

**DEVELOPMENT
AND
GRANT AGREEMENT**

(Innovation and Wellness Commons)

Project Summary

Project Name: Innovation and Wellness Commons (Phase I)

Grant Amount: \$413,750

Date of Award: November 24, 2014

Recipient: City of Milwaukee

Entity Undertaking Project: Walnut Way Conservation Corp.

Project Description: The Innovation and Wellness Commons (“The Commons”) is a two-phased catalytic redevelopment project being created by Walnut Way Conservation Corp. (“Walnut Way”) as a hub for economic development, healthy food, wellness services, education and training programs in the Lindsay Heights neighborhood in the City of Milwaukee. The Commons site is located at 1609-1615 W. North Avenue, along a Wisconsin-designated Main Street and a local Business Improvement District, and includes a vacant lot and a boarded up vintage, landmark commercial building. Situated on a block that previously housed a public natatorium, restaurant, and small businesses, The Commons will be designed to celebrate neighborhood history and serve as a catalyst for the rebirth of the local economy. The site has tremendous potential due to its location on a prominent commercial corridor, proximity to Milwaukee’s downtown, and adjacency to dense residential neighborhoods. However, the site potential has not been leveraged to the advantage of its Lindsay Heights neighborhood, which remains an extremely low-income, food desert community with limited access to critical goods and services. The three major elements of the Commons vision are:

1. Economic Impact: The Commons will deepen a shared investment in the neighborhood through a comprehensive economic strategy that includes blight elimination, small business enterprise development, training and employment opportunities for residents, job and wealth creation, and commercial corridor revitalization.

2. Environmental Impact: The Commons site will expand Walnut Way’s existing environmental campus, which currently includes urban gardens and a neighborhood environmental center, to include a landmark building to be restored and a new building to be constructed. Both Commons buildings will: embrace ecological best practices in design and construction; incorporate craftsmanship in building preservation and use of sustainable materials; and, provide shared space for environmental education.

3. Social and Cultural Impact: The Commons will create restorative and sustainable programs, products and services that improve individual health and self-reliance, enhance the collective community quality of life, and strengthen a neighborhood culture of beauty, wellness, and resilience.

The Commons redevelopment project entails two phases.

Phase I of The Commons will transform the boarded-up landmark building into a new 6,000 s.f. development that will create an estimated 20 jobs for low-income residents.

Phase I consists of renovation the existing 5,500 s.f. building and constructing a 500 s.f. addition. Phase I focuses specifically on creating a food oasis in a food desert by providing a community of food retail, food production, and food wholesale tenants in a building surrounded by a productive food-focused site concentrated in one commercial block that provides a diversified continuum of food access and healthy food choices. Goals that will be fulfilled in Phase I include:

- Leverage and strengthen existing food-related efforts already underway in the community.
- Introduce strong businesses that make and sell fresh whole foods directly in the community.

- Prepare for the opening of a grocery store that emphasizes selling fresh, healthy, whole foods.
- Expand the production and distribution of locally grown fruits and vegetables.
- Hire and provide career development opportunities for low-income area residents that will provide steppingstones to career advancement and economic self-sufficiency, especially in the food service industry.
- Grow, process, distribute, and consume more healthy food in Lindsay Heights. Walnut Way has spent two years cultivating partnerships and strategies to successfully recruit tenants for The Commons that fulfill these goals and ensure financial sustainability.

DEVELOPMENT AND GRANT AGREEMENT

(Innovation and Wellness Commons)

This Development and Grant Agreement is made and entered into as of the 1st day of December, 2014 by and between the City of Milwaukee, Wisconsin (the “City”), and the Walnut Way Conservation Corp. (“Walnut Way”).

WITNESSETH:

WHEREAS, City initiated a Community Development Investment Application (the “Grant Application”) seeking grant funding for the project described in the Grant Application attached as EXHIBIT “A,” (the “Project”); and

WHEREAS, the Common Council of the City adopted Common Council File No. 141321 approving Grant Application and the execution of this Agreement to fund a portion of the costs of the Project; and

WHEREAS, the Project, which consists of Phase I of the Innovation and Wellness Commons, is described in detail in the Project Description attached to the Grant Application; and

WHEREAS, Grant funds will be utilized to fund a portion of the cost of the Project incurred by Walnut Way; and

WHEREAS, Walnut Way is the entity which will undertake the construction of the Project and own the Project; and

NOW, THEREFORE, In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

I.

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms when used in this Agreement shall have the following meanings:

“Agreement” means this Development and Grant Agreement, as the same may be from time to time modified, amended or supplemented.

“City” means the City of Milwaukee, Wisconsin, a Wisconsin municipal corporation.

“Commissioner” means City’s Commissioner of City Development.

“Project Costs” means not less than \$2,234,000 to be expended by Walnut Way on the Project.

“Project Documents” means the WEDC Grant Agreement and such easements, agreements, instruments and amendments between the parties as may be necessary for the construction and operation of the Project.

“WEDC Grant” means a grant in the amount of \$413,750 from the Wisconsin Economic Development Corporation to City.

“WEDC Grant Agreement” means the Community Investment Grant Agreement between the Wisconsin Economic Development Corporation and City, a copy of which is attached as EXHIBIT “B.”

1.2 Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(A) Words importing the singular number shall include the plural number and vice versa.

(B) The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(C) Words of the feminine and masculine genders shall be deemed and construed to include correlative words of the opposite gender and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

II.

WEDC Grant

City, on behalf of Walnut Way, submitted an application and received an award for the WEDC Grant and has entered into the WEDC Grant Agreement with the Wisconsin Economic Development Corporation. City will disburse WEDC grant funds actually received from the Wisconsin Economic Development Corporation to Walnut Way for Project costs in accordance with disbursement procedures acceptable to the Commissioner, which may include a formal disbursement agreement, in consideration for Walnut Way's agreement to:

(A) Fulfill all of the obligations of Recipient under the WEDC Grant Agreement including, without limitation, the expenditure of Matching Funds, Recipient's obligations under paragraph 3 and the reporting requirements set forth in paragraph 5; and

(B) Indemnify City against any costs and expenses upon any event of default as set forth in paragraph 7 of the WEDC Grant Agreement.

III.

WALNUT WAY ACTIONS

In conjunction with the Project Walnut Way shall:

(A) Comply or cause compliance with all applicable City, state and federal laws, rules and regulations applicable to entities such as Walnut Way receiving funding through the City.

(B) Not discriminate itself and cause others under its control not to discriminate against persons participating in the construction or use of the Project or in any activities funded in whole or in part with WEDC Grant proceeds or any applicant for employment, on the basis of age, race, religion, color, disability, sex, physical condition, developmental disability, sexual orientation, or national origin.

(C) Undertake or cause the construction and operation of the Project to be undertaken in substantial compliance with the WEDC Grant Application and the Project Documents.

(D) Indemnify and hold harmless City, its officers, employees, and agents from and against any and all losses, claims, damages expenses, and all suits in equity or actions at law arising from, in connection with, or as a result of the implementation of the Project or any actions of Walnut Way undertaken pursuant to this Agreement. Nothing in the foregoing indemnity shall protect City, its officers, officials, employees, and agents from their own default, active negligence, or misconduct.

IV.

AUDIT RIGHTS

Walnut Way shall keep or cause others under its control to keep accurate, full and complete books and accounts with respect to costs of developing, constructing, and completing the Project and carrying out the duties and obligations of Walnut Way hereunder. All the books

and accounts required to be kept hereunder shall be maintained in accordance with generally accepted accounting principles consistently applied, and shall be kept for a period of seven years subsequent to the date of their respective creation. City's Comptroller shall have the right, upon reasonable notice to Walnut Way, its contractors, or subcontractors, as the case may be, to examine and audit such books and accounts.

V.

PUBLIC RECORDS

This Agreement and certain Project Documents may be subject to Wisconsin's Public Records Law (*see* Wis. Stat. Ch. 19, Subch. II, and, in particular Wis. Stat. § 19.36(3) which includes records produced or collected under this Agreement). Walnut Way shall and agrees to cause others under its control to cooperate with City in the event any of them receive a request under Wisconsin's Public Records Law for this Agreement or for any record relating to, or produced or collected under this Agreement which is subject to the Public Records Law.

VI.

WAIVER

No delay, waiver, omission or forbearance on the part of any party to exercise any right, option, remedy, duty or power arising out of any breach or default by the other party of any of the terms, provisions or covenants contained herein, shall be deemed a waiver by that party of such right, option, or remedy, as against the other party for any subsequent breach or default by that party.

VII.

COUNTERPARTS

This Agreement shall be executed in three (3) counterparts, each of which shall constitute on and the same original instrument.

VIII.

SEVERABILITY OF PROVISIONS

If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

IX.

NOTICES

All notices under this Grant Agreement shall be made in writing and deemed served upon depositing the same in the United States Postal Service as “Certified MAIL, Return Receipt Requested,” addressed as follows:

A. To the City: _____

B. To Grantee: _____

X.

BINDING EFFECT/ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Walnut Way shall not assign any interest in this Agreement without the prior written consent of City.

XI.

TERMINATION

In the event that Walnut Way fails to comply with any of the terms or provisions of this Agreement, and such failure is not cured within thirty (30) days after Walnut Way's receipt of written notice thereof (provided, however, that if such failure is of a nature that it cannot be cured within thirty (30) days, Walnut Way shall have such additional time as is reasonably necessary to cure the failure provided Walnut Way commences the cure within the thirty (30) day period and diligently prosecutes same to completion), City may terminate this Agreement upon thirty (30) days written notice.

IN WITNESS WHEREOF, The parties have caused this Agreement to be executed by their duly authorized representatives as of the day and date set forth above.

WALNUT WAY CONSERVATION CORP.

CITY OF MILWAUKEE

By: _____
Its: _____

By: _____
TOM BARRETT, Mayor

Approved as to form and execution

By: _____
JIM OW CZARSKI, City Clerk

THOMAS O. GARTNER
Assistant City Attorney

By: _____
MARTIN MATSON, Comptroller

TOG/ml
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