

AGREEMENT BETWEEN THE CITY OF MANITOWOC AND CITY CENTRE, LLC

This agreement is made between the City of Manitowoc, a Wisconsin municipal corporation headquartered at 900 Quay Street and City Centre, L.L.C., a Wisconsin limited liability company with headquarters at 100 Maritime Drive, Suite 3C, both in Manitowoc, WI, for the purposes of commemorating the agreement between the parties for reimbursement of the loading crane project that City Centre, LLC is undertaking in the City of Manitowoc.

RECITALS

WHEREAS, this agreement is for a project to construct a load-out pad and rail platform facility in the City of Manitowoc (“City”) on property located on a peninsula (as such property is more specifically defined in the “HAP Grant Agreement” attached hereto as Exhibit A, the “Property”) owned by City Centre, LLC (“City Centre”) with the commonly known address of 500 South 16th; and

WHEREAS, development and maintenance of commercial harbor activity in the City of Manitowoc, Wisconsin is an integral part of the City’s Three-Year Harbor Development Statement of Intentions; and

WHEREAS, City applied to the Wisconsin department of Transportation (“WisDOT”) for a Harbor Assistance Program grant (“HAP Grant”) under Section 85.095, Wis. Stats., for reimbursement of funds for the work described herein; and

WHEREAS, City was awarded the HAP grant by the State, and will be acting as an agent for the State under the HAP Grant Agreement between the City and the State; and

WHEREAS, as is anticipated by the HAP Grant, City Centre will construct (or cause to be constructed) certain improvements on and submit invoices for the same to the City, who will in turn submit for reimbursement from the state and then, upon receiving such reimbursement, remit the same to City Centre as reimbursement for the costs incurred.

NOW, therefore, the parties agree as follows:

1. The City will assist City Centre with construction and administration of this project and the HAP Grant by facilitating the reimbursement of the lesser of \$2,247,740 or 80% of eligible costs from the State of Wisconsin. All funds received by the City for reimbursement on this project shall be earmarked for reimbursement of City Centre and remitted to City Centre as further set forth herein and the HAP Grant Agreement.
2. As between the City and City Centre, City Centre shall be responsible for the remainder of the project costs, and the City bears no financial liability should any cost not be approved for reimbursement by the State. Nothing contained herein shall restrict City Centre’s ability to recoup the remaining costs from its tenants.
3. The City’s additional responsibilities shall be:
 - a. Establishing a segregated account for receipts and disbursements under this project
 - b. Filing any HAP reimbursement requests with the state within five business days of receipt from City Centre.

- c. Remitting all HAP funds received for this project to City Centre within 10 business days with no additional fees (i.e. the City will pass through such reimbursement, without reduction or setoff of any kind).
 - d. Cooperating with any state audit or project review.
4. City Centre's responsibilities shall be:
 - a. Provide WisDOT with a monthly construction schedule prior to beginning work, and submit monthly updates and performance reports as required by Article 4.0 of ~~Exhibit A, the HAP Grant Agreement.~~
 - b. Obtaining all appropriate permits needed to undertake the project discussed herein.
 - c. Maintaining appropriate insurance coverage for the project as outlined by Section 10.2 of Exhibit A, including provision of the same to State.
 - d. Maintaining environmental protection as outlined in Section 11.11 of Exhibit A.
 - e. Completion of the project by December 31, 2020, unless the state grants a written extension.
 - f. Timely providing HAP reimbursement requests, pursuant to the State's requirements, to ~~the~~ City.
 - g. Maintenance of all documentation related to the project as outlined in Section 3.4 of ~~the~~ City's agreement with the State (contracts, invoices, time sheets, financial records, etc.)
 - h. Cooperating with any state audit or project review.
 - i. Maintaining ownership of the project for 25 years, or transferring the project subject to WisDOT approval under Section 6.1 of Exhibit A.
 - j. Recording this agreement with the City, including all attachments, at the Manitowoc County Register of Deeds.
 - k. Reimbursing City for any requested reimbursement by WisDOT.
 - l. Submitting all bonds and contracts that the City is obligated to submit under Section 11.4 of Exhibit A.
 - m. Complying with all non-discrimination requirements of Section 11.13 of Exhibit A.
 - n. Accepting liability for accidents and safety protection at the site, as required by Section 11.14 of Exhibit A.
5. Should the State default on the agreement, City will partner with City Centre to aggressively pursue all available remedies.
6. The City assumes no ongoing maintenance responsibilities for the project.

In witness whereof, the parties have caused this agreement to be executed by their duly authorized officers.

City of Manitowoc

City Centre, LLC

Justin M. Nickels, Mayor

Peter Allie, Managing Member of Sole
Member of Managing Member,
Peninsula Investments, LLC

_____ Date _____

Deborah Neuser, City Clerk _____

Date _____ Date _____

~~This agreement was drafted by Kathleen M. McDaniel, City Attorney~~