throughout with carpet in the bedrooms, large windows, private unit patios, in-unit washer and dryer, in-unit internet provided at no cost to residents

EXHIBIT C

Restrictive Covenant

(Insert Legal Description)

Subject to the following Restrictive Covenant: Regardless of the owner, occupant, tenant or use of the Property, the real property (as defined in § 70.03, Wis. Stat.) shall remain subject to the general property tax pursuant to Chapter 70 of the Wisconsin Statutes for a minimum period commencing at the date of this deed and concluding December 31, 2043. No owner, occupant, or tenant of the Property shall apply for the real property to be exempt from taxation as provided in §70.11, Wis. Stat., for any tax year prior to tax year January 1, 2044.

This covenant shall run with the land and any future conveyance of the Property shall be subject to the covenant. The City of La Crosse may enforce this covenant using any available legal or equitable remedies permitted by the laws of Wisconsin, including injunctive relief, reasonable attorney's fees and the costs of enforcement of this covenant, including liquidated damages equal to the amount of real estate taxes for the duration of the restrictive covenant time period ending December 31, 2043 that the violator would have paid but for the granting of the tax exemption of the Property.

EXHIBIT D

Description of Public Improvements

None

EXHIBIT E

Project Cost Breakdown

[attached]

EXHIBIT E
Project Cost Breakdown

SOURCES				
Debt		Amount	Percent	Per Unit
Debt A:	First Mortgage	6,997,554	23.9%	58,313
Debt B:	Pay-As-You-Go TIF	1,950,000	6.7%	16,250
Debt C:	AHRLF Loan	1,111,111	3.8%	9,259
Debt D:	La Crosse Deferred Loan	550,000	1.9%	4,583
		10,608,665	36.3%	88,406
Other Sources		Amount	Percent	Per Unit
Category	Sources			
Deferred_Fee	Developer Fee	1,260,000	4.3%	10,500
Tax_Credits	Federal Low Income Housing Tax Credit	12,185,373	41.7%	101,545
Tax_Credits	State Low Income Housing Tax Credits	3,762,824	12.9%	31,357
Local_Grant	AHRLF Grant	888,888	3.0%	7,407
WI_Public	County Acquisition Funds	100,000	0.3%	833
WI_Public	CMF	432,000	1.5%	3,600
		18,629,085	63.7%	155,242
		29,237,750	100.0%	243,648

USES				
		Amount	% of Cost	Per Unit
ACQUISITION COSTS		250,000	0.9%	2,083
Land Cost	n/a psf	250,000	0.9%	2,083
CONSTRUCTION COSTS		23,090,255	79.0%	192,419
Residential Building		21,990,719	75.2%	183,256
Construction Contingency		1,099,536	5.0%	9,163
ENVIRONMENTAL ABATEMENT/SOIL CORRECTION		0	0.0%	0
PERMITS/FEES		76,000	0.3%	633
Permits/Inspection		50,000	0.2%	417
Other		26,000	0.1%	217
PROFESSIONAL SERVICES		843,886	2.9%	7,032
Accounting		10,000	0.0%	83
Appraisals		8,000	0.0%	67
Architectural & Engineering Fees		416,000	1.4%	3,467
Architectural Reimbursements		15,000	0.1%	125
Cost Certification/Audit		13,000	0.0%	108
Environmental Assessment Consultant		19,400	0.1%	162
FF&E		100,000	0.3%	833
Legal - Development		95,000	0.3%	792
Market Research		7,000	0.0%	58
Marketing/Leasing		90,000	0.3%	750
P&P Bond		32,988	0.1%	275
Soils Consultant		6,000	0.0%	50
Survey		6,500	0.0%	54
Other		25,000	0.1%	208
FINANCING COSTS		1,687,609	5.8%	14,063
Construction Period Interest		960,000	3.3%	8,000
Inspections - Lenders		25,000	0.1%	208
Insurance - Hazard/Liability		100,000	0.3%	833
Lender Legal		40,000	0.1%	333
Loan Origination Fees		172,500	0.6%	1,438
Real Estate Taxes During Construction		114,357	0.4%	953
Syndication Fees		7,760	0.0%	65
Tax Credit & Compliance Fees		206,892	0.7%	1,722
Title & Recording		31,300	0.1%	261
Other		30,000	0.1%	250
DEVELOPER FEE		2,520,000	8.6%	21,000
Developer Fee		2,520,000	8.6%	21,000
CASH ACCOUNTS/ESCROWS/RESERVES		770,000	2.6%	6,417
Management Startup/Leasing		120,000	0.4%	1,000
Operating Reserves		650,000	2.2%	5,417
TOTAL USES		29,237,750	100%	243,648

Project Timeline – The Driftless Apartments

- Construction Bid Publishing: 03/2023
- Real Estate Closing: 04/2023
- Construction Start: 04/2023
- Construction 60% Complete: 12/2023
- Begin Lease-Up/Marketing: 02/2024
- Construction Completion: 08/2024
- Complete Lease-Up: 12/2024

Exhibit F

Project Timeline – The Driftless Apartments

- Construction Bid Publishing: 03/2023
- Real Estate Closing: 07/2023
- Construction Start: 07/2023
- Begin Lease-Up/Marketing: 02/2024
- Substantial Completion: 12/2024
- Complete Lease-Up: 06/2025

EXHIBIT G: MONETARY OBLIGATION EXAMPLE

CASH GRANT SCHEDULE

MSP - The Driftless Apartments Development Agreement

Tax Year (Valuation Date)	Base	Guarantees		1/1/2026	1/1/2027	1/1/2028	1/1/2029
	1/1/2023	60%	100%				
Total Assessed Value (Value Increment) 1% Inflation		5,760,000	9,600,000	9,696,000	9,792,960	9,890,890	9,989,798
Mill Rate	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958
Tax Increment		112,781	187,968	189,848	191,746	193,664	195,600
<i>Cash Grants</i>							
City's Proration (15% per policy)		16,917	28,195	28,477	28,762	29,050	29,340
City's Allocation of Tax Increment		16,917	28,195	28,477	28,762	29,050	29,340
City's Cumulative Allocation (\$741,300 Max.)		16,917	45,112	73,589	102,351	131,401	160,741
<i>Developer's Cash Grants</i>							
Developer's Proration (85% per policy)		95,864	159,773	161,371	162,984	164,614	166,260
Developer's Cash Grants		95,864	159,773	161,371	162,984	164,614	166,260
Developer's Cumulative Cash Grants (\$4,200,000 Max.)		95,864	255,636	417,007	579,991	744,605	910,866
Aggregate Contribution (\$4,942,000 Max.)		112,781	300,749	490,596	682,343	876,006	1,071,607
Payment Date		9/1/2025	9/1/2025	9/1/2025	9/1/2026	9/1/2027	9/1/2028

NOTE 1: Assumes 1% appreciation

NOTE 2: Assumes base value of property is zero.

3/1/2023

1/1/2030	1/1/2031	1/1/2032	1/1/2033	1/1/2034	1/1/2035	1/1/2036	1/1/2037	1/1/2038	1/1/2039	1/1/2040
10,089,696	10,190,593	10,292,499	10,395,424	10,499,379	10,604,372	10,710,416	10,817,520	10,925,695	11,034,952	11,145,302
0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958
197,556	199,532	201,527	203,542	205,578	207,634	209,710	211,807	213,925	216,064	218,225
29,633	29,930	30,229	30,531	30,837	31,145	31,456	31,771	32,089	32,410	32,734
29,633	29,930	30,229	30,531	30,837	31,145	31,456	31,771	32,089	32,410	32,734
190,374	220,304	250,533	281,065	311,901	343,046	374,503	406,274	438,363	470,772	503,506
167,923	169,602	171,298	173,011	174,741	176,489	178,253	180,036	181,836	183,655	185,491
167,923	169,602	171,298	173,011	174,741	176,489	178,253	180,036	181,836	183,655	185,491
1,078,788	1,248,390	1,419,688	1,592,700	1,767,441	1,943,929	2,122,183	2,302,219	2,484,055	2,667,710	2,853,201
1,269,163	1,468,695	1,670,222	1,873,764	2,079,342	2,286,976	2,496,686	2,708,493	2,922,418	3,138,482	3,356,707
9/1/2029	9/1/2030	9/1/2031	9/1/2032	9/1/2033	9/1/2034	9/1/2035	9/1/2036	9/1/2037	9/1/2038	9/1/2039

1/1/2041	1/1/2042	1/1/2043	1/1/2044	1/1/2045	1/1/2046	1/1/2047
11,256,755	11,369,323	11,483,016	11,597,846	11,713,824	11,830,963	11,949,272
0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958
220,407	222,611	224,837	227,086	229,357	231,650	233,967
33,061	33,392	33,726	34,063	34,404	34,748	35,095
33,061	33,392	33,726	34,063	34,404	34,748	35,095
536,567	569,959	603,684	637,747	672,151	706,898	741,993
187,346	189,220	191,112	193,023	194,953	196,903	198,872
187,346	189,220	191,112	193,023	194,953	196,903	198,872
3,040,547	3,229,767	3,420,879	3,613,902	3,808,855	4,005,757	4,204,629
3,577,114	3,799,726	4,024,563	4,251,649	4,481,006	4,712,656	4,946,623
9/1/2040	9/1/2041	9/1/2042	9/1/2043	9/1/2044	9/1/2045	9/1/2046

EXHIBIT G-1: MONETARY OBLIGATION EXAMPLE

CASH GRANT SCHEDULE

MSP - The Driftless Apartments Development Agreement

Tax Year (Valuation Date)	Base	Guarantees		1/1/2026	1/1/2027	1/1/2028	1/1/2029
	1/1/2023	60%	100%				
Total Assessed Value (Value Increment) 1% Inflation		5,760,000	9,600,000	9,696,000	9,792,960	9,890,890	9,989,798
Mill Rate	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958
Tax Increment		112,781	187,968	189,848	191,746	193,664	195,600
<i>Cash Grants</i>							
City's Proration (15% per policy)		16,917	28,195	28,477	28,762	29,050	29,340
City's Allocation of Tax Increment		16,917	28,195	28,477	28,762	29,050	29,340
City's Cumulative Allocation		16,917	45,112	73,589	102,351	131,401	160,741
<i>Developer's Cash Grants</i>							
Developer's Proration (85% per policy)		95,864	159,773	161,371	162,984	164,614	166,260
Developer's Cash Grants		95,864	159,773	161,371	162,984	164,614	166,260
Developer's Cumulative Cash Grants (\$4,200,000 Max.)		95,864	255,636	417,007	579,991	744,605	910,866
Payment Date		9/1/2025	9/1/2025	9/1/2025	9/1/2026	9/1/2027	9/1/2028

NOTE 1: Assumes 1% appreciation

NOTE 2: Assumes base value of property is zero.

2/16/2023

1/1/2030	1/1/2031	1/1/2032	1/1/2033	1/1/2034	1/1/2035	1/1/2036	1/1/2037	1/1/2038	1/1/2039	1/1/2040
10,089,696	10,190,593	10,292,499	10,395,424	10,499,379	10,604,372	10,710,416	10,817,520	10,925,695	11,034,952	11,145,302
0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958	0.01958
197,556	199,532	201,527	203,542	205,578	207,634	209,710	211,807	213,925	216,064	218,225
29,633	29,930	30,229	30,531	30,837	31,145	31,456	31,771	32,089	32,410	32,734
29,633	29,930	30,229	30,531	30,837	31,145	31,456	31,771	32,089	32,410	32,734
190,374	220,304	250,533	281,065	311,901	343,046	374,503	406,274	438,363	470,772	503,506
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9/1/2029	9/1/2030	9/1/2031	9/1/2032	9/1/2033	9/1/2034	9/1/2035	9/1/2036	9/1/2037	9/1/2038	9/1/2039

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3,040,547	3,229,767	3,420,879	3,613,902	3,808,855	4,005,757	4,204,629
9/1/2040	9/1/2041	9/1/2042	9/1/2043	9/1/2044	9/1/2045	9/1/2046



CITY OF LA CROSSE

400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org

LEGISLATION STAFF REPORT FOR COUNCIL

File ID

Caption

23-0205

Resolution approving development agreement with MSP for The Driftless Apartments and Townhomes.

Staff/Department Responsible for Legislation

Planning

Requestor of Legislation

Planning Staff

Location, if applicable

River Point District

Summary/Purpose

This Resolution approves a development agreement, including the parameters of TIF assistance, for The Driftless Apartments and Townhomes, the first development scheduled to break ground in the River Point District this year. Plans include 120 units of affordable/workforce housing. Amenities include on site parking, community room, outdoor patio, on-site leasing office, storage, tot lot.

Background

City Staff, the RDA, and Ehlers have been working directly with MSP for almost 2 years to bring this project to fruition. MSP was awarded highly competitive tax credits for this development in 2022. Due to the current development climate (financing and construction costs primarily), it was very challenging to close the financial gap to make this project feasible. MSP must have all financing finalized by March 31, 2023, to include this legislation, or they will lose their allocated tax credits from WHEDA. Without the LIHTC credits, the project will not be able to move forward. At all.

Fiscal Impact

85% of tax increment generated by the project during the life of the TID

Staff Recommendation

Planning staff recommends approval.



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0001

Agenda Date: 3/2/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Status Update