



March 29, 2017

City of Manitowoc
Attn: Nicolas Sparacio, AICP
Community Development Director
900 Quay Street
Manitowoc, WI 54220

Re: Proposal to Provide Tax Increment Financing (TIF) Services
Amendment No. 4 of Tax Increment District (TID) No. 15

Dear Mr. Sparacio:

Vierbicher Associates, Inc. (Consultant) is pleased to submit this Agreement to provide Tax Increment Financing (TIF) Consulting Services to the City of Manitowoc (Client).

I. PROJECT UNDERSTANDING

The Client wishes to encourage new investment in the immediate area around the successful TID No. 15 (Harbor Town). The proposal is to increase the project plan to allow for a project within one-half mile of the district boundary. Consultant will also help facilitate the creation of up to two development agreements related to the project. All sections included in this Agreement and the General Terms and Conditions form the basis for this Agreement.

II. SCOPE OF SERVICES

A. General

Consultant shall prepare a TID No. 15 Amendment No. 4 Project Plan in accordance with Wisconsin state statutes. Consultant shall guide the Client through the TID amendment process and attend meetings as requested by the Client.

B. Specific Services Provided by Consultant

TIF Amendment Services

1. Attend a kick-off meeting with the City to review the proposed development concepts, develop a preliminary project list, and finalize the TID schedule.
2. Prepare and coordinate publishing of notices and agendas for public meetings and public hearing related to the TID amendment process.
3. Coordinate with the Client, Technical College, School District, and County on Joint Review Board representation, meeting schedule, and Tax Increment Financing information.

4. Facilitate Joint Review Board Meeting No.1. The activities include coordinating with the Joint Review Board members on a meeting date. Generate Joint Review Board agenda and work with staff to mail draft TID amendments to the Board for review.
5. Draft TID Project Plan Amendment No. 4 for discussion at the Plan Commission Public Hearing shall include:
 - a. Statement of any additional types and location of the proposed public works or improvements within the district.
 - b. Economic feasibility study.
 - c. Detailed list of estimated project costs.
 - d. Description of finance methods and estimated timeline for costs or monetary obligations.
 - e. Proposed changes in zoning ordinances.
 - f. Present potential value of property.
 - g. Comparison of program to the master plan, official map, building codes, and local ordinances.
 - h. List of estimated non-project costs.
 - i. Statement of a proposed method for the relocation of any displaced persons.
 - j. Statement indicating how amendment of the TID still promotes the orderly development of the community.
6. Present a summary of the TID amendment at the public hearing and be available to respond to questions or issues that arise from the Plan Commission during the hearing.
7. Prepare final Project Plan as recommended by the Plan Commission.
8. Prepare City Council adoption resolutions and required findings. Provide final Project Plan draft to City for discussion by the City Council.
9. Present final TID No. 15 project plan amendment to City Council for consideration.
10. Facilitate a meeting of the Joint Review Board to obtain a final decision regarding amendment to the TID project plan.
11. Submit a copy of the Project Plan, TID map, legal notices, and Legal Requirements Reports to the Department of Revenue and the Client.
12. Submit two (2) copies of the final TID Project Plan to the Client, along with an electronic copy suitable for reproduction.

Development Agreement Preparation

Consultant shall undertake the following activities related to the preparation of a development agreement.

13. Attend a meeting with representatives with the City of Manitowoc to review any initial discussions between potential developers and the City.
14. Prepare an initial draft of a development agreement based on the agreed upon terms between the developer and the City. Terms could include, but are not limited to:
 - a. Cash grant development incentives
 - b. Development revolving loans
 - c. Grant applications
 - d. Assisting with other applicable funding, training, and data resources as needed
 - e. Performance guarantees
15. Coordinate a legal review of the development agreement prior to distribution to the City.

C. Additional Services If Requested by Client

If requested by Client, Consultant is prepared to provide the following additional services:

1. Additional meetings may be held as appropriate beyond the number detailed in the scope of services. The additional meetings requested by Client, beyond those listed above, will be billed on a time and expense basis.

III. SERVICES NOT PROVIDED AS PART OF THIS PROJECT

In addition to the "Services Not Provided as Part of This Agreement" section indicated in the attached General Terms and Conditions, the following services are not included as part of this work.

- A. Services related to implementation of projects including financing, design, permitting, and other related implementation activities.

IV. INFORMATION PROVIDED BY OTHERS

In order to complete our scope of services, the following information or tasks shall be provided by others:

- A. Production of maps showing any related updates to the existing land use, proposed land use, existing and proposed zoning, conditions of the property, and proposed improvements within the TID boundary or within one half mile of the TID Boundary.
- B. The Plan Commission shall review and recommend a final TIF program to the City Council for adoption.
- C. The Client shall convene a Joint Review Board.

- D. The Client shall print, mail, and publish of all related TID and notice materials. The Client shall also pay for all newspaper publications costs.
- E. The City Council shall accept a TIF program and take appropriate action.
- F. The Client and Client's Assessor shall provide property and tax information; and prepare and submit any necessary information to the Department of Revenue.
- G. The Client shall provide the services of their attorney to review all elements of the TID amendment process and project plan; and provide an opinion whether the plan is complete and complies with state statute required by Wisconsin Statute 66.1105.
- H. The Client shall review cost estimates for project costs to be included in the project plan including development incentives, land acquisition, infrastructure improvements, utility extensions, etc.
- I. The Client shall provide copies of all studies, reports, and other available information that may be helpful in the amendment of the TID.
- J. If a whole parcel of real property needs to be split on the tax roll to accommodate the amendment of the TID, the Client shall be responsible for facilitating the parcel split.
- K. The Client shall be responsible for obtaining the financing for the TID projects.

V. SCHEDULE

Consultant shall complete the scope of services according to the attached Anticipated Project Schedule in Exhibit A. The Anticipated Project Schedule shall comply with the established process and public hearing requirements set forth in Section 66.1105 of the Wisconsin Statutes and shall be subject to the constraints of the local public meeting schedules

VI. SCHEDULE OF DELIVERABLES

The following deliverables shall be provided to the Client throughout the course of the project:

- A. Notices, letters and agendas for public meetings.
- B. Resolutions.
- C. PDF copies of draft documents throughout the process shall be provided to Client for printing and distribution.
- D. Two (2) hard copies of the final TID project plan for the Client, along with an electronic copy suitable for reproduction.
- E. Copy of the project plan, TID map, legal notices, and legal requirements reports for the Department of Revenue and the Client.

VII. DESIGNATION OF RESPONSIBLE PARTIES

The designated responsible parties representing the Client and Consultant, respectively, shall have authority to transmit instructions, receive information, and render decisions relative to the project on behalf of each respective party.

Overall coordination and project supervision for Consultant is the responsibility of Quasan Shaw, EDFP, Project Leader. Quasan, along with other personnel, shall provide the services required for the various aspects of the project. Please direct all communications that have a substantive impact on the project to Quasan.

The Client designates Nicolas Sparacio, AICP as its representative. Consultant shall direct all communications that have a substantive impact on the project to that individual, and that individual's responses shall be binding on the Client.

VIII. FEES

- A. The fixed fee to provide the scope of services described herein is:
 - 1. TID No. 15 amendment: \$8,500
 - 2. Development agreement preparation: \$2,500 (per agreement)

All fees are eligible to be paid by the TID.

- B. These fees assume that the work will be completed within the time frame set forth herein. If significant delays to the project occur, which are not due to the negligence of the Consultant including, by way of example and not limitation, decisions of the Client, regulatory approvals, deferrals to the next construction season or calendar year, etc., the Consultant reserves the right to negotiate and adjust an appropriate change to the fees.
- C. Reimbursable expenses are included in the above-described fee.
- D. Additional Services described under II-C above will be performed on a time and expense basis. Additional services will only be undertaken at the written (either via email or via first class mail) direction of Client's Responsible Party. Billing rates are updated annually on January 1st.

IX. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions dated 1-2-17 and attached hereto are incorporated herein by reference.

We appreciate the opportunity to work with you on this project. If this Agreement is acceptable to you, please sign the Authorization below and return one copy to me at our Madison office. Should you have any questions or require any additional information, please feel free to contact us.

Sincerely,



Quasan Shaw, EDPF

Enclosures: General Terms and Conditions
Exhibit A – Anticipated Project Schedule

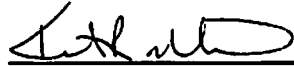
AUTHORIZATION TO PROCEED

In witness whereof, the parties have made and executed this Agreement as of the day and year written below.

Client

Consultant

Nicolas Sparacio, AICP
Community Development Director
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220



Kurt Muchow
Vierbicher Associates, Inc.
999 Fourier Drive, Suite 201
Madison, WI 53717

Date

3/29/17

Date

Witness



Witness

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**VIERBICHER ASSOCIATES, INC. (CONSULTANT)
GENERAL TERMS AND CONDITIONS OF SERVICES**

1. Services Not Provided as Part of This Agreement

Environmental studies, resident construction observation services, archaeological investigations, soil borings, flood plain analysis, wetland delineations, public hearing representation, easements, property descriptions or surveys, negotiations for property rights acquisitions, and other detailed studies or investigations, unless specifically identified in this Agreement for Services, are not included as part of this work.

2. Hazardous Environmental Conditions

Unless specifically identified in this Agreement for Services, it is acknowledged by both parties that Consultant's scope of services does not include any services related to the discovery, identification, presence, handling, removal, transportation, or remediation at the site, or the inspection and testing of hazardous materials, such as asbestos, mold, lead paint, PCBs, petroleum, hazardous waste, or radioactive materials. Client acknowledges that Consultant is performing professional services for Client, and Consultant is not and shall not be required to become an "arranger," "operator," "generator" or "transporter" of hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA). If Client is the owner of the project site, Client shall defend, indemnify and hold Consultant harmless from and against any CERCLA-based claims.

3. Additional Services

The Scope of Services in this Agreement is intended to cover services normally required for this type of project. However, occasionally events occur beyond the control of the Consultant or the Client that create a need for additional services beyond those required for a standard agreement.

The Consultant and/or Client shall promptly and in a timely manner bring to the attention of the other the potential need to change the Scope of Services set forth above, necessitated by a change in the Scope of Project, Scope of Services, or the Schedule. When a change in the Scope of Services, Schedule, or Fees is agreed to by the Consultant and Client, it shall be initiated by written authorization of both parties.

4. Client's Responsibility

- A. Provide Consultant with all criteria and full information as to Client's requirements for the project, including design objectives and constraints, capacity and performance requirements, flexibility, expandability, and any budgetary limitations; furnish previous plans, studies and other information relevant to the project; furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications; and furnish copies of Client's standard forms, and conditions, including insurance requirements and related documents for Consultant to include in the bidding documents, or otherwise when applicable.
- B. Furnish to Consultant any other information pertinent to the project including reports and data relative to previous designs, or investigations at or adjacent to the site, including hazardous environmental conditions and other data such as reports, investigations, actions or citations.
- C. Consultant shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's Consultants and Contractors, and information from public records, without the need for independent verification.
- D. Arrange for safe access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services under this Agreement.

- E. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Consultant and render timely decisions pertaining thereto.
- F. For projects involving construction, attend any pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and substantial completion and final payment inspections.
- G. For projects involving construction, if more than one prime contract is to be awarded for the work designed or specified by Consultant, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth in writing the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Consultant.
- H. For projects involving construction, if Client designates a Construction Manager or an individual or entity other than, or in addition to, Consultant to represent Client at the site, the Client shall define and set forth in writing the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Consultant and make a part of this Agreement.
- I. Provide information relative to all concealed conditions, subsurface conditions, soil conditions, as-built information, and other site boundary conditions. Consultant shall be entitled to rely upon the accuracy and completeness of such information.

5. General Considerations (for projects involving construction)

- A. Consultant shall not at any time supervise, direct, or have control over any contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- B. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- C. Consultant shall not be responsible for the acts or omissions of any contractor, subcontractor or supplier, or of any contractor's agents or employees or any other persons (except Consultant's own employees) at the project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Consultant.

6. Fees

- A. The fees set forth in this Agreement are based on the assumption that the work will be completed within the time frame set forth herein. If significant delays to the project occur, which are not due to the negligence of the Consultant, e.g. decisions of the Client, regulatory approvals, deferrals to the next construction season or calendar year, etc., the Consultant reserves the right to negotiate and adjust an appropriate change to the fees.
- B. Consultant may submit invoices monthly for work completed to date. Fixed fees will be submitted on the basis of percent of the Scope of Services completed. Estimated fees will be submitted on the basis of time and expense incurred in accordance with Consultant's fee schedule in effect at the time the costs are incurred.

- C. Invoices are due upon receipt. For invoices not paid after 30 days, interest will accrue at the rate of 1 ½% per month. Payments will be credited first to interest and then to principal. In the event any portion of the account remains unpaid after 90 days after the billing, Consultant may initiate collection action and the Client shall be responsible for all costs of collection, including reasonable attorneys' fees. As a matter of business practice, Consultant would intend to file lien rights against the property if payment is not received before lien rights would expire. Consultant shall have the right to suspend its services without any liability arising out of or related to such suspension in the event invoices are not paid within 30 days of receipt.
- D. When estimates of fees or expenses are quoted, they are simply that, estimates. Actual costs invoiced may be higher or lower due to actual fees or expenses incurred. When fees or expenses are anticipated to be higher or lower than estimated, Consultant shall make every effort to inform you in a timely manner, even prior to incurring the costs, if possible.
- E. Consultant will bill additional services, if requested, in accordance with the fee schedule in effect at the time the work is performed or as otherwise negotiated.

7. Dispute Resolution

In the event a dispute shall develop between the Client and the Consultant arising out of or related to this Agreement, the Client and Consultant agree to use the following process to resolve the dispute:

- A. The Client and Consultant agree to first negotiate all disputes between them in good faith for a period of at least 30 days from notice first being served in writing to the Client or Consultant of the dispute.
- B. If the Client and Consultant are unable to resolve the dispute by negotiation as described above, the Client and Consultant agree to submit the dispute to non-binding mediation. Such mediation shall be conducted in accordance with Construction Industry Dispute Resolution procedures of the American Arbitration Association.
- C. If the Client and Consultant are unable to resolve the dispute by negotiation or by mediation, they are free to utilize whatever other legal remedies are available to settle the dispute.

8. Insurance

A. Consultant

Consultant maintains general liability and property insurance; vehicle liability; and workers' compensation coverage meeting state and federal mandates. Consultant also carries professional liability insurance. Certificates of Insurance will be provided upon written request.

B. Client

The Client shall procure and maintain, at its expense, general liability, property insurance and, if appropriate, workers' compensation and builders risk insurance. Client waives all claims against the Consultant arising out of losses or damages to the extent such losses or damages are covered by the foregoing insurance policies maintained by the Client.

C. Contractor

The Consultant shall procure from the Contractor, as directed by the Client and/or as provided in the Scope of Services, Certificates of Insurance for the type and amounts as directed by the Client, and shall require the Contractor to name the Consultant as an additional insured under the Contractor's general and auto liability policies.

9. Limitations of Liability/Indemnity

- A. In recognition of the relative risks, rewards and benefits of the project to both the Client and Consultant, the risks have been

allocated such that the Client agrees that, to the fullest extent permitted by law, the Consultant's total aggregate liability to the Client for any and all injuries, damages, claims, losses or expenses arising out of this Agreement from any cause or causes, shall not exceed the net fee received by Consultant, not including reimbursable subconsultant fees and expenses. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of Agreement or breach of express or implied warranty.

- B. Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers and employees from and against liability for losses, damages and expenses, including reasonable attorneys' fees recoverable under applicable law, to the extent they are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.
- C. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Consultant to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee or any of them.

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party.

10. Use of Documents

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein, including all copyrights. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of planning, constructing, occupying or maintaining the project or as otherwise intended. Reuse or modification of any such documents by Client, without Consultant's written permission and professional involvement in the applicable reuse or modification, shall be at Client's sole risk, and Client agrees to waive all claims against and defend, indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

11. Survey Stakes for Construction (for projects involving construction)

Stakes placed by Consultant for use by the Contractor shall only be used for the specific purpose indicated. Any use of stakes by the Client for purposes other than indicated and/or communicated by the Consultant, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless for all claims, damages and expense, including attorneys' fees, arising out of such unauthorized use by Client or others acting through Client.

12. Use of Electronic Media

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant except for electronic copies of documents available for printing by Contractors during bidding and/or construction from QuestCDN.com or as specified in this Agreement for Services or as specifically indicated in writing by Consultant. Files in electronic formats, or other types of information furnished by Consultant to Client such as text, data or graphics, are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic formats, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of the project.

13. Opinions of Cost

When included in Consultant's scope of services, opinions or estimates of probable construction cost are prepared on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or the actual construction cost will not vary from Consultant's opinions or estimates of probable construction cost.

14. Approvals

Client acknowledges that the approval process necessary to estimate or maintain a project timeline is both unpredictable and outside the Consultant's control. Consultant does not guarantee reviews or approvals by any governing authority or outside agency, nor the ability to achieve or maintain any project timeline.

15. Certifications

Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, quantify, or warrant the existence of conditions that Consultant cannot ascertain.

16. Third Parties

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Consultant. Consultant's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claims against Consultant because of this Agreement or Consultant's performance of services hereunder.

17. Consequential Damages Waiver

Neither the Client nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of Agreement and breach of warranty.

18. Standard of Care

The Standard of Care for all professional services performed or furnished by Consultant under this Agreement shall be the skill and care used by members of Consultant's profession practicing under similar circumstances or similar scope of services at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

19. Termination

The obligation to provide further services under this Agreement may be terminated:

A. For Cause

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, through no fault of the terminating party. The failing party shall have the right, within 30 days, to correct or remedy the cited failures.
2. By Consultant
 - a. Upon seven days written notice if Consultant believes that he is being requested by Client to furnish or perform services contrary to Consultant's responsibilities as a licensed professional.

Consultant shall have no liability to Client on account of such termination.

- b. Upon seven days written notice if the Consultant's services for the project are delayed or suspended for more than 90 days for reasons beyond Consultant's control.
- c. Upon seven days written notice if the Client has failed to pay for previous services rendered and/or if his account is more than 60 days past due.

B. To Discontinue Project

By Client effective upon the receipt of notice by Consultant.

C. Reimbursement for Services

Consultant shall be reimbursed for all services and expenses rightfully incurred prior to termination.

20. Force Majeure

Neither party shall be deemed in default of this Agreement to the extent that any delay of failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence. This shall include mass illness caused by a pandemic and potential government pronouncement of the pandemic.

21. Successors Assigns and Beneficiaries

- A. Client and Consultant each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Consultant are hereby bound to the other party by this Agreement and to the partners, successors, executors administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Client nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty of responsibility under this Agreement.

22. Municipal Financial Advisor Services

The Consultant is not registered with the Securities and Exchange Commission as a municipal advisor. Consultant does not perform municipal advisory services (as covered under the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law on July 21, 2010, as it relates to financial products and services). In the event Client desires such services, it is the Client's responsibility to retain an independent registered advisor for that purpose.

23. Controlling Laws

This Agreement is to be governed by the laws of the state in which the project is located and in force at the time of completion of deliverables.

24. Entire Agreement

These General Terms and Conditions and the accompanying Agreement constitute the full and complete Agreement between Client and Consultant and may be changed, amended, added to, superseded, or waived only if Client and Consultant specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these General Terms and Conditions, the proposal, Agreement, purchase order, requisition, notice to proceed, or like document, these General Term and Conditions shall govern