

**CHART DEVELOPMENT AGREEMENT:
West Bay Addition Project**

This Chart Development Agreement: West Bay Addition Project (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 **Chart Energy & Chemicals, Inc.**, a Delaware corporation with offices located at 2191 Ward Avenue, La Crosse, Wisconsin, 54602 ("**Developer**").

WITNESSETH:

Whereas, Developer proposes to own, construct and develop a West Bay Addition facility expansion ("Project") consisting of an addition to its manufacturing building of not less than one hundred thousand (100,000) square feet on its property within the City of La Crosse on property it will own all of which property is more particularly described in **Exhibit A ("Real Estate")**;

Whereas, the goals for the Real Estate include encouraging private 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 a newly created Tax Incremental District No. 15, ("TID #15"), in order to further redevelop an area of the City, eliminate environmental contamination, blight, grow the tax base as well as provide for a place of employment 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 manufacturing, commercial and retail needs of City residents 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 #15;

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 #15 (“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;

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:

TABLE OF CONTENTS

ARTICLE I – PURPOSE; LAND; DEFINITIONS; EXHIBITS	Page
Section 1.1 Land Affected	4
Section 1.2 Purpose of Agreement	5
Section 1.3 Certain Definitions	5
Section 1.4 Exhibits	8
 ARTICLE II – DEVELOPER OBLIGATIONS	
Section 2.1 Acquire the Real Estate	9
Section 2.2 Develop the Real Estate	9
Section 2.3 Local Subcontractors	10
Section 2.4 Compliance with Planning and Zoning; Use.....	10
Section 2.5 Maintenance and Repair.....	10
Section 2.6 Taxes	10
Section 2.7 Transfer or Sale of Real Estate	11
Section 2.8 Easements	11
Section 2.9 Insurance	12
Section 2.10 Indemnity.....	12
Section 2.11 Utilities	12
Section 2.12 Restrictions	12
Section 2.13 Record Retention	12
Section 2.14 Repair and/or Replacement of Infrastructure	13
Section 2.15 Job Creation	13
 ARTICLE III – CITY OBLIGATIONS	
Section 3.1 Cash Grants Based on Project	13
Section 3.2 Certificate of Completion	13
Section 3.3 Assistance with Zoning Changes	14

Section 3.4	City Performance Subject to Required Government Approvals	14
Section 3.5	Subsequent Phases	14

ARTICLE IV – CONDITIONS PRECEDENT TO CITY OBLIGATIONS

Section 4.1	Existence	14
Section 4.2	Incumbency; Due Authorization	14
Section 4.3	No Violation or Default	14
Section 4.4	Financing Commitment	14
Section 4.5	Plans and Specifications	15
Section 4.6	Survey	15
Section 4.7	Insurance	15
Section 4.8	Creation of TID #15 and TID Project Plan	15
Section 4.9	Financial Statements	15
Section 4.10	Acquisition of Real Estate	15
Section 4.11	Approvals and Permits	15
Section 4.12	Compliance with Law	15
Section 4.13	Compliance with agreements	15

ARTICLE V – CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATIONS

Section 5.1	Acquisition of Real Estate	16
Section 5.2	Creation of TID #15 and TID Project Plan	16

ARTICLE VI – REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 6.1	Financial Statements / No Material Change	16
Section 6.2	Taxes	16
Section 6.3	Compliance with Zoning	16
Section 6.4	Payment	16
Section 6.5	Certification of Facts	16
Section 6.6	Good Standing	16
Section 6.7	Due Authorization	16
Section 6.8	No Conflict	17
Section 6.9	No Litigation	17
Section 6.10	Certification of Costs	17
Section 6.11	No Default	17
Section 6.12	Fees and Commissions	17
Section 6.13	Financing Accommodation	17
Section 6.14	Commencement and Completion	18
Section 6.15	Compliance with Plans	18
Section 6.16	No Changes	18
Section 6.17	Inspection of Project	18
Section 6.18	Notification	18
Section 6.19	Unrelated Activity	19
Section 6.20	No Indebtedness	19
Section 6.21	Correction of Defects	19
Section 6.22	Not for Speculation	19

ARTICLE VII – DEFAULT

Section 7.1	Developer's Default	19
Section 7.2	City's Default	20
Section 7.3	Mediation of Disputes Required	20

ARTICLE VIII – MISCELLANEOUS PROVISIONS

Section 8.1	Assignment	21
Section 8.2	Nondiscrimination	21
Section 8.3	No Personal Liability	21
Section 8.4	Force Majeure	21
Section 8.5	Parties and Survival of Agreement	21
Section 8.6	Implementation Schedule and Time of the Essence	21
Section 8.7	Notices	21
Section 8.8	Governing Law	22
Section 8.9	Conflict of Interest	22
Section 8.10	Execution in Counterparts	22
Section 8.11	Disclaimer Relationships	22
Section 8.12	Severability	22
Section 8.13	Termination	22
Section 8.14	Memorandum of Agreement	23
Section 8.15	Covenants Running with Land	23
Section 8.16	Amendments	23
Section 8.17	Time Computation	23
Section 8.18	Jury Trial	23
Section 8.19	Construction	23
Section 8.20	Incorporation of Proceedings and Exhibits	23
Section 8.21	Entire Agreement	23
Section 8.22	Execution of Agreement	24

EXHIBITS

Exhibit A	Real Estate
Exhibit B	Description of Project
Exhibit C	Living Wage Resolution
Exhibit D	Description of Public Improvements
Exhibit E	Project Cost Breakdown
Exhibit F	Construction Schedule
Exhibit G	Monetary Obligation Example

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 #15:

The Real Estate (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 within the City, the City intends to undertake certain project costs and public improvements 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 Chart Development Agreement: West Bay Addition Project 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 Chart Energy & Chemicals, Inc., a Wisconsin corporation.
- f. "Job" or "New Full-time Equivalent Job" means a position or employment classification employed by Developer on a Full-time basis, where such position or employment classification may be worked by one (1) or more of Developer's employees. "Full-time" means two thousand eighty (2080) hours of actual work per calendar year. In calculating such Jobs, only actual hours worked shall be counted rather than time-and-a-half, double time, or any other multiple of actual work hours paid. Such Jobs shall comply with the City's living wage requirements as per the 2003 Second Amended Resolution of the Common Council attached as Exhibit C. "New" means that such Jobs were previously non-existing on the Signature Date of this Agreement and that such Jobs were created at Developer's main campus within the corporate limits of the City of La Crosse by Developer subsequent to the Signature Date.

"Job" excludes such positions or employment classifications that thwart or circumvent the job maintenance provisions of this Agreement. Such Jobs shall exclude positions or employment classifications that are relocated to these Project from elsewhere within the corporate limits of the City of La Crosse from any other employer. Such Jobs shall also exclude Developer's relocation of Jobs between its various facilities within the corporate limits of the City of La Crosse. Jobs created by Developer meeting this definition shall apply toward the job maintenance requirement of this Agreement. Nothing in this definition prohibits Developer from competing for labor within the labor market against other employers located within the corporate limits of the City of La Crosse.

- g. "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.

- h. "Monetary Obligation" means a limited and conditional monetary obligation of the Tax Increment generated from the Project in a maximum aggregate amount of one million five hundred thousand dollars (\$1,500,000.00), that is incurred, in one or more installments, and that is payable over the time not to exceed the duration of the TID #15; more specifically:**
- (1) Calculation.** Effective September 1, 2015, the City shall be obligated to pay an amount calculated as the Tax Increment resulting from an increase in real property tax base from the Project not to exceed the lesser of: (a) one million five hundred thousand dollars (\$1,500,000.00), 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 2014-2017. The difference, if any, between the actual Tax Increment resulting from an increase in the real property tax base from the Project for tax years 2014-2017 and the maximum one million five hundred thousand dollars (\$1,500,000.00), shall be retained by the City.
 - (2) Disbursement Date.** After determining 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 #15 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 Board of Public Works. Said submissions shall be in form and content acceptable to the Finance Director and Board of Public Works 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**
 - (f) The use of cash grants for eligible project costs under the Tax Incremental Law.**
 - (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 #15 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.
- (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.
- i. "Plans and Specifications" means the plans and specifications developed for the Project.
- j. "Project" means the development and improvement of the Real Estate by the construction and expansion of a manufacturing facility of not less than one hundred thousand (100,000) square feet 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.

- k. "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.
- l. "Public Improvements" means the public infrastructure improvements, if any, to be constructed by the City in connection with the Project set forth on **Exhibit D**.
- m. "Real Estate" means the real property described in **Exhibit A**.
- n. "Signature Date" has the same meaning as provided in Section 8.22 of this Agreement.
- o. "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, 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.
- p. "Tax Increment" means the tax increment received by the City with respect to the Real Estate which is generated by TID #15.
- q. "Tax Incremental Law" means Section 66.1105, Wis. Stats., as amended and superseded.
- r. "TID #15" means the Tax Incremental Financing District Number 15 of the City of La Crosse.
- s. "TID Project Plan" means the plan, created in accordance with the Tax Incremental Law, for the financial development or redevelopment of TID #15, 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.** Living Wage Resolution
- 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 commencing construction on the Project, 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 April, 2013 with Substantial Completion on or before, December 31, 2014, all in accordance with the Construction Schedule set forth on **Exhibit F**.
- c. **Guaranty of Minimum Construction Costs.** Developer agrees that the building and improvements associated with the Project shall have an aggregate minimum construction cost of twenty-five million dollars (\$25,000,000.00). 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 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 their 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.

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 #15, 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 fifteen million dollars (\$15,000,000.00) beginning in tax year 2014 and for a period of twenty (20) years or the life of TID #15, 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 #15, whichever is longer.
- c. **Special Charge.** In the event there is a lack of compliance for payment of the Annual 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.
- 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 City Attorney and Board of Public Works 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 City Attorney 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.

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 #15, 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.

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; (b) arise out of any willful misconduct of the Indemnified Party; or (c) arise out of any act or omission on the part of the Indemnified Party, but only to the extent of the Indemnified Party's negligence. Nothing in this Agreement shall be construed to waive or limit any immunities and/or liability limitations available to the Indemnified Party as a Wisconsin municipality pursuant to Wisconsin Statutes or any other applicable law. Nothing in this section precludes or bars a claim by the Developer against the Indemnified Party for damages sustained by a third party wherein an act or omission by the Indemnified Party caused the damages. 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, except as set forth in (a), (b), and (c).

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 on 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 #15, whichever is longer. Payday lenders and car title loan business shall exclude banks and credit unions.

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.

2.15. Job Creation. Developer shall maintain its current full-time employment within the City limits and create an additional one hundred (100) New Full-time Equivalent Jobs within its campus within the City limits within two (2) years of the Signature Date.

Developer shall report, certify and submit to the City an annual certification of its job creation, maintenance and retention requirements under this Agreement. Each annual certification shall report information for one (1) calendar year and must be received by the City by the close of regular business hours on June 15 of the year subsequent to said calendar year to be reported. Any report, certification or submission under this section shall be in a form and format acceptable to the City. The City, or its agent, shall have the right to inspect, verify and audit, at no cost, any certification, report or submission upon reasonable notice to Developer. The City shall hire a third-party auditor to perform said inspections, verification and audit for the City on an annual basis. It is further agreed that Developer's full-time employment to be maintained as well as the New Full-time Equivalent Jobs to be created shall command wages equal to or greater than the living wage as referenced in the Second Amended Resolution of the Common Council attached as Exhibit C.

ARTICLE III

CITY OBLIGATIONS

3.1. Cash Grants Based on Project. Developer has requested and the City may be required to make Contributions to Developer up to an aggregate maximum one million five hundred thousand dollars (\$1,500,000.00), more specifically,

- a. **Cash Grant Based on Improvements.** Developer agrees to advance funds on behalf of the City for project costs, which the City shall reimburse through Contributions under the terms of this Agreement. The Developer has requested a cash grant from TID #15 of up to an aggregate amount of one million five hundred thousand dollars (\$1,500,000.00), 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 as provided in 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 and review of the improvements by the City, the City shall provide the Developer with an appropriate recordable instrument certifying that the improvements have been made in accordance with this Agreement and the project plans for said area 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 property being developed by Developer so that the zoning for the development 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.

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, 2013, 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-five million dollars (\$25,000,000.00). Said documents shall be acceptable in all respects to City, in the sole and absolute discretion of the Finance Director and Board of Public Works. Developer

shall have closed 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. Creation of TID #15 and TID Project Plan. The creation of TID #15 and TID Project Plan shall be approved by the appropriate governmental entities.

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 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. 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 December 31, 2013 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 necessary 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. The Developer shall have acquired fee simple title to the Real Estate no later than December 31, 2013 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.

5.2. Creation of TID #15 and TID Project Plan. The creation of TID #15 and TID Project Plan shall be approved by the appropriate governmental entities.

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 corporation 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 represent and warrant 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) 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 respectively.

- 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; and
- 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.

La Crosse, Wisconsin 54601

with a copy to:

Attn: City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, Wisconsin 54601

To the Developer:

Attn: Joel A. Guberud
Vice President, General Manager BAHX Division
2191 Ward Avenue
La Crosse, WI 54601

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 2.48 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), 2.13 (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 #15, 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 its acquisition of the Real Estate 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 forty-five (45) 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").

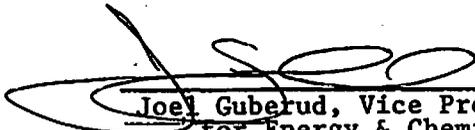
IN WITNESS WHEREOF, the parties have executed and delivered this Agreement effective the date set forth next to the City's signature below.

Dated this 29 day of Aug, 2013

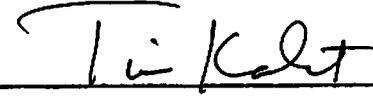
Dated this 10th day of Sept, 2013

Chart Energy & Chemicals, Inc.

City of La Crosse



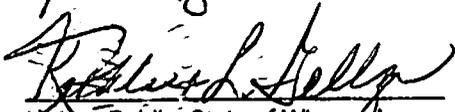
Joe Guberud, Vice President Operations
for Energy & Chemicals



Tim Kabat, Mayor

Subscribed and sworn to before me this
29 day of Aug, 2013.

Subscribed and sworn to before me this
10th day of Sept, 2013.



Notary Public, State of Wisconsin
My Commission: 10/09/2015



Notary Public, State of Wisconsin
My Commission: 11-2-14

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

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

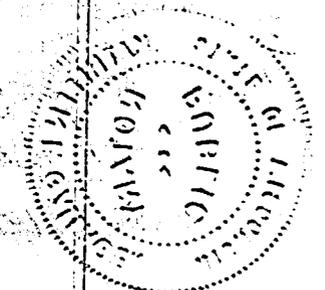
Second section of faint, illegible text, possibly a body paragraph or a list of items.

[Handwritten signature]

[Handwritten signature]

[Faint handwritten text]

[Handwritten signature]



- A -

LEGAL DESCRIPTION

Part of the Southeast Quarter of the Southwest Quarter of Section 9, Township 15 North, Range 7 West, City of La Crosse, La Crosse County, Wisconsin, described as follows:

Commencing at the South Quarter corner of said Section 9; Thence N85°40'23"W 912.47 feet to the intersection of the North right-of-way of Ward Avenue and the Northeasterly right-of-way of the Burlington Northern Santa Fe Railroad; thence N56°22'13"W along said Northeasterly railroad right-of-way 34.99 feet to the point of beginning; Thence continuing N56°22'13"W along said Northeasterly railroad right-of-way 430.24 feet to the Easterly right-of-way of 21st Place; Thence Northerly along said Easterly right-of-way on the arc of a 1921.87 foot radius curve, concave West, the chord of which bears N01°53'56"E and measures 243.14 feet; Thence continuing along said Easterly right-of-way N01°43'40"W 282.40 feet; Thence S89°51'43"E 360.32 feet; thence S00°07'20"W 762.69 feet to the point of beginning.

Parcel contains approximately 228,641 Square Feet or 5.24 Acres.

Subject to any easements, covenants and restrictions of record.

SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT THIS SURVEY IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Lucas V. Sonsalla 8/09/2012

LUCAS V. SONSALLA, RLS 2900
LA CROSSE ENGINEERING & SURVEYING CO., INC.



EXHIBIT "B"

DESCRIPTION OF PROJECT

Data sheet of Chart's La Crosse expansion project

Chart is expanding the facility to continue to be strong in the markets we serve, expand our product capabilities and expand our capacity to serve our markets. Chart's facility has a long history in La Crosse since emerging from the Trane company in 1988. This facility has been very successful for Chart, essentially leading the way to make Chart the large corporation it is today. While Chart has other facilities worldwide, the decision was made to expand this operation. The La Crosse operation has a long history of successful manufacturing of a high technology product with high quality. Also significant to Chart is the solid employee base in the La Crosse area. These employees have proven to be dedicated to a customer focus philosophy that Chart desires.

In general, we are adding a significant amount of space, equipment, and personnel. Our parent company, Chart Industries, is making a significant investment in La Crosse with this expansion and with this we are confirming there is a long term commitment to the area and our employees. This expansion includes:

- New equipment which will allow Chart to development capabilities to continue to be the market leader.**
- Significant added space including additional office space and area for training employees. - Together the space and the equipment will allow Chart to increase capacity to meet the current and future market demands.**
- At full future capacity, expecting to hire significant amount of highly skilled personnel. This consists of engineers, supervisors, toolmakers, lab technicians, welders, fabricators, testers, inspectors, clerks and maintenance personnel.**

In summary, Chart looks forward to continue the success and the cooperation we have had in the La Crosse area.

EXHIBIT C

Living Wage Resolution

[attached]

Living Wage

FILE # 8000-07-000

REPORT OF COMMITTEE

To the Honorable Mayor and Common Council of the City of La Crosse:

Your Judiciary & Administrative Committee and Finance & Personnel Committee on April 8, 2003, having under consideration the annexed resolution approving a living wage for construction contracts and development agreements that are financed in part with City funds which benefit primarily a single business organization so that families and individuals meet a certain minimum level of decency, recommends the same be adopted as second amended.

Respectfully submitted,

Richard P. Becker, Chmn
Charles Clemence
Dave Goodin
Jon M. Olson
Todd Olson
Robert Slaback

David R. Morrison, Chmn.
Joe Ledvina
Douglas Farmer
Mark Johnsrud
Mark Meyer

REPORT AND
RESOLUTION ADOPTED

APR 10 2003
BY COUNCIL

SECOND AMENDED RESOLUTION

APR 23 2003
RT
MP
Mayor

WHEREAS, La Crosse is and will continue to be a business friendly community,
and

WHEREAS, City of La Crosse taxpayers subsidize low wage jobs through increased taxes for health and human services for the poor, and

WHEREAS it should be a basic right of all workers to earn a living wage in accordance with State law and in order to provide for their families and to meet a certain minimum level of decency, and

~~WHEREAS, the City of La Crosse lets many contracts each year for maintenance, construction and repair projects and considering the impact that these projects have on the taxpaying citizens of the City, these contracts should not allow the work to be performed at any wage less than a living wage.~~

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that said living wage be not less than 110 percent of the annual income of a family of four, based on the U.S. Department of Health and Human Services most recent poverty guidelines, which wage at the current time would be \$9.73 \$8.14 per hour.

BE IT FURTHER RESOLVED that in order for said living wage to be carried out according to the intent of this resolution, the City of La Crosse shall not enter into any development agreement or capital expenditure for the primary benefit of a single business or organization, unless it is demonstrated that the majority of the full-time jobs created or supported by the expenditure will command wages equal to or greater than this living wage amount.

BE IT FURTHER RESOLVED that this living wage policy should not apply to any job that is subject to the prevailing wage laws, in which event said applicable prevailing wage law shall apply, and that the same not displace or disrupt the past practices of utilizing union labor wages in such cases.

BE IT FURTHER RESOLVED that this resolution shall not in any way be used or is the same intended to reduce wages received by full-time skilled and unskilled workers.

BE IT FURTHER RESOLVED that the living wage previously referred to herein include the basic wage plus fringe benefits in accordance with the methodology utilized for public construction contracts for what is known as the prevailing wage in order to meet Davis-Bacon requirements as well as Wisconsin public construction contract requirements.

BE IT FURTHER RESOLVED that fringe benefits include health insurance, retirement, life insurance, vacation and some contributions to training funds and do not include employer payments or contributions required by other federal, state or local laws, such as the employer's contribution to social security or some disability payments.

~~BE IT FURTHER RESOLVED that this resolution shall not apply to non-profit, tax exempt organizations, which are exempt from state and federal income tax.~~

Typed: 4-9-03

Approved:

Living Wage Chart

Year	Wage/per hour
2005	\$10.23
2006	\$10.57
2007	\$10.92
2008	\$11.21
2009	\$11.66
2010	\$11.66
2011	\$11.66
2012	\$12.19
2013	\$12.49

EXHIBIT D

Description of Public Improvements

None.

EXHIBIT "E"

(Project Cost Breakdown)

1. Land - \$950,000.00
2. Building - \$23,950,000.00
3. Equipment - \$22,500,000.00
4. TOTAL - \$47,400,000.00

EXHIBIT "F"

(Construction Schedule)

1. **March 25, 2013 – construction starts.**
2. **February 24, 2014 – construction complete.**

EXHIBIT G
MONETARY OBLIGATION EXAMPLE
(Chart Development Agreement: West Bay Addition Project)

Tax Year (Valuation Date)	Base Year 1/1/2013	Guarantee 1/1/2014	1/1/2015	1/1/2016	1/1/2017
Base Value of Property	0.00	0.00	0.00	0.00	0.00
New Construction 2013 (0.5% appreciation)		15,000,000.00	15,075,000.00	15,150,375.00	15,226,126.88
<u>Total Assessed Value (Value Increment)</u>		<u>15,000,000.00</u>	<u>15,075,000.00</u>	<u>15,150,375.00</u>	<u>15,226,126.88</u>
Mill Rate	0.028	0.028	0.028	0.028	0.028
Tax Increment		420,000.00	422,100.00	424,210.50	426,331.55
City's Retainage of Cash Grant Disbursements:					
<u>City's Allocation of Tax Increment (15%)</u>		<u>63,000.00</u>	<u>63,315.00</u>	<u>63,631.58</u>	<u>63,949.73</u>
City's Cumulative Retainage (\$225K Max.)		63,000.00	126,315.00	189,946.58	253,896.31
Cash Grants yet to be Retained (\$225K Max.)	225,000.00	162,000.00	98,685.00	35,053.43	(28,896.31)
Developer's Cash Grant Disbursements:					
<u>Developer's Allocation of Tax Increment (85%)</u>		<u>357,000.00</u>	<u>358,785.00</u>	<u>360,578.93</u>	<u>362,381.82</u>
Developer's Cumulative Cash Grants (\$1.275M Max.)		357,000.00	715,785.00	1,076,363.93	1,438,745.74
Developer's Aggregate Cash Grants Unpaid (\$1.275M Max.)	1,275,000.00	918,000.00	559,215.00	198,636.08	(163,745.74)
Payment Date		9/1/2015	9/1/2016	9/1/2017	9/1/2018

Note 1: Assume base value is zero; cash grants based on improvements only.

Note 2: Assume 0.5% appreciation of assessed value.

Note 3: Maximum cash grants equal 10% of guarantee tax base.

Note 4: Maximum cash grants are paid by September 1, 2018