



Department of City Development
City Plan Commission
Redevelopment Authority of the City of Milwaukee
Neighborhood Improvement Development Corporation

Rocky Marcoux
Commissioner
rmarco@milwaukee.gov

Martha L. Brown
Deputy Commissioner
mbrown@milwaukee.gov

March 30, 2015

Mr. James R. Owczarski
City Clerk
City Hall, Room 205
Milwaukee, WI 53202

Dear Mr. Owczarski:

Enclosed is a fully executed copy of Amendment No. 1 to the Real Estate and Cooperation Agreement between ACTS Community Development Corp. and the City of Milwaukee.

This document was executed pursuant to Common Council Resolution File No. 131632

Sincerely,

Scott A. Stange
Procurement and Compliance Manager
Department of city Development

Enclosure

AMENDMENT NO. 1 to ACTS-City Agreement (Contract No. 14-008)

GH 3-3-15 Draft. CAO Doc 212290.

DUPLICATE
ORIGINAL

This Amendment ("Amendment") is dated as of 4:01 P.M. **DECEMBER 30, 2014** (the "Effective Date"), and is by and between the City of Milwaukee ("City") and ACTS Community Development Corporation ("ACTS"). The parties, for good and valuable consideration, receipt and sufficiency of which are acknowledged, agree as follows.

RECITALS

A. ACTS and City are parties to an "ACTS-City Real Estate & Cooperation Agreement" dated April 11, 2014 (the "Contract") (No. 14-008), approved by the City's Common Council in Resolution File No. 131632, which Contract calls for an initial Term ending at 4:00 P.M. on December 30, 2014, and which contemplates the possibility of Term extension to include Year 2015.

B. Contract Section 6.A. provides:

"A. **2015**. The City may, in its sole discretion, extend the Term to include calendar year 2015 if City provides ACTS with written notice of such on or before **December 1, 2014**. If City provides such notice and so extends the Term, ACTS and City shall sign a written amendment hereto (i) acknowledging the Term extension, (ii) specifying what the **Monthly Capacity Payment**...shall be for Year 2015 and how same shall be calculated, and (iii) specifying what the **Milestone Payment**...shall be for Year 2015 and how same shall be calculated."

C. Per Contract Section 6.A., City sent to ACTS a November 26, 2014 notice of City's desire to extend the Term to include Year 2015. City and ACTS now, hereby, amend the Contract to extend the Term to include the rest of Year 2014 (after 4:00 P.M. on December 30, 2014) and to include Year 2015.

D. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Contract.

WHEREFORE

1. **Monthly Capacity Payments – Year 2015.**

A. The Monthly Capacity Payment for 2015 shall be up to, and capped at, \$12,683.33 *per month* (i.e., capped at no more than a total of \$152,200 *for Year 2015*).

B. Per the August 5, 2014 clarifying letter from City to ACTS about Contract Section 20, the Monthly Capacity Payment may include a component of up to \$2,110.83 for Executive Director and Assistant Director pay for realigning, managing and supervising ACTS' team including ACTS Rehab Specialist employees.

DUPLICATE

(1) There shall be no payment for this component for unfilled Executive Director or Assistant Director positions, with the exception, however, that the Monthly Capacity Payment may, for a maximum of 3 months (being 30 day periods from February 16 to March 15, March 16 to April 15, and April 16 to May 15, 2015), contain a “**Consultant Component**” defined as a component of up to \$1,352.50 per such 30-day period for payments that ACTS makes to Carl Quindel (“**Carl**”) for those periods, for Carl’s consulting services under that certain Consulting Services Agreement between ACTS and Carl dated as of February 16, 2015 (the “**Consulting Contract**”).

(2) Notwithstanding (1) above, if the Consulting Contract is amended to extend the term and to extend further payments to Carl for consulting, and if ACTS provides City with a fully signed copy of that amendment, and if ACTS can demonstrate to City’s reasonable satisfaction adequate progress toward achieving ACTS goals, then, the City may - in its sole discretion - exceed the 3-month restriction regarding Consultant Components.

(3) The City has no duty to make any payment for any Consultant Component if the Consulting Contract is terminated, if Carl no longer serves as or performs under the Consulting Contract, if Carl is in breach under the Consulting Contract, or if the Consulting Contract has been amended in any manner not meeting City’s prior approval.

(4) See para. 5 below.

C. The Monthly Capacity Payment may also include a component for one ACTS Office Manager employee, hired after April 11, 2014, for up to 50% of that employee’s actual hours and actual pay, for hours that that employee spends on ACTS activities under the Contract.

D. Accordingly, for Year 2015, Monthly Capacity Payments – subject to the maximum per month cap and the maximum per year cap, shall be available: for the aforesaid portion of ACTS Executive Director and Assistant Director pay; for the aforesaid portion of ACTS Office Manager pay; for ACTS FTE rehab specialists per Contract Section 20; and subject to the restrictions above, for Consultant Components.

E. The Monthly Capacity Payment, subject to the provisions hereof, shall be subject to the terms and conditions of the Contract, including Section 20, including adjustment under Section 20.

2. 2015 Milestone Payments – Year 2015.

A. The Milestone Payments for 2015 shall be up to, and capped at, \$44,799, and be available for ACTS meeting production goals.

B. For Year 2015, and Sales/Closings in 2015:

- a \$14,933 Milestone Payment shall be paid by City to ACTS within 10 days after ACTS sells either (i) 30 City Homes hereunder (i.e., 30 successful Closings on PASA-transactions signed by City and A-ID Buyers), or (ii) a combination of City Homes and

Market Homes totaling 30 where there are a minimum of 23 City Homes sold as part of that 30 (again, with successful Closings under respective PASAs).

- a \$14,933 Milestone Payment shall be paid by City to ACTS within 10 days after ACTS sells either (i) 45 City Homes hereunder (i.e., 45 successful Closings on PASA-transactions signed by City and A-ID Buyers), or (ii) a combination of City Homes and Market Homes totaling 45 where there are a minimum of 34 City Homes sold as part of that 45 (again, with successful Closings under respective PASAs).
- a \$14,933 Milestone Payment shall be paid by City to ACTS within 10 days after ACTS sells either (i) 60 City Homes hereunder (i.e., 60 successful Closings on PASA-transactions signed by City and A-ID Buyers), or (ii) a combination of City Homes and Market Homes totaling 60 where there are a minimum of 45 City Homes sold as part of that 60 (again, with successful Closings under respective PASAs).

C. At year end, the balance of remaining incentive Milestone Payment available funds for Year 2015 not yet paid to ACTS – up to the maximum cap of \$44,799 in total Milestone Payments available for the year – will be paid to ACTS, but only on a pro rata basis, and only after ACTS sells (and successfully closes on) at least (i) 45 City Homes, or (ii) 34 City Homes and 11 Market Homes. The proration will be based on the number of homes sold compared to ACTS' production goal of 60 homes in Year 2015, and will only be paid if ACTS surpasses the foregoing benchmarks of 45 City Homes or 34 City Homes and 11 Market Homes. For example, if ACTS sells 48 Homes (i.e., 48 successful Closings on PASA-transactions signed by City and A-ID Buyers, meeting the minimum number of City Homes to qualify for payment) (i.e., over 45 City Homes or over 34 City Homes plus 11 Market Homes as the case may be), then the pro rata payment of remaining Milestone Payment funds that will be paid to ACTS will be $48/60 \times \$14,933 = \$11,946.40$.¹

D. The Milestone Payments, subject to the provisions hereof, shall be subject to the terms and conditions of the Contract, including Sections 21.B. and C.

3. **City-Financing Addendum to PASA.** MCO² 304-49 was amended after the April 11, 2014 Effective Date of the Contract. ACTS is aware of the current form of MCO 304-49 (accessible through the City's website). Included in the 304-49 amendments were the amendments, effective October 31, 2014, by Common Council Resolution File 140612. For any City-owned parcel designated by the Common Council under 304-49-3-c that includes City or City-related financing, and for which City or City-related financing will be provided (including Loan Funds) (see below and see Contract Sections 22 and 23), ACTS shall ensure that the PASA presented to the City, under the Contract, for that particular parcel, includes a "Special Conditions MCO 304-49-3-c and 304-49-4.5 Addendum" (see EXHIBIT A) and that the PASA reflects that the Addendum applies.

¹ With milestones for the first two Milestone Payments met ($\$14,933 \times 2 = \$29,866$), there will be \$14,933 in remaining Milestone Payment funds available for possible payment, on a prorata basis, to ACTS.

² Milwaukee Code of Ordinances.

4. 2015 Loan Fund Amounts for City Homes "Challenging Properties."

A. Within 10 days of execution of this Amendment, City shall provide ACTS with \$50,000 for Year 2015 that shall be the Year 2015 "Loan Fund Amount."

B. The Loan Fund Amount shall be subject to the terms and conditions of the Contract including Sections 22 and 23.

5. ACTS Reporting.

A. **Monthly Reports.** ACTS reports to the City under Contract Section 25.A. for *monthly* periods in Year 2015, shall continue to include the substance required by the Contract, including Section 25.A., and also include:

(1) Regarding Monthly Capacity Payments, the Section 20.A. detail about ACTS rehab specialists as well as the same Section 20.A. detail for the ACTS Office Manager.

(2) The number of days in the past month that the Executive Director and Assistant Director positions of ACTS were filled.

(3) The number of Closings on conveyances must specify, on a per-Closing basis for each address, whether the parcel is a City Home or Market Home.

(4) For loans made using Loan Fund Amounts, specify the name and address for each borrower.

(5) If any owner has not achieved code compliance by the previously reported estimated date for code compliance for that parcel, an update on the rehab status and steps ACTS is taking to ensure owner code compliance.

(6) Date of post-Closing occupancy, on a per parcel basis, for each City Home and Market Home conveyed.

(7) The status of the Consulting Contract, the amount that ACTS paid Carl under the Consulting Contract for the particular monthly period, and the number of hours for the particular monthly period that Carl performed consulting services for ACTS under the Consulting Contract.

B. **Year-End W-2's.** Annually, in January or as soon as available, ACTS shall provide to City a copy of the W-2 pertaining to the prior year wages for each ACTS Rehab Specialist.

6. Other Contract Terms Unaffected. Except as expressly amended hereby, all other terms and conditions of the Contract remain in full force and effect.

7. **Counterparts.** This Amendment may be executed in one or more counterparts which, when taken together, shall constitute one and the same document. Facsimile and/or email-PDF copies of signatures shall be accepted as originals.

IN WITNESS WHEREOF, the parties hereto enter into this Amendment as of the Effective DATE.

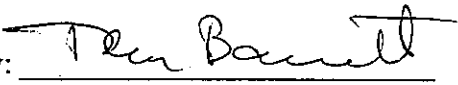
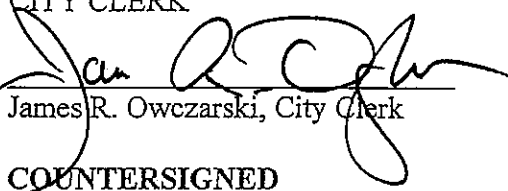
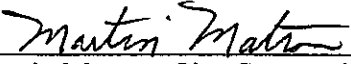
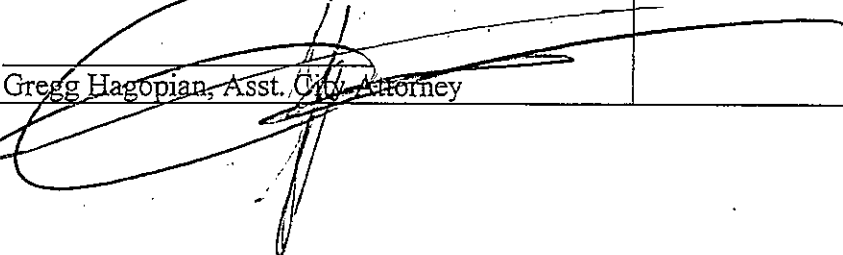
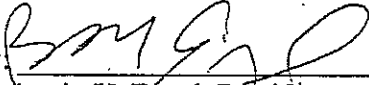
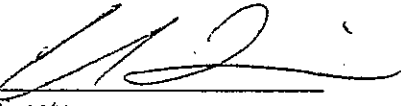
<p>CITY: City of Milwaukee</p> <p>By: <u></u> Mayor Tom Barrett</p> <p>CITY CLERK</p> <p><u></u> James R. Owczarski, City Clerk</p> <p>COUNTERSIGNED</p> <p><u></u> Martin Matson, City Comptroller 3-24-2015 <i>mra</i></p> <p>City Common Council Resolution File No. 131632</p> <p>CITY ATTORNEY APPROVAL (MCO 304-21)</p> <p><u></u> Gregg Hagopian, Asst. City Attorney</p>	<p>ACTS: ACTS Community Development Corporation</p> <p>By: <u></u> Benjamin Y. Engel, President</p> <p>And By: <u></u> Executive Director</p> <p>Name Printed: <u>CARL QUINDEL</u></p>
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EXHIBIT A

Special Conditions MCO 304-49-3-c and 304-49-4.5 Addendum
City or City-Related Financing

GH 12-3-2014 Draft, CAO 210487

This Special Conditions Addendum ("Addendum") is made part of the City of Milwaukee Offer to Purchase (the "Offer"). All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Offer.

1. City informs Buyer that the local council member (defined in MCO 304-49-1-c) has asked to be provided with notice of this Offer under MCO 304-49-3-c.
2. Check one. Buyer _____ is or _____ is NOT seeking financing related to the purchase or rehabilitation of the Property from the City of Milwaukee, the Housing Authority of the City of Milwaukee, the Redevelopment Authority of the City of Milwaukee, or the Neighborhood Improvement Development Corporation (herein called "City-Related Financing").
3. If Buyer IS seeking City-Related Financing from any source listed in item 2 above, City DCD will provide a copy of this Offer to the local council member, and approval of the City-Related Financing and Closing are contingent upon either (a) approval by the local council member under MCO 304-49-4.5, or (b) failing local council member approval, approval by the common council under MCO 304-49-4.5.

If the requisite approval in MCO 304-49-4.5 is NOT obtained, City will provide Buyer with written notice of failure to obtain approval. Within 10 days of the date of that City notice to Buyer, Buyer may submit to City DCD a written waiver of the City-Related Financing and proof of available alternative funding to carry out the purchase and rehabilitation of the Property without the City-Related Financing. If the waiver is timely submitted and the proof of alternative funding is acceptable to City DCD, this Offer shall continue. If the waiver is not timely submitted, or if it is but the proof of alternative funding is not acceptable to City DCD, this Offer shall be deemed terminated, in which case, City has no duty to sell the Property to Buyer, and Buyer shall be entitled to return of any Earnest Money paid.

If the Expiration Date of the Offer Term occurs prior to City DCD ascertaining whether MCO 304-49-4.5 approval will happen, then City automatically, at no cost to Buyer, extends the Expiration Date (or, if applicable the Extended Date), to accommodate ascertainment of 304-49-4.5 approval status.

Buyer may terminate this Offer at any time after the Expiration Date of the Offer Term if City has not by the Expiration Date ascertained 304-49-4.5 approval status and provided written notice of same to Buyer. Any such Buyer termination must be by written notice to City, and if provided, that will terminate this Offer, in which case, City has no duty to sell the Property to Buyer, and Buyer shall be entitled to return of any Earnest Money paid.