

MEETING AGENDA

PLYMOUTH REDEVELOPMENT AUTHORITY CITY OF PLYMOUTH, WISCONSIN

THURSDAY APRIL 27, 2023 @ 7:30 AM

Plymouth City Hall
FIRE DEPARTMENT TRAINING ROOM
128 Smith Street
Plymouth, WI 53073

Members Present:

____ Lee Gentine
____ Donna Hahn
____ John Nelson
____ Randy Schwoerer
____ Ronna O'Toole
____ Ken Pannier

Staff:

____ Tim Blakeslee
____ Anna Voigt

Other:

The Plymouth Redevelopment Authority's mission is to serve as a catalyst for development which supports Plymouth as a welcoming place for the arts, entertainment, shopping, dining, working and living. The Authority has a particular interest in the physical revitalization of downtown Plymouth as an inviting atmosphere which encompasses not only buildings but also streetscapes, parking areas, signage, sidewalks, pedestrian lighting and green spaces including the River Walk corridor.

1. Call to order and roll call.
2. Approval of Meeting Minutes from the December 1, 2022 meeting.
3. Discussion/Action regarding resolution 2023-1 regarding 133 E Mill St. Asset Purchase Agreement and Trademark Usage Agreement
4. Discussion regarding RDA hosting Revolving Loan Fund (RLF) Program
5. Discussion/Action regarding repainting of the cow and RDA funding to support
6. Discussion regarding a potential pocket park at the Strutz Financial Building
7. Communication – Letters, E-mails, or Reports Related to the Redevelopment Authority (Staff, Chairperson, Members etc.)
8. Adjournment

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the City of Plymouth ADA Coordinator Leah Federwisch, located in the Plymouth Utilities office at 900 County Road PP, Plymouth, WI or call 920-893-3853.

**PLYMOUTH REDEVELOPMENT AUTHORITY
CITY OF PLYMOUTH, WISCONSIN**

THURSDAY DECEMBER 1, 2022

Meeting Minutes

- 1. Call to order and roll call** Chairman Gentine called the meeting to order at 7:30 AM. Members present were Lee Gentine, Donna Hahn, John Nelson, Randy Schwoerer, Ronna O'Toole, and Ken Pannier. Tim Blakeslee, City Administrator/Utilities Manager, Anna Voigt, Patrick Campbell, Mary Hauser, Chamber of Commerce Executive Director, and Jenna Schram, Cheese Counter Manager, were also in attendance.
- 2. Approval of Meeting Minutes from the September 14, 2022 meeting** Motion was made by Schwoerer/Nelson to approve the minutes from September 14, 2022. A unanimous aye vote was cast. Motion carries.
- 3. Consent to Assignment of the Management Agreement for the Cheese Counter (133 E Mill Street).** City Administrator/Utilities Manager Blakeslee explained that the City has now purchased 133 E. Mill St. from the SCEDC. Motion was made by O'Toole/Hahn. A unanimous aye vote was cast. Motion carries.
- 4. Discussion of Cheese Counter 2022 Financials/Cheese Counter Update:** Manager of the Cheese Counter Schram stated they were coming into the holiday season. They have an order from Sartori Cheese for 800 gift boxes. The boxes will have all local products and no cheese. Gentine asked if there have been any promotions for the season. Schram stated that she isn't focusing on promotions to get people in the door. She is trying to offer new items to get people to come in. Gentine went over the financials from the Cheese Counter. The Cheese Counter is still losing money.
- 5. Discussion and possible approval of sign grant for Red Shorts Café:** Motion was made by Nelson/Schwoerer to approve the sign grant for Red Shorts Café. A unanimous aye vote was cast. Motion carries.
- 6. Discussion and possible action regarding Sign/Façade Grant program changes:** Gentine explained the form was being updated to accept sign/façade grants after work was already done. Motion was made by Schwoerer/Pannier to approve the changes to the sign/façade grant program. A unanimous aye vote was cast.
- 7. Update on Downtown Design Strategy** Blakeslee gave a brief update on the strategy. On Dec 5. the ad hoc committee made a recommendation to plan commission. There will be an open house on January 5, 2023 before the plan commission meeting.
- 8. Communication – Letters, E-mails, or Reports Related to the Redevelopment Authority (Staff, Chairperson, Members etc.)** Nelson mentioned that the Council is creating an Ad Hoc committee for affordable housing.
- 9. Adjournment:** Motion was made by Schwoerer/Hahn to adjourn the meeting. A unanimous aye vote was cast. Motion carries.



DATE: April 24, 2023

TO: RDA

FROM: Tim Blakeslee, City Administrator/Utilities Manager

RE: **Approve Resolution 2023-1 approving an Asset Purchase Agreement and Trademark Usage Agreement related to the sale of 133 E Mill St**

Background: The city transferred the H.C. Laack building (133 E Mill St) to the Sheboygan County Economic Development Corporation Foundation (SCEDCF) in 2016. The project received a \$300,000 grant from USDA Rural Development, \$100,000 grant from the Wisconsin Economic Development Corporation, \$300,000 in state historical tax credits and close to \$2 million in donations facilitated by the Lakeshore Community Foundation and the Plymouth Redevelopment Authority (RDA). As a result, 133 E Mill Street property was restored and developed into what is currently the Cheese Counter and Dairy Heritage Center and several apartments.

As part of an agreement in 2016 when the building was transferred to the SCEDCF, the City had the right to purchase 133 E Mill St from the SCEDCF in 2022 for \$1. The City completed the purchase of the building in December 2022, with the intention to sell the property quickly thereafter. A newly created non-profit organization, the Plymouth Cheese Counter Foundation, Inc. (PCCF), approached city staff with a concept for continuing to run the Cheese Counter and Dairy Heritage Center on the first floor and the residential rental units on the second floor. The nonprofit board of directors would consist of representatives from Plymouth's cheese companies. The Common Council approved a sale of 133 E Mill St to the PCCF on April 13, 2023. The RDA must also approve a resolution approving the Asset Purchase Agreement and a Trademark Usage Agreement prior to the closing date of May 31, 2023.

Per the agreement, the PCCF shall adopt, as part of its bylaws, a provision requiring that any remaining assets flow to City upon dissolution of the PCCF, which shall be used for redevelopment of the City of Plymouth downtown area. The bylaws shall further state that the PCCF will not transfer ownership of the Property and that such a conveyance will cause a dissolution of the PCCF.

Staff along with Attorney Fieber have worked with the PCCF to develop a series of agreements and terms of a potential sale. Summary of the documents for RDA consideration:

- (New): Resolution: Resolution approving the sale of 133 E Mill Street to the Plymouth Cheese Counter Foundation, Inc. on the terms and conditions of the Asset Purchase Agreement.
- Asset Purchase Agreement: Document selling the assets of 133 E Mill St to the PCCF for \$1, including the residential rental agreements for the three apartments (Also to be approved by the RDA).
- Trademark Usage Agreement – Document to allow the PCCF to use the Cheese Capital of World Trademark (Review by council only, subject to RDA approval).

Recommendation: Move to approve Resolution 2023-1 approving an Asset Purchase Agreement and Trademark Usage Agreement related to the sale of 133 E Mill St

Attachments (To be provided prior to the meeting):

1. Draft Resolution 2023-1
2. Asset Purchase Agreement
3. Trademark Usage Agreement

**REDEVELOPMENT AUTHORITY
OF THE
CITY OF PLYMOUTH, WISCONSIN**

RESOLUTION NO. 2023-_____

Resolution Authorizing the Sale of Assets located at 133 E Mill Street
to the Plymouth Cheese Counter Foundation, Inc.

WHEREAS, 133 E. Mill Street is a historically significant two-story structure located in downtown Plymouth, Wisconsin (the "Property"); and

WHEREAS, the Redevelopment Authority of the City of Plymouth, Wisconsin (the "RDA"), in collaboration with the City of Plymouth and the Sheboygan County Economic Development Corporation Foundation, Inc. developed the Property into a cheese-themed retail store and heritage center (the "Center") on the first floor and residential rental units on the second floor ("Residential Units"); and

WHEREAS, the RDA wishes to transfer ownership of the assets used in operation of the Property to the Plymouth Cheese Counter Foundation, Inc. (the "Foundation") a Wisconsin non-stock corporation, and the Foundation wishes to continue operations of the Center and Residential Units.

NOW, THEREFORE, BE IT RESOLVED THAT the Redevelopment Authority of the City of Plymouth hereby approves the sale of the assets to the Foundation on the terms and conditions of the Asset Purchase Agreement, and use of the RDA's trademarks on the terms and conditions of the Trademark Usage Agreement, on file in the City Clerk's Office.

BE IT FURTHER RESOLVED THAT, effective at 11:59 p.m. the day before closing on the Asset Purchase Agreement, the RDA hereby terminates the Management Agreement between the City and the RDA dated August 5, 2016 and assigned to City on December 20, 2022.

BE IT FURTHER RESOLVED THAT, the RDA authorizes the Chairperson to execute all documents necessary for closing on the sale.

Adopted: _____, 2023.

REDEVELOPMENT AUTHORITY OF THE
CITY OF PLYMOUTH, WISCONSIN

By: _____
Lee Gentine, Chairperson

By: _____
Tim Blakeslee, Executive Director/Secretary

CERTIFICATION

I hereby certify that the foregoing Resolution was duly adopted by the Redevelopment Authority of the City of Plymouth, Wisconsin on this ____ day of _____, 2023.

Tim Blakeslee, Executive Director/Secretary

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (“Agreement”) is entered into as of the ____ day of _____, 2023 by and between PLYMOUTH CHEESE COUNTER FOUNDATION, INC., a Wisconsin, non-stock corporation (“Buyer”), the REDEVELOPMENT AUTHORITY (“RDA”) of the City of Plymouth, Wisconsin, and the CITY OF PLYMOUTH, a Wisconsin municipal corporation (“City”) (City and RDA collectively referred to as “Seller”). Buyer and Seller are sometimes referred to separately as a “Party” and together as the “Parties”.

RECITALS

WHEREAS, City owns the Plymouth Cheese Counter and Dairy Heritage Center and residential rental units at 133 E. Mill Street, Plymouth, Wisconsin and the RDA owns the assets used in operations (the “Business”).

WHEREAS, Seller desires to sell to Buyer and Buyer desires to purchase from Seller substantially all the assets and real estate of the Business, upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants, conditions and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

As used in this Agreement, the following defined terms have the meanings indicated below:

“Agreement” shall mean this Asset Purchase Agreement, together with any exhibits attached hereto (all such exhibits being specifically incorporated into this Agreement by reference herein), as the same may be amended from time to time.

“Assumed Contracts” shall mean the Contracts set forth on **Exhibit A** attached hereto. Seller’s rights under the Assumed Contracts will be assigned by Seller to Buyer at the Closing and are included in the Purchased Assets.

“Assumed Liabilities” shall mean Assumed Contracts not covered by applicable insurance.

“Business” shall have the meaning specified in the recitals above.

“Closing” shall mean the conference to be held, at which the transaction contemplated by this Agreement shall be consummated.

“Contracts” shall mean all contracts and agreements relating to the Business, whether written or oral, to which Seller is a party or by which Seller or the Business is bound.

“Environmental Law” shall mean any Law relating to any hazardous or toxic material, pollutant, contaminant or any other regulated substance, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, the Super Fund Amendments and Reauthorization Acts, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act.

"Excluded Assets" shall mean those particular assets listed on **Exhibit B** attached hereto, which are not to be transferred to Buyer pursuant to this Agreement, including but not limited to, all bank deposits, cash, and accounts receivable existing as of Closing.

"Financial Information" shall mean:

- (1) All financial statements for Seller's last three (3) full fiscal years;
- (2) All other financial data and information of Seller delivered or otherwise made available by Seller to Buyer.

"Inventory" shall mean any and all materials and supplies used by Seller in the Business.

"Law" shall mean any federal, state, local or other law, rule, regulation, ordinance, proclamation, declaration, order or governmental requirement of any kind.

"Leases" shall mean the leases for the residential rental units located on the upper floor of 133 E. Mill Stret and any personal property leases.

"OSHA" shall mean the Occupational and Safety Health Act of 1970, as amended.

"Permits" shall mean all governmental and third-party permits, licenses, franchises, authorizations, and approvals of any kind whatsoever, relating to the operation of the Business or the ownership of the Purchased Assets, including without limitation, zoning. All such Permits must be assigned (to the extent assignable) by Seller to Buyer, including but without limitation those set forth in **Exhibit C** attached hereto.

"Proceeding" means any action, suit, litigation, arbitration, or other similar proceeding, including any civil, criminal, administrative, or appellate proceeding conducted by any Governmental Authority or any arbitrator or arbitration panel.

"Purchased Assets" shall include any and all tangible and intangible property and rights in property owned by Seller or used in the Business, including without limitation all furniture, trade fixtures and equipment (including without limitations the assets identified on **Exhibit D**), telephone numbers and listing, Customer Lists, Leases, trade names, Trademarks, Trade Secrets, goodwill, going concern value, the name "Cheese Counter and Dairy Heritage Center" and any derivations thereof, World Wide Web and/or Internet domain names, web pages, social media accounts, non-governmental email addresses, Records (as hereinafter defined), deposits, signs, transferrable Permits, the Assumed Contracts, Inventory, and warranty rights with respect to products purchased and used by Seller prior to Closing. The only assets of Seller that shall be excluded from this definition are the Excluded Assets.

"Records" shall mean all books, documents, information and data owned or used by the Seller relating to the Business, including without limitation, the Financial Information, accounting records, correspondence and other written materials, computer software and computer systems, excluding employee records.

"Trade Secrets" shall mean all proprietary information of Seller that relates in any manner to the Business and all technical knowledge and information owned by Seller that relates in any manner to the Business or the Purchased Assets. All Trade Secrets shall be assigned by Seller to Buyer.

“Trademarks” shall mean all of those trade names, entity names, trade marks, service marks, trade mark and service mark registrations, and trade mark and service mark applications owned by Seller that relate in any manner to the Business. All Trademarks must be assigned by Seller to Buyer, including without limitation those set forth on **Exhibit E** attached hereto.

“Work in Process” shall mean all contracts/pending orders not fully completed as of Closing.

2. PURCHASE AND SALE.

(a) Sale of Purchased Assets. At the Closing, and subject to all the terms and conditions of this Agreement, Seller shall sell, assign, convey and deliver to Buyer all of the Purchased Assets.

(b) Purchase Price. The “Purchase Price” for the Purchased Assets shall be One Dollar (\$1.00).

(c) Payment of Purchase Price. The Purchase Price for the Purchased Assets shall be payable at the Closing. Buyer shall pay to Seller the Purchase Price in cash or immediately available funds.

(d) Prorations. All prepayments for Leases, services, utilities or other charges and all expenses paid or payable with respect to the Purchased Assets shall be adjusted as of the Closing and shall be allocated to the Buyer or Seller, as the case may be, so that all such prepayments and expenses applicable to the period ending as of Closing shall be for the account of or chargeable to the Seller. All such prepayments and expenses for the period after the Closing shall be for the account of or chargeable to the Buyer.

(e) Assumption of Liabilities. Except for the Assumed Liabilities, if any, Buyer shall not assume any liabilities or obligations of Seller.

(f) Risk of Loss. All risk of loss with respect to the Purchased Assets shall remain with Seller until the time of the Closing and shall pass to Buyer at the Closing.

(g) Accounts Receivable. Buyer shall direct its employees to work and with Seller and the Owner in the collection of Seller’s accounts receivable including without limitation the accounting and posting of payments on Seller’s accounts receivable.

3. CLOSING.

(a) Closing and Closing Date. The closing of the transaction contemplated herein (the “Closing”) shall be held not later than May 31, 2023, and held contemporaneously with Closing on the WB-15 Commercial Offer to Purchase for the real estate located at 133 E. Mill Street, Plymouth, Wisconsin, or at such other time as the Seller and Buyer may mutually agree (the “Closing Date”).

(b) Seller's Obligations. At Closing, Seller shall deliver to Buyer the following, which shall be in form and content reasonably satisfactory to Buyer and Buyer's counsel and shall have been executed by all required Parties:

(1) A bill of sale for all the Purchased Assets, conveying the same to Buyer free and clear of all liens and encumbrances of any nature whatsoever, except such liens and encumbrances as may be accepted by Buyer. Such bill of sale shall contain warranties of title, but shall not contain any warranties with respect to the condition of the Purchased Assets;

(2) Any specialized forms or documents necessary to convey any particular Purchased Assets, such as titles and transfer forms that may be necessary to convey any motor vehicles;

(3) The original or a copy of any Leases relating to the Business, along with duly executed assignments from the lessors of such Leases and duly executed estoppel letters from such lessors, as Buyer may reasonably require, confirming the material terms of such Leases and confirming that neither lessor nor lessee is in default of any of the terms and conditions of such Leases;

(4) The original or a copy of any Contracts, Trademarks, Trade Secrets and/or Permits that are included in the Purchased Assets, along with duly executed assignments thereof from Seller to Buyer, and if required under the terms of any of the foregoing items, the written consent of the other party(ies) or the issuer, consenting to such assignment;

(5) Copies of all personal property tax bills for the most recent three (3) years that relate to the property included in the Purchased Assets;

(6) A copy of minutes of both the Common Council and RDA board of Seller authorizing and confirming the transactions contemplated herein, certified to be true and correct by Seller's Clerk or recording Secretary;

(7) A closing statement setting forth the net amount due Seller; and

(8) Any other documents which may be reasonably required by Buyer or Buyer's counsel.

(c) Buyer's Obligations. At the Closing, Buyer shall deliver to Seller the following:

(1) The Cash Payment;

(2) Any other documents which may be reasonably required by Seller or Seller's counsel.

(d) Cooperation After Closing. After Closing, Seller shall, from time to time, at Buyer's request, execute and deliver such instruments of conveyance and transfer and take such other action as Buyer shall reasonably request so as to more effectively convey the Purchased Assets to Buyer and to effectuate the terms, conditions, and intent of this Agreement.

4. WARRANTIES AND REPRESENTATIONS OF SELLER.

In order to induce Buyer to enter into this Agreement and to consummate the transaction contemplated herein, Seller represents and warrants to Buyer, as of the date of this Agreement

and as of the date of Closing, which covenants, representations, and warranties shall survive the Closing, the following:

(a) Organization. Seller is a municipal Corporation organized and validly existing under Chapter 62 of the Wisconsin Statutes and a redevelopment authority existing pursuant to Wis. Stat. § 66.1333. Seller has all requisite authority to carry on the Business as it is now being conducted and to execute, deliver, and perform this Agreement and all other instruments required hereby.

(b) Authorization; Enforceability. The execution, delivery and performance of this Agreement and all of the documents and instruments required hereby by Seller have been duly authorized by all necessary action and Seller has obtained all necessary approvals to enter into and consummate the transactions contemplated by this Agreement. This Agreement is, and any other documents or instruments required hereby will be, when executed and delivered by Seller, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms. The consummation of the transactions provided for herein shall not result in a breach of any Law, judgment, any Contract to which Seller is a party or by which Seller is bound or to which the Business is subject.

(c) Operation of Business. The operation and ownership of the Business has not and will not, at any time prior to Closing, result in a breach of any Law, (including ERISA, Environmental Law, and OSHA), judgment, any contract or agreement to which Seller is a party or by which Seller is bound, or to which the Business is subject.

(d) Compliance with Laws. To the knowledge of Seller, the ownership and operation of the Business have not resulted and will not result in a violation of any Laws, and Seller is not in violation of any Law applicable to it the effect of which, individually or in the aggregate, would restrain, enjoin or otherwise prohibit or make illegal the transaction contemplated by this Agreement.

(e) Title to Purchased Assets. Seller owns good and marketable title to all Purchased Assets, free and clear of any and all liens, security interests, restrictions, and claims or encumbrances of any nature whatsoever, whether or not of public record, except such liens and encumbrances as may be accepted by Buyer pursuant to this Agreement.

(f) Disposal of Purchased Assets. Seller has not disposed of any assets set forth in the Purchased Assets except in the normal course of business.

(g) Legal Proceedings. There are no Proceedings or claims of default or breaches of contract pending, proposed, or threatened against Seller, against or relating to the Business, Assumed Contracts or the Purchased Assets.

(h) Condition of Purchased Assets. To the best of the Seller's knowledge and without doing an independent investigation, there are no material defects in any of the Purchased Assets. All such Purchased Assets are in good operating condition and repair, normal wear and tear accepted.

(i) No Adverse Change. Since the date of the latest Financial Information made available to Buyer, there has not been:

(1) Any material adverse change in the Business, any of the Purchased Assets, or the financial condition of Seller;

(2) Any loss, damage or destruction to any of the Purchased Assets;

(3) Any disturbance relating to the Business, of any nature whatsoever, including, without limitation, labor disputes; or

(4) Any pledge, lien or encumbrance of any nature whatsoever made on or placed upon any of the Purchased Assets.

(j) Inventory. To the best of Seller's knowledge, all inventory purchased by Buyer is merchantable and usable or saleable in the ordinary course of business.

(k) Disclosure. All documents and written information delivered to Buyer or made available for Buyer's inspection, including without limitation the Financial Information and Records, are true, correct and complete in all material respects and present an accurate and complete disclosure of the condition, including financial condition, of Seller, the Purchased Assets and the Business. There are no agreements or understandings, written or oral, modifying or amending any such Financial Information or Records. Seller has not omitted to disclose to Buyer any material fact of any nature whatsoever necessary to make the Financial Information and Records not misleading.

(l) Assumed Contracts. Seller has fully performed each term, covenant and condition of each of the Assumed Contracts which is to be performed by Seller. Each of the Assumed Contracts is in full force and effect and constitutes a legal and binding obligation of the respective parties thereto; and no event has occurred which would constitute a default under any Assumed Contract.

(m) Trademarks. The Trademarks, Trade Secrets, Permits and similar assets constitute all of those types of assets owned by Seller. Seller owns the entire right, title and interest in and to each of such assets and there are no claims, demands or proceedings instituted or pending, nor does Seller have any notice or knowledge of any claims, demands or proceedings that have been threatened by any third party pertaining to or challenging Seller's right to use any such assets. All such assets are valid and enforceable. Seller is not utilizing any Trademark or similar asset without license or permission to do so. The Trademarks, Trade Secrets, Permits and similar assets owned by Seller and included in the Purchased Assets constitute all of those assets necessary to conduct the Business.

(n) Taxes. Seller is a tax-exempt governmental entity. Seller has timely filed all withholding taxes for which it is responsible.

(o) Permits. Seller is operating the Business in compliance with all Permits, all such Permits are in full force and effect and all such Permits represent the only Permits necessary for the operation of the Business and the ownership of the Purchased Assets.

(p) Insolvency. Seller has not been a voluntary debtor in any type of state or federal insolvency or receivership proceeding, including without limitation, any proceeding under Title XI or VII of the United States Code, no involuntary proceeding under any state or federal insolvency receivership proceeding has been commenced

against Seller, and Seller knows of no fact which could give rise to any such proceedings.

(q) No Broker. Seller has not contracted with or engaged a broker, finder or other intermediary of any kind who would have a valid Claim for a fee, commission or other payment from Seller with respect to the transaction contemplated by this Agreement.

5. WARRANTIES AND REPRESENTATIONS OF BUYER.

In order to induce Seller to enter into this Agreement and to consummate the transaction contemplated herein, Buyer covenants, represents, and warrants to Seller, as of the date of this Agreement and as of the date of Closing, the following:

(a) Organization. Buyer is a non-stock organization duly organized, validly existing and current with all filings under the laws of the State of Wisconsin. Buyer has full power and authority to execute, deliver and perform this Agreement and any other instruments required hereby.

(b) Authorization; Enforceability. The execution, delivery and performance of this Agreement and all of the documents and instruments required hereby by Buyer are within Buyer's authorized powers and have been duly authorized by all the necessary action by its board of directors and otherwise. This Agreement is, and any other documents or instruments required hereby will be, when executed and delivered by Buyer, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms. The consummation of the transactions provided for herein shall not result in a breach of any Law, judgment, Articles of Incorporation and bylaws of Buyer, or any contract or agreement to which Buyer is a party or by which Buyer is bound.

(c) Legal Proceedings. There are no Proceedings pending against Buyer or, to the knowledge of Buyer, threatened against Buyer or any of its assets which are reasonably likely to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the transaction contemplated by this Agreement.

(d) Compliance with Laws. Buyer is not in violation of, or in default under, any Law applicable to it the effect of which, individually or in the aggregate, would restrain, enjoin or otherwise prohibit or make illegal the transaction contemplated by this Agreement.

(e) No Broker. Buyer has not contracted with or engaged a broker, finder or other intermediary of any kind who would have a valid claim for a fee, commission or other payment from Buyer with respect to the transaction contemplated by this Agreement.

6. MATTERS PENDING CLOSING.

From and after the date of this Agreement, and until Closing:

(a) Access. Buyer and its agents, and representatives shall have access to all the Purchased Assets, all Records, and every other aspect of the Business. Seller shall cooperate in all respects with Buyer's examinations and investigations.

(b) Ordinary Course. Seller shall carry on the Business in the usual, regular and ordinary course in substantially the same manner as conducted prior to this Agreement and shall not make or institute any unusual or novel methods of purchase, sale, lease, management, accounting or operation. By way of example only and not by way of limitation:

(1) Seller shall maintain normal levels of all inventory for the Business, including without limitation, retail goods for sale, ingredients and supplies;

(2) Seller shall not sell, lease, dispose of, lien, pledge, or otherwise encumber any of the Purchased Assets except for sales of inventory in the ordinary course of business.

(3) Seller shall use, operate, maintain and repair all Purchased Assets in a normal business manner.

(c) Preservation of Relationships. Seller will use its best efforts to preserve the Business and Purchased Assets, and to conduct business with suppliers and others having business relationships with the Business in the best interest of the Buyer.

(d) No Default. Seller shall not do any act or omit to do any act, or permit any act or omission which would cause a breach of any of the Assumed Contracts or Permits.

(e) Publicity. Any notices, releases, statements, communications to employees, suppliers, distributors, and customers of Seller and Business and to the general public and media relating to the transactions covered by this Agreement shall be made only at such times and in such manner as may be approved by Buyer.

(f) Insurance. Seller shall keep in full force and effect, until the Closing, all insurance, of any kind whatsoever, maintained by Seller.

(g) Employees. City and RDA shall terminate the Management Agreement for 133 E. Mill Street, Plymouth Wisconsin as of 11:59 p.m. on the day before Closing. Buyer intends, but is not obligated to, offer at-will employment to the existing RDA employees of the Business on substantially the same terms and conditions of employment as existed before the Closing. Nothing herein shall require Buyer to retain any employee or contractor of the Business for any period of time after Closing and nothing herein shall restrict Buyer's right to terminate the employment of any employee or the engagement of any contractor at any time.

7. POST-CLOSING COVENANTS.

(a) Indemnification and Payment of Damages by Seller. Seller hereby agrees, to indemnify and hold Buyer harmless from and to reimburse Buyer for, any and all losses, damages, costs, expenses, liabilities, obligations, and claims of any kind whatsoever (Indemnifiable Losses), which the Buyer may at any time within twelve (12) months after the Closing Date suffer or incur, or become subject to, as a result of or in connection with any of the following:

(1) Any liability or obligation of Seller, of any nature whatsoever, to the extent such liability or obligation was not specifically assumed by Buyer in this Agreement or in any other certificate or document delivered by Seller pursuant to this Agreement.

(2) Any material breach or inaccuracy of any representation or warranty made by Seller or the Owner in this Agreement or in any other certificate or document delivered by Seller pursuant to this Agreement.

(3) Any failure by Seller to carry out, perform, satisfy or discharge any of Seller's covenants, agreements, undertakings, liabilities or obligations under this Agreement or any other certificate or document delivered by Seller pursuant to this Agreement.

(4) Any failure by Seller to pay any taxes of any nature whatsoever, which are assessed against Seller at any time in connection with the transaction contemplated herein or in connection with Seller's business operations prior to the Closing.

(5) Any claim for injury to or death of persons, damage to property or contractual liabilities associated with the ownership or operation of the Purchased Assets or the Business arising out of events or transactions occurring before the Closing.

(6) Any action, suit, proceeding, compromise, settlement, assessment or judgment arising out of or incident to any of the matters indemnified against herein.

(7) All obligations of Seller under this agreement remain subject to the governmental immunities, defenses, and other statutory limitations contained within Wisconsin law, including those set forth in Wis. Stat. §§ 893.80, 895.50 and 345.05, which shall apply to both contractual and tort liability. Nothing herein constitutes a waiver or estoppel by Seller or its insurer of any governmental immunities, defenses, or other limitations.

(b) Indemnification and Payment of Damages by Buyer. Buyer hereby agrees to indemnify and hold harmless Seller for Indemnifiable Losses which Seller may at any time within twelve (12) months after the Closing date suffer or incur, or become subject to, and shall pay to the Seller the amount of any amount arising directly or indirectly from or in connection with any of the following:

(1) Any material breach or inaccuracy of any representation or warranty made by Buyer in this Agreement or in any other certificate or document delivered by Buyer pursuant to this Agreement.

(2) Any failure by Buyer to carry out, perform, satisfy or discharge any of Buyer's covenants, agreements, undertakings, liabilities or obligations under this Agreement or any other certificate or document delivered by Buyer pursuant to this Agreement.

(3) Any claims from activities of Buyer and use of the Purchased Assets after Closing.

(c) Duty to Mitigate. A Party that becomes aware of a claim for which it seeks indemnification under this Section 7 shall be required to use commercially reasonable efforts to mitigate such claim, including taking any actions reasonably requested by the other Party, and such other Party shall not be liable for any claim to the extent that it is attributable to the failure of the Party seeking indemnification to mitigate.

8. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER.

All of Buyer's obligations under this Agreement shall be subject to the completion prior to or at the Closing of each of the following express conditions precedent:

(a) Compliance with this Agreement. Seller shall have performed and complied with all of its obligations under this Agreement, including without limitation, the following:

(1) All warranties and representations made by the Seller in or pursuant to this Agreement shall be true and correct as of the Closing with the same force and effect as though said representations and warranties had been made on the Closing.

(2) All actions and documents relating to the transactions contemplated by this Agreement shall be reasonably satisfactory in form and substance to Buyer and Buyer's counsel, including without limitation, all of the Closing documents set forth in this Agreement. In addition, Seller shall have made available to Buyer for examination the originals or true and correct copies of all documents which Buyer may reasonably request in connection with the transactions contemplated by this Agreement.

(b) Permits. Buyer, at its own cost and expense, obtaining all Permits as may be needed to operate the Business and the Purchased Assets. Seller shall at the request of Buyer, fully cooperate with Buyer in obtaining such Permits that are required to be made in the name of the title-holding entity and if so, shall make any application for such Permits in the name of Seller and shall otherwise make, execute and deliver all documents and instruments necessary or desirable in connection with any such Permits as Buyer may reasonably request, provided, however, that Buyer shall reimburse to Seller all of Seller's out-of-pocket costs relating thereto.

(c) No Adverse Changes. Prior to the Closing, there shall not have occurred and there shall not exist on the Closing, any condition or fact which is or may be materially adverse to the Purchased Assets or the Business, including without limitation, no condemnation, destruction or physical damage affecting the Purchased Assets or the Business, whether or not insured against. Any such change which is not material shall be repaired or otherwise restored, at Seller's expense, to its condition as of the date of this Agreement.

(d) Real Estate Purchase. Buyer or its assigns shall have simultaneously purchased the Business Real Property located at 133 E. Mill Street, Plymouth, Wisconsin 53073 pursuant to the Commercial Offer to Purchase set forth on attached **Exhibit F.**

(e) Satisfaction of Conditions Precedent. If any of the conditions precedent set forth in this Agreement are not satisfied prior to or at the Closing, Buyer at its sole option, may declare this Agreement to be null and void and all monies previously paid by Buyer, if any, shall be returned promptly to Buyer. Seller and Buyer further acknowledge and agree that they intend this Agreement to be a binding and enforceable agreement, subject to the terms and conditions set forth herein, and each party hereby waives any right to hereafter challenge the enforceability of this Agreement on the basis that the conditions precedent set forth herein are at the sole discretion of Buyer. Buyer agrees to use its good faith efforts to determine whether the conditions precedent set forth herein may be satisfied. Seller acknowledges and agrees that such efforts by Buyer will require Buyer to expend significant time and money investigating and reviewing such conditions precedent and the expenditure of such time and money by Buyer constitutes good and sufficient consideration to Seller for Seller granting Buyer the opportunity to investigate, review and resolve all of the conditions precedent set forth herein.

(f) No Effect on Warranties and Representations. The exercise of any inspection, testing, or other rights relating to Buyer's conditions precedent shall in no way relieve Seller of its responsibility for the accuracy of all of the warranties and representations contained in this Agreement.

(g) Redevelopment Authority Trademarks. Buyer shall have entered into licenses for use of the trademarks which Buyer wishes to continue to use in the Business, including "Cheese Capital of the World", "Cheese Counter", and the "Cheese Capital" logo with the trademark owner, RDA as set forth in **Exhibit G**.

(h) Service Agreement. Buyer shall have entered into a service agreement with the City of Plymouth for continuing operation of the Business as a cheese counter and museum as set forth on the attached **Exhibit H**.

9. MISCELLANEOUS PROVISIONS.

(a) Time is of the Essence. Time shall be of the essence of this transaction with regard to every date or time period set forth herein, except as may be otherwise expressly agreed to in writing by the Parties.

(b) Waiver. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

(c) Amendment. This Agreement may only be amended by a written agreement signed by all of the Parties.

(d) Entire Agreement. This Agreement, together with the exhibits attached hereto, supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof, and sets forth the sole and entire agreement between the Parties concerning the transaction contemplated herein, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than are herein set forth.

(e) Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, (1) such provision will be fully severable; (2) this Agreement will be construed and

enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (3) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (4) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision that is as similar in terms to such illegal, invalid or unenforceable provision as may be possible and will, from an economic viewpoint, most nearly and fairly approach the effect of the unenforceable provision and the intent of the Parties.

(f) Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(g) Governing Law. This Agreement, including all matters arising under or relating to this Agreement, shall be governed by, construed and enforced in accordance with the Laws of the State of Wisconsin, without regard to its conflict of laws principles.

(h) Notices. Any notices required or permitted to be sent or given hereunder shall be deemed given when personally delivered; mailed by certified mail, return receipt requested, with postage prepaid; deposited with Federal Express or a similar commercial courier service; or sent by facsimile transmission or e-mail transmission, as follows:

If to Buyer: Plymouth Cheese Counter Foundation, Inc.
Attn: President
113 E. Mill Street
Plymouth, WI 53073
E-mail address: leegentine@wi.rr.com and
magumm08@gmail.com

If to Seller: City of Plymouth
Attn: City Administrator/Utilities Manager
128 Smith Street, P.O. Box 107
Plymouth, WI 53073

with a copy to: Hopp Neumann Humke LLP
Attn: Crystal H. Fieber
2124 Kohler Memorial Drive, Suite 310
Sheboygan, Wisconsin 53081
E-mail Address: crystal.fieber@hopplaw.com

or to such other address, facsimile number, or e-mail address as the Party entitled to receive such notice may notify the other Party in accordance with the foregoing provisions.

(i) No Presumption. Should any provision of this Agreement require additional interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it being understood and agreed that both Parties have participated in the preparation of this Agreement.

(j) Authority. Each individual executing this Agreement on behalf of an entity warrants and represents that he or she has been duly authorized to execute this Agreement and to bind the entity on whose behalf he or she is executing this Agreement to all of the terms, conditions and provisions contained herein.

(k) Counterparts; Facsimile and E-mail Signatures. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile signatures and scanned signatures sent by electronic mail ("e-mail") on this Agreement or any related documents shall have the same effect as original signatures. This Agreement and any documents related hereto shall be deemed fully executed upon signing by all Parties in any combination of original, facsimile and scanned signatures.

(l) Costs and Expenses. Each of the Parties shall be responsible for the payment of its own costs, expenses and legal and accounting fees incurred in connection with the negotiation and execution of this Agreement and the closing of the transaction contemplated herein.

(m) No Third-Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each Party, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person.

(n) Further Assurances. Each Party agrees, upon the request of the other Party from time to time after the Closing, to do, execute, acknowledge and deliver such other acts, consents, instruments, documents and other assurances as may be reasonably necessary to carry out and perform the transaction contemplated by this Agreement.

(o) Attorneys' Fees. If either party brings an action to enforce the terms of or declare rights under this Agreement, the prevailing party in any such action shall be entitled to recover actual attorneys' fees, costs, and expenses.

(p) Any default by either Party of a material term, covenant, warranty or undertaking in this Agreement between the parties, or the occurrence of a material event of default under the Commercial Offer to Purchase for 133 E Mill Street, Plymouth, WI between the City and Buyer which is not cured after any required notice and/or cure period is also a default of this Agreement.

*(The remainder of this page intentionally blank;
signature page to follow.)*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

CITY OF PLYMOUTH

By: _____
Donald O. Pohlman, Mayor

By: _____
Anna Voigt, City Clerk

REDEVELOPMENT AUTHORITY

By: _____
Name: _____
Its: _____

BUYER:

**PLYMOUTH CHEESE COUNTER
FOUNDATION, INC.**

By: _____
Name: _____
Its: _____

EXHIBIT A

Assumed Contracts

Residential Rental Agreements:

1. 133 E. Mill Street #1, Plymouth, Wisconsin 53073
2. 133 E. Mill Street #2, Plymouth, Wisconsin 53073
3. 133 E. Mill Street #3, Plymouth, Wisconsin 53073

EXHIBIT B

Excluded Assets

Cash and Cash Equivalents

Accounts Receivable

EXHIBIT C

Permits

Shopify License

Civics Payroll Module

Wisconsin Department of Revenue Seller's Permit

Wisconsin Sales and Use Tax and Withholding Certificate

EXHIBIT D

Purchased Assets

See attached depreciation schedule.

EXHIBIT E

Trademarks

Plymouth Cheese Counter and Dairy Heritage Center

EXHIBIT F

Commercial Offer to Purchase

EXHIBIT G

Trademark Usage Agreement

EXHIBIT H
Service Agreement



Trademark Usage Agreement

City of Plymouth, Redevelopment Authority
PO Box 107, 128 Smith St.
Plymouth, WI 53073

phone: (920) 893-1271
fax: (920) 893-0183
www.plymouthgov.com

This Trademark Usage Agreement (the "Agreement") is effective as of the _____ day of _____, **2023**, and is entered into by and between the Plymouth Cheese Counter Foundation, Inc. (the "Licensee"), with its principal place of business located at 133 E. Mill Street, Plymouth, WI 53073 and the Redevelopment Authority (RDA) of the City of Plymouth, Wisconsin, with its principal place of business located at 128 Smith Street, P.O. Box 107, Plymouth, WI 53073 (the "Licensor").

WHEREAS, Licensee desires to use the trademarks (the "Marks") owned by Licensor in connection with Licensee's operation of the Cheese Counter and Dairy Heritage Center at 133 E. Mill St. Plymouth, Wisconsin, 53073 (the "Licensee's Business"). Licensor desires to grant Licensee a limited-use license to use the Marks for this purpose. The Marks licensed to Licensee under this Agreement are as follows:

1. CHEESE COUNTER (U.S. Trademark Application 86/738837)
2. Plymouth Cheese Capital of the World logo
3. Cheese Capital of the World

NOW, THEREFORE, in consideration of the promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Licensee's Use of Licensor's Marks. The above recitals are incorporated herein. Licensor hereby grants to Licensee the non-exclusive and non-transferable right and license (without any power to sub-license) to use Licensor's Marks on printed marketing and promotional material, retail sales products, and other documents and materials used in connection with the usual scope of the Licensee's Business. The Marks shall not be used by Licensee for any other purposes. Licensee hereby acknowledges Licensor's exclusive right, title and interest in and to the Marks and shall not do any act which impairs the same. Licensee shall not represent that Licensee has any ownership or other rights in the Marks and acknowledges that Licensee's use of the Marks will not create in Licensee's favor any right, title or interest in or to the Marks. Upon written request of the Licensor for good cause, Licensee shall cease and desist from all further use of the Marks and shall either destroy or deliver to Licensor all materials upon which the Marks appears.

2. The Marks. Licensor represents that it has the exclusive right, title and interest in and to all Marks and has full power and authority to grant the Licensee the license described in Section 1 of this Agreement. Such grant does not require the consent of any other person or entity. The Marks do not do so now, nor will in the future, violate the material rights or claimed rights of any other person or entity.

3. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, and any claim arising under this Agreement shall be resolved in the courts of the State of Wisconsin. This Agreement shall inure to the benefit of, and be binding upon, Licensor and Licensee. The parties intend and agree that a copy or facsimile of this agreement with their signatures thereon, and any such document containing a copied or telefaxed signature of one or both of the parties, shall be treated as an original, and shall be as binding, valid, genuine, and authentic as an original-signature document for all purposes, and shall be admissible in a court of law as conclusive evidence of this Agreement notwithstanding any law or rule of evidence to the contrary.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

PLYMOUTH REDEVELOPMENT AUTHORITY:

LICENSEE:

By _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



DATE: April 24, 2023

TO: RDA

FROM: Tim Blakeslee, City Administrator/Utilities Manager

RE: **Discussion regarding Plymouth Revolving Fund Loan Program**

Background:

The City of Plymouth has a Business Revolving Loan Fund (RLF) that has gone defunct as a result of changes in state/federal guidelines. Currently, the City has three outstanding loans established under the prior program guidelines. In 2019, the City was notified that it was not subject to the restrictions of the CBGD-CLOSE program and as a result has discretion for the use of the funds in the RLF. Staff recommends the reestablishment of a Business Revolving Loan Fund to support business attraction and retention. At the end of 2022, cash available in the fund is approximately \$1.8 Million. The City did initiate a loan from the RLF of \$750,000 to TID#5 to finance the construction of the E Clifford Street project in 2023. The loan from TID#5 will be paid back to the RLF by 2028.

Staff worked with Brian Doudna with the SCEDC to develop a new City of Plymouth Revolving Loan Program. Economic development activities assisted with funds made available through the City of Plymouth Revolving Loan Fund are intended to meet the following objectives:

- To encourage the leveraging of new private investment into the City of Plymouth in the form of fixed asset investment, particularly in land, buildings, and fixed equipment.
- To perpetuate a positive and proactive business climate which encourages the retention and expansion of existing businesses and helps to attract desirable new businesses.
- To implement the City of Plymouth's comprehensive plan goals and objectives.
- To maintain and promote a diverse mix of employment opportunities and to minimize seasonal or cyclical employment fluctuations.
- To encourage the development and redevelopment of the historic downtown district.

Wis. Stat. § 66.0627(8) provides authority to a City to make loans for certain purposes. An RFL program is not specifically identified as one of those purposes. As a result, the City requests the RDA host the program, with the program being funding and managed by the City. An RDA is specifically permitted in state law to host in RLF. A Revolving Loan Fund Committee would be appointed by the Common Council. As proposed, an RDA representative would be appointed to the Revolving Loan Fund Committee.

Recommendation: Discuss Revolving Loan Fund program

Attachments:

1. Draft Revolving Loan Fund Manual

**CITY OF PLYMOUTH
REVOLVING LOAN FUND (RLF) MANUAL**

DRAFT

March 14, 2023

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FOREWORD

Pursuant to resolution _____, the City of Plymouth established the Revolving Loan Fund program supporting economic development.

This Manual contains the Revolving Loan Fund (RLF) policies and procedures that have been adopted by the City of Plymouth to govern the use of the funds.

The City of Plymouth has allocated a portion of the Revolving Loan Fund Balance to special financial programs for downtown historic district.

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SECTION 1. GENERAL PROVISIONS

1.1 PURPOSE

The purpose of the policies and procedures contained within this manual, hereafter referred to as the City of Plymouth Revolving Loan Fund Manual, is to present the criteria which governs the activities and management of funds made available through the City of Plymouth Revolving Loan Fund.

1.2 OBJECTIVES

Economic development activities assisted with funds made available through the City of Plymouth Revolving Loan Fund are intended to meet the following objectives:

- (1) To encourage the leveraging of new private investment into the City of Plymouth in the form of fixed asset investment, particularly in land, buildings and fixed equipment.
- (2) To perpetuate a positive and proactive business climate which encourages the retention and expansion of existing businesses and helps to attract desirable new businesses.
- (3) To implement The City of Plymouth’s comprehensive plan goals and objectives.
- (4) To maintain and promote a diverse mix of employment opportunities and to minimize seasonal or cyclical employment fluctuations.
- (5) To encourage the development and redevelopment of the historic downtown district.

1.3 AMENDMENTS and MODIFICATIONS

The City can create pilot programs using the funds from the Revolving Loan Fund to support strategic initiatives of the City.

The City of Plymouth Revolving Loan Fund may from time to time amend the provisions imposed by the policies and procedures contained within the City of Plymouth Revolving Loan Fund manual.

SECTION 2. ADMINISTRATION

2.1 LOAN COMMITTEE

- (1) The City of Plymouth Revolving Loan Fund Committee shall consist of the following:
 - 1) City of Plymouth Mayor
 - 2) City of Plymouth Common Council President (or designee by Mayor)
 - 3) 2 public members appointed by the City of Plymouth Mayor
 - 4) Member of the Plymouth RDA

RLF Administrator – designee by City of Plymouth Administrator
(Non-voting)
- (2) The Loan Committee shall have the authority to review, select, recommend, and approve loan applications. The Committee shall also have the authority to make policy recommendations for the administration of the program.
- (3) The RLF Administrator shall explain the program to prospective applicants, provide written information, assist applicants in completing applications, and facilitate requests for financing.
- (4) The RLF Administrator in concert with City of Plymouth staff and other service providers shall review all financial statements and loan amortization schedules of RLF loan recipients
- (5) The City of Plymouth Finance Department will maintain the RLF accounting records which shall be segregated from other City accounts.
- (6) The City's Corporation Counsel shall prepare all loan agreements, review all promissory notes and mortgage or lien instruments, record RLF security instruments, and counsel the Loan Fund Committee on legal matters.
- (7) The RLF Administrator shall be responsible for the maintenance of all other records for the RLF, particularly those related to the expenditures of the RLF monies for program administration purposes.

2.2 MEETINGS

Revolving Loan Fund Committee meetings shall be held on an as-needed basis. Meetings shall be subject to Wisconsin Open Meetings Laws pursuant to Wisconsin Statutes, Sections 19.31 through 19.39. A majority of the Committee in attendance at a meeting constituting a quorum shall be required for official Committee action. Official actions must have the support of the majority of the total Committee. Vacant positions on the Committee shall be counted in determining the total number of Committee members.

2.3 RECORDS

Written records of all program activities, including program meetings, loan applications, and related documents, shall be maintained in appropriate files. All files shall be maintained in a secure place with limited access by authorized personnel. City Corporation Counsel shall be consulted in regard to compliance with state and municipal open record laws.

The following files shall be established and maintained for each loan recipient:

- (1) **Loan Application File:** This file contains all pre-application, application business financial statements, personal financial statements, credit reports, business plan documents, and other supporting loan information submitted to the Loan Committee, including all applicable correspondence. This permanent file will also contain a summary of the analysis, recommended actions for the application, and a copy of the minutes for the Loan Committee meeting summarizing the action taken on the loan request. This file will be maintained by the City of Plymouth.
- (2) **Loan Closing File:** This file contains copies of all loan-closing documents. All legal documents from the loan closing, including security instruments, the note and other applicable correspondence shall be placed in a locked safe. City Corporation Counsel shall be involved in helping create and complete this file to ensure complete loan documentation. Copies of the loan closing documents, and an amortization schedule will be provided to the loan recipient, along with an invoice, if applicable, for loan closing and servicing fees. This file will be maintained by the City of Plymouth.
- (3) **Progress Report, Site Visit & Financial Statements Monitoring:** The RLF Administrator shall make periodic site visits to verify information in the progress report and financial statements. Site visits shall be conducted periodically to each loan recipient, the scheduling of which depends on the nature of the project. A summary of the site visits highlighting any information that can help in rating the overall condition/risk of the loan to the City Administrator.
- (4) **Repayment Monitoring File:** The City of Plymouth Finance Department will monitor the loan amortization schedule, status of payments, and the outstanding balance of the loan. The City of Plymouth Finance Department shall immediately notify the RLF Administrator and the City Administrator of failure of a loan recipient to make timely payments.
 1. 1 Missed Payment - Notify the RLF Administrator/City Administrator
 2. 2nd Missed Payment – Notify the Loan Committee and Corporation Counsel

3. 3rd Missed Payment - after 3rd missed payments or request to modify payment schedule. The City Corporation Counsel will notify the loan recipient in writing of the deficiency and the action that will be taken should the payment not be made.

Should there be a late payment, the RLF Administrator will contact the loan recipient to determine the reason for the delayed payment. Contact may need to be made with other participating lender(s) to determine if their loans are current and to alert the lender of a potential problem. All payments shall be applied first to accrued late payment penalties, then to interest accrued and then to principal.

- (5) **Loan Review – As Needed:** If a business is experiencing repayment or collateral problems, the RLF Administrator (or designee) is to work with the loan recipient to identify actions that are needed to correct the identified deficiencies, including possible restructuring of the loan to protect the City of Plymouth’s interest and meet the needs of the business. If appropriate, the RLF Administrator will arrange for business assistance.

In the event the findings of the loan review suggest serious problems, particularly if the loan is at risk for default, the account shall be referred to City Corporation Counsel for legal action in order to initiate steps necessary to protect the loan and to ensure the maximum repayment of the balance due. Again, corrective actions may be achieved through restructuring or if necessary, foreclosure actions.

2.4 ADMINISTRATION

Reasonable administrative funds may be withdrawn from the Revolving Loan Fund to cover personnel costs and other administrative expenses. Administrative expenses of up to fifteen (15) percent of program income may be used for direct loan administrative costs. In addition to paying costs for direct RLF administration, these funds may be used for the following purposes to support RLF administration:

- (1) Legal costs.
- (2) Consulting fees for administration, credit analysis, business plan reviews and technical assistance.
- (3) Office supplies, copying, typing, mailing, and related.
- (4) Fees, meals and mileage reimbursement as deemed necessary by the Loan Committee.

To generate additional revenue to cover administrative costs, if necessary, the Revolving Loan Fund Committee may also establish loan origination fees, closing fees, servicing fees, and other fees to cover charges directly related to either processing an application or servicing a loan. All fees collected go to the RLF.

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SECTION 3. ELIGIBILITY CONSIDERATIONS

3.1 ELIGIBLE AREA

The area served by the RLF program shall generally be within the corporate limits of the City of Plymouth.

3.2 ELIGIBLE APPLICANTS

- (1) Applications may be submitted by the authorized representatives of any business wishing to establish a new operation or expand an existing operation in the City of Plymouth.
- (2) No voting member of the City of Plymouth Revolving Loan Fund is eligible for financial assistance under this program.
- (3) The applicant must not be delinquent or in default on federal, state or local taxes or any existing private or publicly financed loan and will be required to sign an affidavit to that effect.
- (4) Applicants shall not be disqualified based on age, race, religion, color, handicap, sex, physical condition, development disability, sexual orientation or national origin.

3.3 ELIGIBLE ACTIVITIES

Program loans shall be available to eligible applicants for the following activities:

- (1) The acquisition of land, buildings, and fixed equipment (*related expenses*).
- (2) Site preparation and the construction or reconstruction of buildings or the installation of fixed equipment and related expenses.
- (3) Clearance, demolition, or the removal of structures or the rehabilitation of buildings and other such improvements.
- (4) Working capital (*Justifiable use of dollars & only a percentage of entire project*).
- (5) Historical or significant rehabilitation to a commercial, mixed-use, industrial or retail structure
- (6) Bridge financing where other source(s) of capital are expected to flow into the project at a later date (an example of this is the future receipt of tax credit funds)
- (7) Other activities that the City of Plymouth Revolving Loan Fund Committee may identify as appropriate for the Revolving Loan Fund program

3.4 INELIGIBLE ACTIVITIES

Program loans shall not be available for the following activities:

- (1) Reimbursement for expenditures prior to loan approval.
- (2) Specialized equipment that is not essential to the business operation.
- (3) Routine maintenance.
- (4) Professional services such as feasibility and marketing studies, accounting, management services, and other similar services. Legal services incurred in the closing of a RLF loan are eligible.
- (5) Activities that the Loan Committee may identify during the program's administration.

3.5 INELIGIBLE BUSINESSES

Program loans shall not be available for the following businesses:

- (1) Speculative investment and highly leveraged investment companies.
- (2) Lending institutions/Companies lending funds.
- (3) Gambling operations.
- (4) Non-public recreation facilities.
- (5) Other businesses not serving the interests of the City of Plymouth.
- (6) Other businesses that the City of Plymouth Revolving Loan Fund Committee may identify during the administration of this program

3.6 MINIMUM REQUIREMENTS

To be eligible for funding, a proposed project must meet all of the following requirements:

- (1) Private Funds Leveraged. The applicant must leverage a minimum of one dollar (\$1.00) of private funds for each dollar (\$1.00) of loan funds requested. Higher leverage may be required at the discretion of the Loan Review Committee.
- (2) Financial Feasibility and Business Viability. The applicant must demonstrate that the proposed project is viable and the business will have the ability to repay note.
- (3) Compliance with Applicable Laws. Applicants shall comply with all applicable local, state, and federal laws and codes.
- (4) Project Completion. Projects shall be completed within 36 months from the date of the loan approval. Applicants shall provide the Loan Committee a project implementation schedule not exceeding 36 months for project completion.

SECTION 4. TERMS AND CONDITIONS

4.1 TERMS AND CONDITIONS

Loan terms and conditions shall be structured on need and ability to repay. Minimum standards shall include the following:

- (1) Loan Amount: Loan amounts are subject to the availability of program funds.
- (2) Interest Rate: The interest rate shall be established by the Loan Committee.
- (3) Terms for Loans:
 1. Working capital loans shall have a maximum term of seven years.
 2. Loans for machinery, equipment and fixtures shall have a maximum term of ten years.
 3. Real estate loans shall have a maximum term of 12 years which can be amortized on a 20-yr basis with the option of refinancing for an additional 8 years.
 4. In any case, the loan shall not have a term longer than the terms of the other private financing in the project.
- (4) Repayment. Payment of interest and/or principal may be deferred during the implementation period of the assisted activity if merited in the loan application. Interest shall accrue during the deferment period and may be paid in full or added to the principal amount of the loan. Following the deferral period, interest and principal shall be paid for the remaining term of the loan.
- (5) Prepayment. There shall be no prepayment penalties.
- (6) Collateral. The Loan Committee will seek to have the best possible collateral position possible to ensure that RLF loans are adequately secured.
- (7) Insurance. Term life and building insurance may be required of the applicant to cover the loan balance through the life of the loan.

SECTION 5. APPLICATION PROCEDURES

5.1 DISCUSSION OF REQUIREMENTS

Prior to submitting an application, the applicant must discuss the program with the RLF Administrator and complete the pre-application checklist. The RLF Administrator shall assist the applicant, as is reasonably necessary, in completing the application. All financial information shall be kept in a secured place with limited access by authorized personnel only

5.2 TIMING

Applications may be submitted at any time during the calendar year.

5.3 PRIORITY

Applications shall be reviewed in the order received and based on readiness for the proposed project to proceed. In the event that loan funds requested exceed available funds, the following criteria will be used to determine which business (es) will be awarded the loan(s):

- (1) Eligibility of the applicants.
- (2) Eligibility of the project to be undertaken.
- (3) The extent to which private funds are to be leveraged.
- (4) The extent to which the loan can be secured.
- (5) Evidence of ability to repay the loan.
- (6) Size of the loan requested.
- (7) Timing of the proposed expenditures.
- (8) Completeness of application.
- (9) Other factors as deemed appropriate, such as economic impact and access to other loan programs

5.4 LOAN APPLICATION

Applicants shall apply using the forms available from the City of Plymouth Revolving Loan Fund and will generally include the following:

- (1) Business Plan, including the following:
 - (a) Brief overview of the existing or proposed business including when it started or will start, business location, primary business objective, type of business, market area, etc.,.

- (b) Ownership including type of legal entity, ownership and percentage of ownership by owner.
 - (c) Management team and resumes.
 - (d) Marketing strategy including identification of key customers; identification of major competitors; market niche, pricing structure; promotional strategy, etc.
 - (e) A discussion of projected sales growth, break-even sales and what is required to achieve this growth.
 - (f) A description of the debt structure of the business.
 - (g) Financial statements, including balance sheets, profit and loss statements and cash flow statements for the past three years for an existing business. Include the most recent quarter.
 - (h) Include an aging report of accounts receivable and payable.
 - (i) Three years of financial projections (balance sheet, profit and loss and a monthly cash flow statement for the first 12 months of operations). Include all assumptions.
- (2) Project Description. A description of how the business plans to use the requested funds.
- (3) Personal Financial Statements. required for each owner of the business who owns more than 20% as well as his/her spouse.
- (4) Commitments from Private Lenders. This consists of commitments from all private lenders making loans to the project. Lender commitment letters should include:
- (a) Description of the type of loan being made by the lender (first mortgage, permanent financing, construction financing, etc.)
 - (b) The amount of the loan, interest rate, term, and security, availability, and repayment schedule and amounts.
 - (c) These commitments shall be obtained concurrently with the negotiation of the terms and conditions of the City of Plymouth Revolving Loan Fund program to ensure the interest of the City of Plymouth are secured.
- (5) Additional Information. The Revolving Loan Fund Committee or the RLF Administrator may require additional information.

5.5 REVIEW PROCESS

Specific steps in the review process include the following:

- (1) Preliminary Review. The RLF Administrator will review the application for completeness and verify that the proposed project meets the minimum requirements provided in Section 3.6. If the application is not complete, the RLF Administrator will inform the applicant of the deficiencies.

- (2) Formal Review. The Loan Committee will meet to review an application within 60 days of the receipt of a completed application or at some other predetermined schedule. Once the review is completed and the proposal is acceptable for funding, the Loan Committee will forward the proposal to City Corporation Counsel for drafting of the closing loan documents.
- (3) Negotiation of Terms. Upon the tentative acceptance by the governing body, the RLF Administrator will contact the business in writing to review and explain the terms of the loan.
- (4) Notice of Award. If the application is approved, a closing will be scheduled by City Corporation Counsel to execute the necessary loan documents.
- (5) Rejection of Award. If the application is not approved, the RLF Administrator will send a letter to the applicant stating the reasons for rejection and offer to meet with the applicant to explore ways to strengthen the loan request or to identify alternative funding sources.

SECTION 6. DISTRIBUTION OF FUNDS

6.1 LOAN PROCEDURES

Prior to releasing funds, the following documentation must be in place or provided at the appropriate time during the term of the loan.

- (1) Notice of Award. The Loan Committee must have reviewed and approved a complete application for an eligible applicant. RLF Administrator will provide Notice of Award letter to the loan recipient.
- (2) Loan Agreement. City Corporation Counsel shall prepare a loan agreement, which shall be executed by City Administrator and the Chief Executive Officer of the business.
- (3) Promissory Note. A promissory note shall be prepared by the City Corporation Counsel and signed by the Chief Executive Officer at the time of loan closing. The note must be dated; it must reference the agreement between City of Plymouth Revolving Loan Fund and the business; and, it must specify the amount and terms of the loan funds delivered.
- (4) Security. Mortgage or lien instruments, or a personal guarantee must be provided as security for all loans and shall be prepared by City Corporation Counsel and executed at the time of the loan closing. City Corporation Counsel shall record the instrument and place a copy in the project file to include:
 - a) Mortgage and/or security agreement.
 - b) UCC searches and filing.
 - c) Guarantee agreement.
 - d) Title insurance or Abstract.
 - e) Assignment of Life Insurance.

- f) Casualty Insurance binder.
- g) Personal guarantee.
- h) Other documentation as may be appropriate.

- (5) Repayment Schedule. A loan repayment or amortization schedule shall be prepared by the City of Plymouth Finance Department after the loan proceeds are fully disbursed. The repayment schedule shall be dated and signed by the Plymouth City Administrator. At that time, the repayment schedule shall be attached to both parties' copies of the agreement.
- (6) Fixed Equipment. Fixed equipment financed with program funds must have been purchased, delivered, and installed. The RLF Administrator shall verify the installation of fixed equipment.
- (7) Other Documentation. As appropriate or necessary, the borrower may be asked to provide the following:
- a) A certificate of status from the Department of Financial Institutions.
 - b) The Articles of Incorporation and by-laws.
 - c) A Board resolution to borrow funds and Secretary's certificate.
 - d) Current financial statements.
 - e) Evidence of having secured other funds necessary for the project.
 - f) An Environmental Assessment for real estate loans which may either be a Phase I, II, or III analysis, depending on the environmental condition of the site.

With the above documentation in place, the Corporation Counsel will schedule a loan closing. All documents will be executed before funds are disbursed, and mortgages and UCC Statements shall be recorded with the Register of Deeds and the Secretary of State.

SECTION 7. POST APPROVAL REQUIREMENTS

7.1 OBLIGATION OF LOAN RECIPIENT

In addition to the terms and conditions of the loan, all borrowers shall agree to comply with the following:

- (1) Not to discriminate on the basis of age, race, religion, color, handicap, sex, physical condition, development disability as defined in s. 51.01(5), sexual orientation or national origin in any employment or construction activity related to the use of the business loan funds.
- (2) To use the loan money only to pay the cost of services and materials necessary to complete the project or activity for which the loan funds were awarded.
- (3) To permit inspections by persons authorized by City of Plymouth Revolving Loan Fund of all projects and properties assisted with loan funds. Related project materials shall also be open to inspections, which include, but may not be limited to, contracts, materials, equipment, payrolls, and conditions of employment. Requests for inspection shall be complied with by the borrower.
- (4) To maintain records on the project as may be requested by the RLF Administrator. These files shall be maintained as long as the loan is active or for at least three (3) years after completion of the work for which the loan has been obtained, whichever is longer.
- (5) To submit periodic progress reports to the RLF Administrator in accordance with the schedule in the loan agreement.
- (6) To maintain fire and extended coverage insurance on the project property required during the term of the loan. City of Plymouth Revolving Loan Fund shall be listed as Loss Payee, Mortgagee, or "additional" insured on the policy. Term life insurance may be required of the applicant to cover the loan balance through the life of the loan.
- (7) Payments shall be made to the City of Plymouth Finance Department, Attn: City Administrator. The City of Plymouth Finance Department will maintain a file with receipts of payments.

SECTION 8. PERFORMANCE MONITORING

8.1 PRIVATE LEVERAGE COMMITMENTS

The RLF Administrator shall monitor the use of the funds and expenditure of private leverage commitments. Documentation may include invoices or receipts for materials and supplies, letters from lenders, final bills of sale, and canceled checks.

8.2 DEFAULT

In the event the business is in default on any of the terms and conditions of the loan agreement, all sums due and owing, including penalties, shall, at the City of Plymouth Revolving Loan Fund option, become immediately due and payable. To exercise this option, City Corporation Counsel shall prepare a written notice to the business. The notice shall specify the following:

- (1) The default.
- (2) The action required to cure the default.
- (3) A date, not less than thirty (30) days from the date of the notice, by which the default must be cured to avoid foreclosure or other collective action.
- (4) Any penalties incurred as a result of the default.

SECTION 9. USE OF LOAN REPAYMENTS AND REPORTING

9.1 RLF PROGRAM

Repaid loans shall be re-deposited into the City of Plymouth Revolving Loan Fund account and used in a manner consistent with the City of Plymouth Revolving Loan Fund manual. A separate accounting record for each loan shall be kept to account for all funds loaned. The City of Plymouth Revolving Loan Fund account shall be audited as deemed necessary by the City of Plymouth Revolving Loan Fund Committee.

SECTION 10. LOAN SERVICING

10.1 MONITORING

The RLF Administrator shall monitor each loan to ensure compliance with the loan terms and conditions, except as otherwise provided in Section 2.3(6) of this Manual, and to monitor the financial health of the business to ensure continued repayment of the loan.

10.2 RECORDKEEPING – THE CITY OF PLYMOUTH FINANCE DEPARTMENT

The City of Plymouth Finance Department financial management records must be comprehensive and designed to provide the following information upon request of the RLF Loan Committee:

- (1) A Revolving Loan Fund Register that records all deposits and disbursements to and from the RLF, including funds used for RLF administration.
- (2) A Loan Repayment Register that records repayments made by each business which has received a loan from the RLF. It also tracks the balance of repayments from all loans from the RLF.
- (3) A Collection Register for every loan made. Each register contains the business name, loan date, loan amount, terms, and date repayment begins. Payments are divided into principal and interest payments with a declining principal balance.
- (4) RLF Loan Repayment Registers that record repayments made by each business, which has received a loan from the RLF. It also tracks the balance of repayments from all loans from the RLF.

City of Plymouth
128 Smith St. - P.O. Box 107
Plymouth, WI 53073-0107



Telephone: (920) 893-3745
Facsimile: (920) 893-0183
Web Site: plymouthgov.com

DATE: April 24, 2023
TO: RDA
FROM: Tim Blakeslee, City Administrator/Utilities Manager
RE: Discussion/Action regarding repainting Antoinette the Cow and using RDA funding to support the project.

Background: Antoinette the Cow serves as one of the City's tourist attractions and needs to be repainted. It appears the last time Antoinette was fully repainted was 2004 (there may have been minor touchups in the meantime). The cost in 2004 was \$4,900 and included fence repainting. The City does not have budgeted funds in 2023, so Staff would like to gauge the RDA's interest in finding and funding a local/regional artist to complete the repainting of Antoinette. WPPI Energy noted that they would commit \$1,000 to the repainting effort through their local initiatives program.

Recommendation: Move to direct staff to paint Antoinette the Cow using RDA funding to support the project.



DATE: January 4, 2023
TO: RDA
FROM: Tim Blakeslee, City Administrator/Utilities Manager
RE: Discussion regarding a potential pocket park at the Strutz Financial Building

Background: The City owns the former Strutz Financial building north of Stayer Jr. Park. The building is in blighted condition, has water damage, and sits in the floodway. A community effort was made several years ago to demolish the building and turn it into a shelter, but it quickly became cost prohibitive.

In November, Staff received information about the new Vibrant Spaces Grant program currently being offered by the State of Wisconsin. The new Vibrant Spaces Grant, a pilot program within the Community Development Investment (CDI) Grant Program, is designed to assist with creating vibrant and engaging communities. Grants in amounts from \$25,000 to \$50,000 are available to help local communities develop and enhance public spaces.

In the FY23 competitive grant cycle, no more than 30 grants will be awarded. Applicants must agree to provide a 1:1 match of the grant amount. Competitive projects will:

- Incorporate multiple improvements within or associated with one public space
- Demonstrate community engagement and support via a community document/plan and/or via letters of support from public, private and civic partners
- Be ready to begin construction during 2023
- Increase the number and type of audiences using the space
- Create visible and lasting transformations that foster public activity

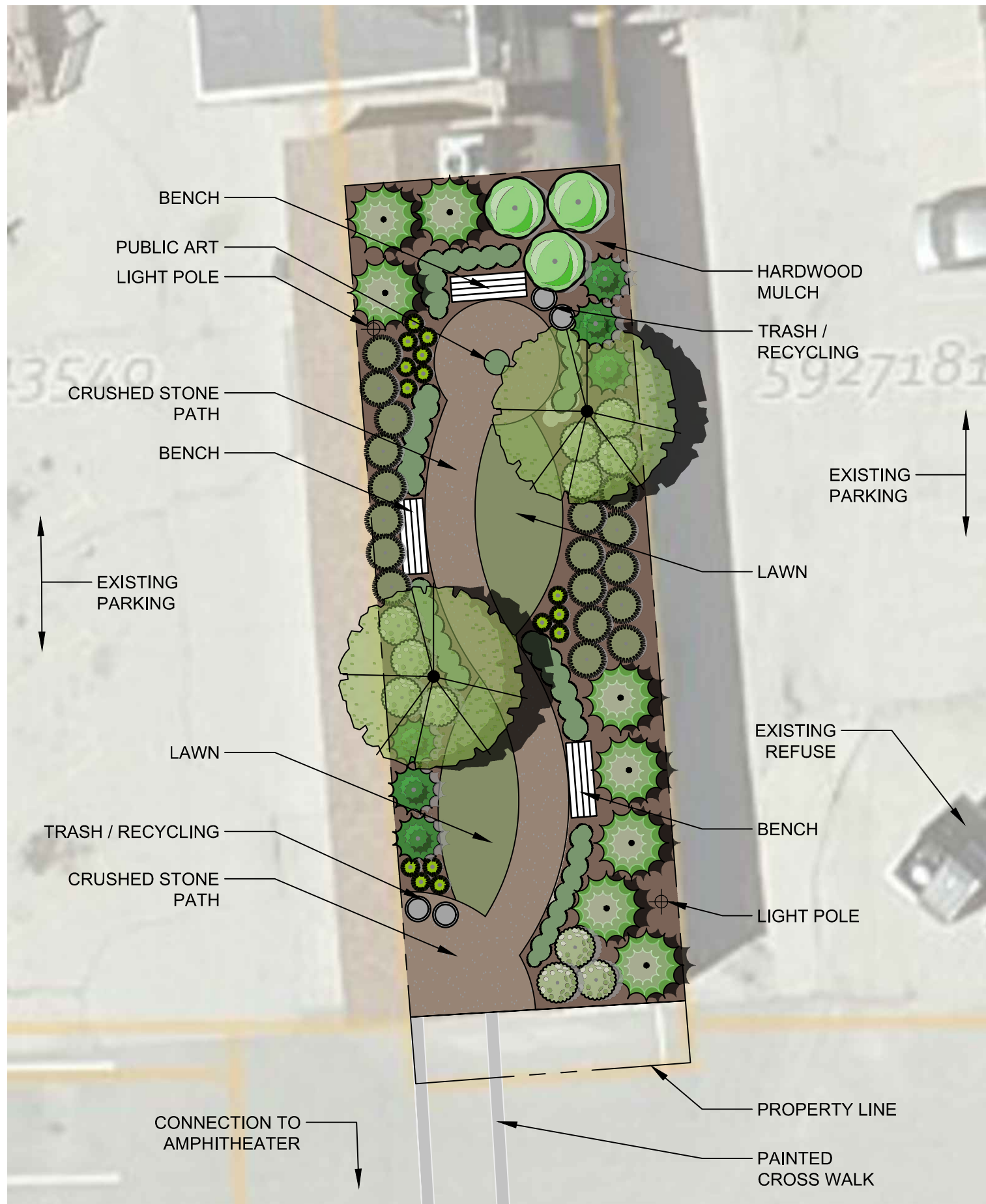
Staff believes the former Strutz Financial Building space is an ideal candidate for \$25,000 Vibrant Spaces Grant to develop a pocket park due to its proximity with Stayer Jr. Park, its creation of visible and lasting transformation of public space for downtown visitors, and because the 2022 Comprehensive Plan Future Land Use Map designates Parcel 59271813530 for Parks and Open Space. In addition, a private donor has agreed to demolish the Strutz Financial Building as an in-kind contribution as part of this project.

Staff worked with Hardwood Engineering Consultants to develop a draft concept plan and budget for the space. It is intended that demolition would begin in 2023. Staff is awaiting response a response from the State, but wanted to share the concept with the RDA as it may be an initiative the RDA would be interested in supporting.

Recommendation: Discussion regarding a potential pocket park at the Strutz Financial Building

Attachments:

1. Draft Concept Plan
2. Draft Project Budget



DESIGN INTENT

PLANTING



STONE PATH



PUBLIC ART



BENCH



TRASH / RECYCLING



PLANT SCHEDULE

EVERGREEN TREES



QTY

COMMON NAME

BOTANICAL NAME

SIZE

ROOT

8

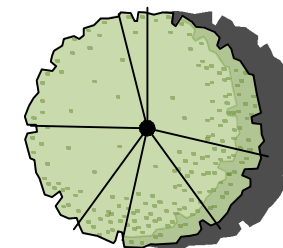
Hetzii Column Juniper

Juniperus chinensis 'Hetzii Columnaris'

5' Ht.

B&B

DECIDUOUS TREES



QTY

COMMON NAME

BOTANICAL NAME

SIZE

ROOT

2

Street Keeper Honey Locust

Gleditsia triacanthos inermis 'Draves' TM

2" Cal.

B&B

DECIDUOUS SHRUBS



QTY

COMMON NAME

BOTANICAL NAME

SIZE

ROOT

11

Little Quick Fire Hydrangea

Hydrangea paniculata 'SMHPFL'

24" Ht.

Cont.



3

Dwarf Korean Lilac

Syringa meyeri 'Palibin'

36" Ht.

Cont.

EVERGREEN SHRUBS



QTY

COMMON NAME

BOTANICAL NAME

SIZE

ROOT

6

Kallay's Compact Pfitzer Juniper

Juniperus x pfitzeriana 'Kallay's Compact'

24" Sprd.

Cont.

ORNAMENTAL GRASSES



QTY

COMMON NAME

BOTANICAL NAME

SIZE

ROOT

18

Purple Flame Grass

Miscanthus sinensis 'Purpurescens'

1 Gal.

Pot



15

Prairie Dropseed

Sporobolus heterolepis

1 Gal.

Pot

City of Plymouth

Pocket Park

Conceptual Phase - Probable Estimate of Construction (Based on Conceptual Plan Dated 12/19/2022)

December 19, 2022

DESCRIPTION	QUANTITY	UNIT	UNIT COST	SUBTOTALS	TOTALS
Existing Conditions					
Site Prep & Excavation	1	ALLOW	\$5,000.00	\$5,000	
Abandon Utilities	1	ALLOW	\$7,500.00	\$7,500	\$12,500
Path					
Crushed Stone	330	SF	\$4.50	\$1,485	
Aluminum Edging	130	LF	\$7.00	\$910	\$2,395
Lighting					
20' Single Fixture Pole	2	EA	\$4,000.00	\$8,000	\$8,000
Landscape					
Planting Soil	45	CY	\$45.00	\$2,025	
Trees	10	EA	\$450.00	\$4,500	
Shrubs	20	EA	\$100.00	\$2,000	
Perennials / Ornamental Grasses	33	EA	\$30.00	\$990	
Mulch	8	CY	\$65.00	\$520	
Lawn	20	SY	\$8.00	\$160	\$10,195
Site Amenities					
Benches	3	EA	\$2,000.00	\$6,000	
Trash & Recycling	4	EA	\$500.00	\$2,000	
Art Work	1	ALLOW	\$4,000.00	\$4,000	\$12,000
				Subtotal	\$45,090
				4% CA	\$1,804
				10% Contingency	\$4,509
				Construction Total	\$51,403