

MEMORANDUM OF UNDERSTANDING

SOUTHPOINT COMMERCE PARK MARKET GARDEN 2014 SEASON

I. THE PARTIES

- 1.01 The City of Appleton, a Wisconsin municipal corporation, doing business at 100 N. Appleton Street, Appleton, Wisconsin (“City”).
- 1.02 Goodwill Industries of North Central Wisconsin, Incorporated, a Wisconsin nonprofit corporation, doing business at 1800 Appleton Road, Menasha, WI 54952 (“Goodwill”).

II. THE RECITALS

WHEREAS,

- 2.01 The City operates and maintains the Southpoint Commerce Park within the city limits.
- 2.02 Goodwill oversees numerous projects intended to benefit the community and its members. Goodwill, in partnership with other organizations that include, but are not limited to, the City of Appleton Neighborhood Revitalization Program, Appleton Area School District, Community Garden Partnership, Fox River Academy, UW-Extension and Fox Valley Technical College, has proposed to oversee the development of a market garden within Southpoint Commerce Park along with programming related to the market garden.
- 2.03 Goodwill intends to use the proposed market garden for on-going educational opportunities throughout the growing season. The City believes the educational use proposed for this garden is an appropriate use of vacant industrial land. The market garden is not intended to have parcels rented to private individuals for private use.
- 2.04 The market garden program is intended to help evaluate the feasibility of future similar gardens at other locations within the City.

III. THE AGREEMENT

NOW, THEREFORE, it is agreed between the parties as follows:

- 3.01 Goodwill shall be the primary agency administering this program and shall be responsible for the terms of this agreement.
- 3.02 The market garden shall be located within the boundaries of Lot 25 Southpoint Commerce Park, Plat No. 2 as identified on the map attached hereto as Exhibit 1. Within this area, Goodwill shall place approximately three acres under planting.

- 3.03 Goodwill shall be responsible for planting the acreage in a safe manner with appropriate materials.
- 3.04 During the term of the program and this agreement, Goodwill shall be responsible for all costs related to the program as well as maintenance of the market garden and surrounding area. The market garden and surrounding area shall be maintained to standards consistent with the maintenance standards adopted for the entire park. Goodwill further agrees that any supplies, equipment or the like stored on-site shall be properly screened. The City shall only be responsible for cutting the grass around the perimeter of the planting areas twice during the growing season.
- 3.05 Goodwill shall provide the City of Appleton's Director of Community and Economic Development with copies of meeting minutes, teaching curriculum, promotional materials, advertising and the like used in conjunction with the program. Upon conclusion of the program, Goodwill shall provide the City's Community and Economic Development Committee with a report summarizing and evaluating the program. This evaluation shall be provided no later than the last meeting of the Community and Economic Development Committee in 2014.
- 3.06 This Agreement shall expire on December 31, 2014; however, any outstanding obligations pursuant to this agreement shall survive that date.
- 3.07 In the event that the program is terminated or, if an agreement is not entered for using the market garden in subsequent years, Goodwill shall be responsible for dismantling the garden and restoring the area by removal of all garden tools, materials and will reseed the site with grass seed, by the first of May, 2015.
- 3.08 The City shall not be responsible for any damage caused to the market garden by vandalism, events beyond the City's control, acts of God or the like. If the market garden is damaged under any of these circumstances, Goodwill shall make the appropriate repairs as soon as practicable.
- 3.09 Goodwill shall provide the required insurance as set forth in Exhibit B, "Small Exposure Jobs", prior to commencing any work. The proof of insurance shall name the City, its officers, and employees as additional insured.
- 3.10 The City of Appleton reserves the right to terminate this agreement at any time for any reason including, but not limited to, sale of all or a portion of the property containing the market garden. If termination of this agreement becomes necessary, the City agrees to provide Goodwill with advance notice; however, the period of time between the notice and actual termination may vary depending on the circumstances that precipitate the termination.

IV. SEVERABILITY CLAUSE

4.01 In the event that any part of this agreement is found to be illegal, it shall be stricken from the Agreement and the Agreement interpreted as if that clause did not exist. This Agreement shall not be construed to modify, replace or in any way amend any terms of the agreement between Goodwill and the City.

V. INDEMNIFICATION

5.01 For good and valuable consideration described and bargained for within this agreement, Goodwill agrees to indemnify, defend and hold harmless the City and its officers, officials, employees and agents from and against any and all liability, loss, damage expense, costs (including attorney fees) arising out of this agreement, caused in whole or in part by Goodwill, its officers, officials, employees, agents, invitees or anyone for whose acts they may be liable, except where caused by the sole negligence or willful misconduct of the City.

VI. AMENDMENTS

6.01 This agreement may only be amended in writing and any amendment shall only be effective after it is signed by both parties to the original agreement.

IN WITNESS WHEREOF, the parties have caused the foregoing instrument to be executed in three (3) original counterparts on this _____ day of March, 2014.

GOODWILL INDUSTRIES OF NORTH CENTRAL WISCONSIN

Witness: _____

By: _____

Witness: _____

By: _____

SIGNATURES CONTINUED ON NEXT PAGE

CITY OF APPLETON

Attest: _____

By: _____
Timothy M. Hanna, Mayor

Attest: _____

By: _____
Wendy Helgeson, Deputy City Clerk

Provision has been made to pay the liability that will accrue under this contract.

Approved as to form:

Anthony D. Saucerman, Interim Finance Director

James P. Walsh, City Attorney

J:\Attorney\WORD\CRB\Economic and Community Development\Market Garden MOU-2014.docx

"EXHIBIT B"

**INSURANCE REQUIREMENTS
FOR CITY OF APPLETON
"SMALL EXPOSURE JOBS"**

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed or the length of time that is specified in the contract.

1. GENERAL LIABILITY COVERAGE

- A. Commercial General Liability
 - (a) \$1,000,000 general aggregate
 - (b) \$1,000,000 products - completed operations aggregate
 - (c) \$500,000 personal injury and advertising injury
 - (d) \$500,000 each occurrence limit

- B. Claims made form of coverage is not acceptable.

- C. Insurance must include:
 - (a) Premises and Operations Liability
 - (b) Blanket Contractual Liability
 - (c) Personal Injury
 - (d) Explosion, collapse and underground coverage
 - (e) Products/Completed Operations
 - (f) The general aggregate must apply separately to this project/location

2. BUSINESS AUTOMOBILE COVERAGE

- A. Limits - \$250,000 each person/\$500,000 each accident for Bodily Injury and \$100,00 for Property Damage
- OR
- \$500,000 Combined Single Limit for Bodily Injury and Property Damage each accident

- B. Must cover liability for "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability

3. **WORKERS COMPENSATION AND EMPLOYERS LIABILITY** - If required by Wisconsin State Statute or any Workers Compensation Statutes of a different state.
- A. Must carry coverage for Statutory Workers Compensation and Employers Liability limit of:
\$100,000 Each Accident
\$500,000 Disease Policy Limit
\$100,000 Disease - Each Employee

4. **BUILDER'S RISK/INSTALLATION FLOATER** - Will you have any property exposure? And would you wish to insure?

- A. City of Appleton will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by the contractor or are to be installed or erected by the contractor.

If coverage is desired for this exposure, the contractor may, at his own cost, procure insurance to cover same.

5. **ADDITIONAL PROVISIONS**

*** Additional Insured - On the General Liability Coverage, Comprehensive Automobile Coverage and Umbrella Coverage. City of Appleton, and its officers, council members, agents, employees, and authorized volunteers shall be Additional Insureds.**

*** Endorsement -**

The Additional Insured Policy endorsement must accompany the Certificate of Insurance.

*** Certificates of Insurance -**

A copy of the Certificate of Insurance must be on file with the City Clerk.

*** Notice -**

NOTE: City of Appleton requires 30 day written notice of cancellation, non-renewal or material change in the insurance coverage.

***The insurance coverage required must be provided by an insurance carrier with the "Best" rating of "A-VII" or better. All carriers shall be admitted carriers in the State of Wisconsin.**

EXHIBIT A

