



Leelanau County Government Center

Leelanau County Land Bank Authority (LC-LBA)

Website: <http://www.leelanau.gov/landbank.asp>

8527 E. Government Center Dr.
Suttons Bay MI 49682 231-256-9838

NOTICE OF MEETING

The Leelanau County Land Bank Authority (LC-LBA) will meet
On Tuesday September 19, 2023 at 9:00 am
at the
Leelanau County Government Center

DRAFT AGENDA

PLEASE TURN OFF ALL CELL PHONES

PLEDGE OF ALLEGIANCE

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES August 15, 2023 **pgs 2-7**

PUBLIC COMMENT

- **UNFINISHED BUSINESS** – Update on Quiet Title / Marek Rd property, and RFP for Oversight of Demolition on Northport Hospital
- **DISCUSSION/ ACTION ITEMS**
 1. Review Proposal for Purchase and Development of Property (4 parcels) RFP 2023-2007 **pgs 8-25**
 2. Approve Oversight of Blight Elimination Grant – Brewery Creek **pgs 26-31**
 3. Any Other Business

CLAIMS & ACCOUNTS

POST AUDIT

CORRESPONDENCE/COMMUNICATION ITEMS

PUBLIC COMMENT

MEMBER COMMENTS

CHAIRPERSON COMMENTS

ADJOURN

Members

John A. Gallagher III – Chair
Dan Heinz – Vice Chair
Trudy Galla -- Secretary
Rick Foster -- Treasurer
Deb Allen
Richard Ispording
Gwenne Allgaier

A regular meeting of the Leelanau County Land Bank Authority (LCLBA) was held on Tuesday, August 15, 2023 at the Leelanau County Government Center.

CALL TO ORDER

Meeting was called to order at 9:00 am by Chair Gallagher who led the Pledge of Allegiance.

ROLL CALL

Members Present: G. Allgaier, D. Allen, T. Galla, J. Gallagher, D. Heinz, R. Foster

Members Absent: R. Isphording
(prior notice)

Public Present: L. Mawby, T. Searles

Staff Present: G. Myer, Senior Planner

APPROVAL OF AGENDA

Gallagher added “Discussion of EDC” under “Discussion/Action Items”

Motion by Heinz, seconded by Allen, to approve the agenda as amended. Motion carried 6-0.

APPROVAL OF JULY 18, 2023 MINUTES

Motion by Heinz, seconded by Allen, to approve the minutes as presented. Motion carried 6-0.

PUBLIC COMMENT – None.

UNFINISHED BUSINESS – None.

DISCUSSION/ ACTION ITEMS

Grant Professional Service Discussion

Gallagher said we have two grants with a third awarded and they have no staff or administration to report or monitor these projects. He and Galla are the designated agents in some regard for these projects, however, he is looking to open the discussion on pursuing a professional service agreement with a consultant to provide them with the oversight and reporting needed to be compliant with the state Land Bank Grant Agreements for Round 1 and Round 2. Gallagher continued, saying Fishbeck is the grantee representing for Round 2, the Northport project, and Wade Trim is representing Round 1, the Elmwood Township project. Neither party has been solicited regarding these agreements for the LBA’s discussion.

Discussion ensued.

Heinz mentioned that the County Board has been discussing hiring an all-purpose person and questioned if this was similar. Allen said the county did submit a grant request for funds to be used to hire a grant writer. Initially it was not the intent to hire a staff person though, more of a

contracted position until they have a better understanding of how much usage the county has for a grant writer who can report and track them. They should know if they have been awarded the grant by the end of October. Allen continued, saying the other issue the County Board has been discussing is a facilities management person, which would also be a contracted person. There is no quote or plan for that at this time, there may be possible action by the end of this year or first of next year. Allen concluded by saying that it would be a good move for this body to make a recommendation for these things to the County Board.

Heinz said that after watching the required ZOOM video on demolition, he realized that they do not have the time or ability to do all of the things required. He always thought it was the developer's responsibility to handle these things. Gallagher commented on a prior demolition and said the developer wasn't capable of handling those things and it was frustrating. Gallagher said the LBA does have to be there in some capacity to make sure things are done correctly.

Allen questioned if they could utilize some of the grant funds to administer the grant. Galla said yes, 8% could be used to administer it. Allen said this could be part of a discussion tied in with the Board of Commissioners, letting them know that we need to expedite this process to get someone on board. Allen then questioned if it would be a conflict of interest if Fishbeck was managing the project and also providing the oversight needed. T. Searles said the LBA holds the contract for this plan, and the oversight is really on the subcontractors doing the abatement and the demolition. It's not really a conflict of interest because the LBA and the owners have the same best interest in mind. They both want best practices and they want work done that is protective in helping the environment. Searles concluded by saying this is a legitimate question the board should discuss and decide what they are comfortable with. With this grant period, they have a little over a year for this project to get done. This is a large project and anything that can be done to expedite the process would be helpful.

Gallagher asked Heinz if he see the LBA having a conflict of interest if they engage with Fishbeck on this? Heinz said they are not required to come up with a designated engineer to represent the LBA, so he thinks they could move around and hire a different firm to oversee the Northport project. There would not be a conflict of interest on the brewery parking lot either if Fishbeck handled that. Allen said Fishbeck has a division that handles asset management and she is currently talking with them about a potential proposal, so the county could have a contract to handle this.

Galla said the round 2 grant is for \$751,610.00 and the lien that would be placed on the Northport property would be \$730,610.00 leaving \$21,000.00 and she is not sure if this is contingency. Galla questioned who was going to oversee this. She was a little uncomfortable with the discussion of Fishbeck handling this because they do not have a proposal today or any actual administration costs. She would like more information before acting on this. Galla noted she had asked Gallagher to check with the state on a potential conflict with Fishbeck and the Northport project and asked Gallagher if he had heard anything. He had not.

Discussion on soliciting proposals ensued.

Foster said they should open the field to everyone, not just Fishbeck. Allgaier questioned if they

had the time to put out an RFP. Gallagher said the Brewery Creek project will be moving forward soon. Galla said that the county bids out anything over \$10,000. The oversight for the Brewery Creek project is not over that amount so they could possibly contract with Fishbeck. Galla said the oversight for the Northport project is over \$10,000. We have typically followed the Board's rules regarding bids.

Motion by Allen, seconded by Allgaier, to authorize Chairman Gallagher to coordinate with Fishbeck to provide oversight services for the administration of the project at Brewery Creek. Motion carried 6-0.

Motion by Gallagher, seconded by Allgaier, to move forward with an RFP for budgeted administration costs to be distributed next week, with proposals due back by the next board meeting.

Discussion ensued.

Galla stated that if they get the grant agreement into the RFP, then whoever responds can see what has to be done. We are also limited on the amount that can be used for oversight so some firms may not bid knowing there is a maximum that can be spent.

Foster said the RFP will need to tell them what needs to happen so we can evaluate the responses to the RFP. Gallagher said he could include the state's demolition presentation with the RFP. Heinz pointed out that on Page 16 of the agenda packet, it lists all of the things that will need to be done. The bidders should understand what is needed and including the pictures from the PowerPoint would also be helpful.

Motion on the table carried 6-0.

Approval of Round 2 Grant Document

Gallagher briefly reviewed the document.

Motion by Galla, seconded by Allgaier, for Chairman Gallagher to accept the Grant Agreement with the State Land Bank Authority in the amount of \$751,610.00 for the Northport Village project.

Discussion:

Heinz questioned why there was a \$21,000.00 difference. Galla thought it was either the contingency or the administration amount. The smaller amount listed is the amount the state said has to be a lien on the property and the property owners will have to sign the lien. Heinz then said the \$21,000.00 allocated for administration is just an allocation. The reality is that there could be overruns on the \$751,610.00 that cut into this. Galla said the grant amount is set and anything above that cost, the owner has to pay.

Motion on the table carried. 6-0.

Survey Update, and Blight Demolition Training

Gallagher said the Cherry Homes property has been surveyed and staked. The sewer testing came back suitable and it is ready to be sold. Heinz asked about the contract which expired with the prospective buyer who indicated he was still interested. Gallagher replied that he sent this new information to the real estate agent who has updated the listing. He anticipates that the prospective buyer will have to reach back out to them with a new offer. Galla said it has a survey and completed perk test on it which increases the value.

Gallagher moved on to the blight elimination ZOOM training which he attended along with Heinz and Galla. He said it was technical at times but full of good information. Heinz commented there is a lot of work to do and we are not competent enough to do it, especially with the legal liability.

Discussion of EDC

Gallagher said this was brought up to County Board Chairman Ty Wessell and was brought back to this board for more discussion. Allen explained that it was brought before the Board of Commissioners and is on the Board's agenda tonight for approval to move it forward. A letter of support was provided by this board and there was also a presentation by Traverse Connect showing how the EDC would be another tool to provide tax free financing for developers. Allen said there were questions as to where this becomes viable in terms of cost of a project. Ten million is the sweet spot and anything above that seems to be even better. There was a question of how many projects were anticipated in the county that would fall under this to justify creating an EDC. We do not currently have anything pending, but this information would be helpful for tonight's County Board meeting.

Allgaier said she had requested a meeting with the Peninsula Economic Foundation (LPEF) to understand this more completely and if there are any conflicts. She is open to any tool they can get to help with housing, but we need to fully understand it. Galla stated that when she talked to Jim Tishler from the State Land Bank Authority, he said that the Act states the LBA has virtually the same powers as an EDC. She wondered if there was any duplication if this is something the LBA has the power to do, but has never done. Galla asked who would staff the new EDC. When the non-profit housing group REACH started, they always talked about staffing being an issue. For a time, one of her employees helped establish REACH and provided staff services but that was temporary and REACH had difficulty with no staffing.

Allgaier questioned if the LBA could provide the same functions for what Peninsula Housing needs. Galla said the LBA can bond, but didn't know if there was an LBA in the state that operated like an EDC. Allgaier stated they need to understand this to know if it would be a duplication of efforts.

Mawby spoke from the public saying that Grand Traverse County chose an EDC because they had more flexibility to deal with businesses. He said it is still not clear to him. He supports this process of figuring out what is the best way to move forward.

Allen said Traverse Connect could be a consultant and manage these requests, so she is not sure there is a benefit or consideration for this. There is a model for the EDC, but to Galla's point, she is not sure and asked Galla to get some answers as soon as possible because if they are going to pull this from the County Boards agenda tonight so that they can have a follow-up discussion with the LPEF, then they need more clarity and answers. If they are talking about going in a different direction, she would like to ask Allgaier to pull this discussion from the County Board's agenda unless they can get some clarity today. She is not comfortable moving forward if this board has questions. Allgaier stated that she wasn't sure if the County Board was actually going to make a decision on this tonight. Galla questioned what the reason was to add this to the Land Bank agenda today – was it because the LBA gave a letter of support to the

County Board? Gallagher said it was his understanding that the County Board needed more information and he was asked to put it on the agenda. Allen stated that they needed to find out if it is even possible to do what they want to accomplish in terms of housing and financial resources through the LBA. Allen said they are obligated to let the County Board know that there are more discussions and that they will go back to them in September when they know more.

Mawby said it was his understanding that the LBA could do it, however, the “secret sauce” in this was Traverse Connect being the front end and doing the work. If Traverse Connect can do the work with the LBA then fine, but if they can only do it through the EDC, then that is the way to go. Heinz stated they have an existing but inactive EDC; therefore, members would not need to be appointed each year because it is still inactive. Would it be a stand-alone like the LBA or a subcommittee? Allen said the EDC was disbanded as far as she knows and the discussion point was that this could be run very simply in tandem with the LBA. Could this board also be appointed to the EDC board, for the sole purpose of approving these tax credits for developers since there would only be a couple meetings a year? From that standpoint, it’s not a cumbersome staff issue, it’s just a matter of process and making sure what is viable and makes the most sense. Gallagher said they will come back with more questions and answers.

Allgaier is open to paying Traverse Connect so that staff is not needed. The bottom line is that we want to make sure we get all the money and grants we possibly can.

CLAIMS & ACCOUNTS – None.

POST AUDIT

Motion by Heinz, seconded by Allgaier, to approve Post Audit in the amount of \$1,225.00. Motion carried 6-0.

CORRESPONDENCE/COMMUNICATION ITEMS

Expedited Quiet Title Proceeding and Foreclosure

Gallagher referenced a letter, a Notice of Motion and a Notice of Meeting in the agenda packet. This has been moved from the July 28th hearing and pushed into August because there was an issue with the firm representing them. The attorney left the firm and didn’t file the petition or showed up to court. Galla asked if this would take care of the issue and Gallagher said hopefully, this is the final step.

PUBLIC COMMENT

Mawby thanked members for their service.

MEMBER COMMENTS

Heinz asked about bidding on foreclosed properties at the Sheriff’s sale and excess proceeds. Gallagher said this is a treasurer problem, not a LBA issue. The treasurer foreclosed upon properties presented here for transfer were for the minimum bid so there were no surplus proceeds to be distributed. Heinz continued, saying they still have an open period for individuals

to bid on four properties that the LBA owns. He asked Gallagher if any offers have been received. Gallagher said two private individuals have inquired, Habitat for Humanity and Homestretch have also confirmed their interest.

CHAIRPERSON COMMENTS - None.

ADJOURNMENT

Meeting adjourned by consensus at 9:56 a.m.

DRAFT

Trudy Galla

From: Jon Stimson <jon@homestretchhousing.org>
Sent: Friday, September 8, 2023 2:31 PM
To: John Gallagher
Cc: Trudy Galla
Subject: LCAO-RFP-2023-2007
Attachments: RFP Submittal with Exhibit for 2023-007.pdf

Importance: High

Please see attached letter of proposal.

Thank you,

Jon

Jonathan Stimson

Executive Director
Homestretch Nonprofit Housing Corp.
400 Boardman Ave., Suite 10
Traverse City, MI 49684
O: 231-947-6001
C: 231-342-7014
www.homestretchhousing.org





Regional Developer of Affordable Housing

September 8, 2023

County of Leelanau
Treasurer's Office/Land Bank Office
8527 E. Government Drive, Suite 104
Suttons Bay, MI 49682

VIA EMAIL

RE: LCAO-RFP-2023-007

Dear Mr. Gallagher,

Homestretch Housing proposes to acquire the four parcels at eight thousand dollars (\$8,000.00) for a total amount of thirty-two thousand dollars (\$32,000.00).

The properties will be developed as single-family homes for *sale* to eligible applicants that have income not to exceed 100% Area Median Income by family size. A 15-year Deed Restriction will be recorded against each property that will distribute 50% of the equity appreciation back to the property and be utilized to determine the Formula Price at resale. See Exhibit A attached to this letter for reference of Deed Restriction to be utilized.

Fifty percent of the land purchase will be paid to the Land Bank Office upon escrow closing and the remainder paid to the Land Bank upon sale of the property to the homeowner.

Thank you in advance for considering the proposal outlined above. Homestretch looks forward to working with the Land Bank Authority should this proposal be accepted.

Sincerely,

Jonathan Stimson
Executive Director

Exhibit A

DECLARATION OF AFFORDABILITY RESTRICTIONS

This Declaration of Affordability Restrictions (hereinafter called the “**Declaration**”) is made as of _____, by HomeStretch Nonprofit Housing Corporation (herein after called the “**Community Organization**”).

The following is a recital of facts underlying this Declaration:

- A. The Community Organization is organized for public welfare purposes, including developing and preserving decent, affordable housing for low- and moderate-income people, combating community deterioration and promoting neighborhood stability, and creating homeownership opportunities for low and moderate income people, who otherwise would be denied such opportunities because of limited financial resources.
- B. The Community Organization owns certain residential property (hereinafter called the “**Property**”) located in the Depot Neighborhood Condominium in Grand Traverse, County Michigan and more particularly described in Exhibit A.
- C. The conditions and restrictions set forth in this Declaration are essential to the fulfillment of the purposes of the Community Organization by (a) preserving the Community Organization subsidy; (b) limiting the inflationary effect of any appreciation in the value of the Property; and (c) restricting resale of the Property to other Income-Qualified Families, and shall be binding on all buyers and owners and subsequent owners of the Property (herein after called individually and collectively the “**Owner**”).
- D. As shall be set forth in the Community Organization’s warranty deed conveying the Property to the initial Owner, **IF OWNER DOES NOT COMPLY WITH THE COVENANTS AND RESTRICTIONS IN THIS DECLARATION, THEN THE COMMUNITY ORGANIZATION WILL HAVE A RIGHT TO REPURCHASE THE PROPERTY AT THE PURCHASE PRICE** designated in the Warranty Deed or otherwise Enforce this Declaration as provided in paragraph 10.
- E. Each Owner shall acquire the Property subject to the special nature of the terms and conditions of the sale of the Property, including without limitation such terms and conditions as might affect the marketability or resale price of the Property.

NOW, THEREFORE, in consideration of the foregoing recitals, of the mutual promises of the parties, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **BINDING ON ALL OWNERS. ANY PERSON WHO TAKES TITLE TO, OR POSSESSION**

OF, OR ANY INTEREST IN, ANY PORTION OF THE PROPERTY, SHALL BE DEEMED TO HAVE TAKEN SUCH INTERESTS SUBJECT TO THIS DECLARATION (SPECIFICALLY INCLUDING THE RESTRICTIONS ON RESALE) AND TO HAVE ACCEPTED AND AGREED TO BE BOUND BY THIS DECLARATION. THE COVENANTS AND RESTRICTIONS IN THIS DECLARATION SHALL BE DEEMED TO BE COVENANTS RUNNING WITH THE PROPERTY AND SHALL BE BINDING ON THE OWNER AND ITS SUCCESSORS AND ASSIGNS.

2. Term. The term of this Declaration shall be **15 years**, commencing on the _____, and terminating on the _____. in the event the first purchaser or subsequent buyer does not hold title to the property for the entire 15 years then the term shall renew for each subsequent buyer and therefore begins upon the date that title is transferred, and each subsequent buyer is then subject to a new 15-year affordability Term.

3. Residential Use.

3.1 Residential Use Only. Owner shall use, and shall cause all occupants to use, the Property only for residential use as permitted by applicable zoning law.

3.2 Occupancy. Owner shall occupy the Property for at least nine (9) months of each calendar year unless otherwise agreed by the Community Organization. Occupancy by immediate family members or legal dependents of the Owner shall be deemed occupancy by the Owner. No more than one person other than immediate family members (children, parents and siblings) or legal dependents of the Owner may occupy the Property. Storage of personal property does not constitute occupancy.

4. Sale or Other Transfer of the Property.

4.1 Income-Qualified Persons. "**Income-Qualified Persons**" are persons whose household income does not exceed eighty per cent (80%) of the area median gross income, adjusted for household size. Household income shall be determined in a manner consistent with determinations of lower income households and area median gross income under Section 8 of the U.S. Housing Act of 1937, as amended (the "**Section 8 Program**"). If the Section 8 Program is terminated, determinations under a comparable Federal or State of Michigan program identified by the Community Organization shall be used; and if the Community Organization does not designate a comparable program, then determinations shall continue to be made under the Section 8 Program regulations as in effect immediately before termination.

4.2 Transfers to Income-Qualified Persons. Owner may sell, transfer, or otherwise dispose of its interest in the Property only to Income-Qualified Persons, as defined above, who acknowledge that they are bound by this Declaration. Any purported sale, transfer or other disposition to any other person or entity done without following the procedures set forth below or in violation of such price limitations (1) shall be voidable at the option of the Community Organization, and (2) shall constitute a default that gives rise to the Community Organization's option to purchase the Property for the price set forth in the Warranty Deed.

4.3 Transfer to Owner's Heirs. Upon receipt of notice from the personal representative of the decedent's estate given within ninety (90) days of the death of Owner (or last surviving

Co-Owner), the Community Organization shall consent to a transfer of the Property, subject to the terms of this Declaration, to one or more of the following possible heirs of Owner:

- (a) the spouse of Owner; or
- (b) the child or children of Owner.

Any other person or persons who are heirs, legatees or devisees of Owner, within a period of ninety (90) days of the death of Owner (or last surviving Co-Owner), must prove to the Community Organization's satisfaction that they meet the definition of Income-Qualified Persons, and if any such person is unable to do so, then such person shall not be entitled to own the Property.

4.4 Intent to Sell Notice. If Owner contemplates a sale, transfer or disposition of the Property, the Owner shall notify the Community Organization in writing of the proposed transfer substantially in the form of Exhibit B (the "*Intent to Sell Notice*").

4.5 Appraisal. No later than ten (10) days after Community Organization's receipt of selling Owner's Intent to Sell Notice, Community Organization shall order at selling Owner's expense, an appraisal (the "**Appraisal**") of the Property by an independent, licensed appraiser. The Appraisal shall be by analysis and comparison of comparable properties disregarding the restrictions of this Declaration. Copies of the Appraisal are to be provided to both Community Organization and Owner.

4.6 Community Organization's Purchase Option. In order to further the purpose of preserving the affordability of the Property for succeeding Income-Qualified Persons while taking fair account of the investment by the Owner, upon receipt of the Intent to Sell Notice, the Community Organization shall have the option to purchase the Property ("**Purchase Option**") at the Maximum Purchase Price (the "**MPP**" or "**Maximum Purchase Price**") calculated as set forth in Section 4.9 below. The Community Organization may exercise its Purchase Option by notifying Owner, in writing ("Notice of Exercise") within 45 days of Community Organization's receipt of the Appraisal, or the Purchase Option shall expire. The Community Organization may assign its Purchase Option. Unless extended by mutual agreement of the Community Organization and Owner, the purchase must be completed within 90 days of the Notice of Exercise, or Owner may sell the Property as provided in Section 4.7 below.

4.7 Owner Sale to Income-Qualified Person. If Community Organization or its assignee does not exercise its Purchase Option or fails to complete the purchase, Owner may sell the Property, subject to this Declaration, to any Income-Qualified Person for not more than the Maximum Purchase Price.

4.8 Power of Attorney: If Community Organization or its assignee does not exercise its Purchase Option or fails to complete the purchase and Owner:

- (a) Is not then residing in the Property; and
- (b) Has made a continuous, *bona fide* effort to sell the Property for a period of one (1) year after the date of the Intent to Sell Notice, Owner hereby irrevocably appoints

the Community Organization as Owner's attorney in fact, as of the date that is one year after the Intent to Sell Notice, to solicit a purchaser, negotiate a price furthering the goals of this Declaration, sell the Property, and distribute proceeds of sale, minus the Community Organization's costs of sale as follows:

- i. First to the Permitted Mortgagee(s);
- ii. Second, to Community Organization to the extent of any amounts owed by Owner;
- iii. Third, to the Owner in the amount of the Maximum Purchase Price less the amounts paid pursuant to Subparagraphs (i) and (ii) above; and,
- iv. Fourth, the balance to the Community Organization.

(c) This power of attorney creates an agency coupled with an interest.

4.9 Maximum Purchase Price. In no event may the Owner sell the Property for a price exceeding the Maximum Purchase Price. The Maximum Purchase Price shall be equal to the lesser of (1) the Current Appraised Value of the Property (as determined by the Appraisal conducted in accordance with Section 4.5 above) minus any Excessive Damage Charge (as determined below) or (2) the Formula Price described in Section 4.10.

An "Excessive Damage Charge" is a decrease in the appraised value of the Property equal to the cost required to remediate any excessive damage or neglect. Excessive damage or neglect is defined as damages beyond normal wear and tear. Such excessive damage may be described as, but not necessarily be limited to, holes in walls; large holes or tears in floor coverings; severely cracked, dented or scratched cabinets and fixtures; damaged, inoperable, or neglected capital systems (including but not limited to plumbing, heating and cooling, roofing, and other similar major structural components or necessary systems of the property); severely degenerated interior or exterior painted surfaces; damage resulting from neglected capital systems; or missing essential household fixtures that were originally a part of the edifice. Determination of excessive damage value will be at the sole discretion of the Community Organization and/or its agents. Owner may appeal Excessive Damage Charge determinations to the Community Organization's Board of Directors within seven (7) days of the assessment.

4.10 Formula Price. The Formula Price shall be calculated as follows:

- (a) Owner's Purchase Price: The Owner and the Community Organization agree on the Owner's Purchase Price for the Property as of the commencement of this Declaration.
- (b) Initial Appraised Value: The Owner and the Community Organization agree that, within 30 days of the date the Owner purchased the Property, an appraisal was conducted by an appraiser selected by Community Organization to determine the Property's market valuation by analysis and comparison of comparable properties, disregarding the restrictions of this Declaration ("Initial Appraised Value").
- (c) Current Appraised Value: The Owner and the Community Organization agree that the Current Appraised Value of the Property at the time of resale of the Property shall be the market valuation determined by the Appraisal conducted in accordance with Section 4.5 above minus an Excessive Damage Charge (as defined in Section 4.9 above) if any.

- (d) Calculation of Appreciation. For the purpose of this Section, Appreciation shall be determined by subtracting the Initial Appraised Value from the Current Appraised Value. If this calculation returns a positive number, the result shall be the "Appreciation." If this calculation returns a negative number, the Appreciation shall be zero (\$0).
- (e) Owner's Share of Appreciation. For the purpose of determining the Formula Price, the Owner's Share of the Appreciation shall be fifty percent (50%) of the Appreciation minus any Excessive Damage Charge (as defined in Section 4.9 above).
- (f) Calculation of Formula Price. The Formula Price is determined by adding Owner's Share of Appreciation to Owner's Purchase Price.
- (g) Nothing in this Declaration represents or guarantees that the Property will be resold at an amount equal to the sale price limit defined above. Depending upon conditions affecting the real estate market, the Property may be resold for less than the sale price limit.

5. Administration Fee.

In consideration of the covenants contained herein and in consideration of the Community Organization's initial sale of the Property to the Owner for a below-market price, all subsequent Owners each shall pay an Administration Fee to the Community Organization. The Owners shall receive certain services and benefits that include but are not limited to receipt of the Community Organization's newsletters and annual reports and technical assistance in meeting the obligations of this Declaration. The Owner's Administration Fee shall be two thousand five hundred dollars (\$2,500.00) and shall be payable to the Community Organization at the address specified in this Declaration at the time of the initial and subsequent Owner's purchase of the Property.

6. Financing.

- (a) Owner may grant a security interest in the Property through a mortgage, deed of trust or other financing security document upon the Property only with the advance written consent of the Community Organization. This includes initial mortgages or deeds of trust to secure financing for the purchase of the unit. Not less than thirty (30) days prior to the date on which the Owner, or a prospective Owner who has contracted to purchase the Unit, requests the Community Organization's consent to a mortgage to be effective, Owner or prospective Owner shall furnish to the Community Organization copies of every document to be executed in connection with the transaction represented by such mortgage. The Community Organization may choose to consent to any mortgage, and in so doing shall designate such mortgage as a "Permitted Mortgage." However, the Community Organization is required to consent to a mortgage if (a) at the time of closing such mortgage, no default in this Declaration is then outstanding; and (b) the mortgage so submitted is a Standard Permitted Mortgage as defined in the attached Exhibit C, Permitted Mortgages. Owner shall pay to the Community Organization at the Community Organization's option, as additional Membership Fee, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Community Organization in connection with any Permitted Mortgage.
- (b) Any holder of a Permitted Mortgage ("Permitted Mortgagee") shall without requirement of

consent by the Community Organization have the rights and duties identified and defined in the attached Exhibit C, Permitted Mortgages.

- (c) In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of this Declaration, the provisions of this Declaration shall thereupon be of no further force or effect as to only so much of the Security so foreclosed upon or transferred, provided that the provisions of paragraph (d) of this Section will remain operative for the time periods set forth therein and will then be of no further force or effect with respect to any future transfer of the Unit.
- (d) Permitted Mortgagee shall, at least 60 days prior to any foreclosure sale or other transfer in lieu of foreclosure, notify the Community Organization in writing of the intent to foreclose. In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure, upon acquisition of title to the Property by the Permitted Mortgagee, the Community Organization shall have an option to purchase the Property from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage; provided, however, that the Community Organization gives written notice to the Permitted Mortgagee of the Community Organization's intent to purchase the Property within thirty (30) days following the expiration of the redemption period of the foreclosed mortgage or within thirty (30) days of delivery of the deed in lieu of foreclosure. The Community Organization shall complete the purchase of the Property within sixty (60) days of having given written notice of its intent to purchase. If the Community Organization does not complete the purchase, the Permitted Mortgagee shall be free to sell the Property to another person, including without limitation, a non-income eligible person or entity.
- (e) The parties recognize that it would be contrary to the fundamental concept of this Declaration and an incentive to abuse Owner's authorization to encumber the Property with a Permitted Mortgage if Owner could realize more than the Maximum Purchase Price limits as the result of any foreclosure of any mortgage. Accordingly, Owner hereby irrevocably assigns to the Community Organization any and all net proceeds of sale of Owner's Property after payment of costs of foreclosure and satisfaction of the lien of any Permitted Mortgagee and authorizes and instructs the Permitted Mortgagee or any party conducting any sale to pay said amounts directly to the Community Organization.
- (f) Owner shall be prohibited from refinancing any Permitted Mortgage without written consent of the Community Organization.
- (g) Any amendments to this Declaration shall be subject to the written approval of Permitted Mortgagee(s), which approval shall not be unreasonably withheld or delayed.

7. Community Organization's Right to Acquire Owner's Interest.

- (a) The Owner agrees that he or she will give immediate notice to the Community Organization upon the first to occur of: (i) the date when Owner becomes twenty-one (21) days late in making a payment on any indebtedness encumbering the Property required to avoid foreclosure, or (ii) the date any notice of delinquency is provided to the Owner.

- (b) At any time within sixty (60) days after receipt of any such notice, or upon receipt of a notice of delinquency from the holder of any mortgage, or thirty (30) days after providing Owner with written notice of default ("Notice of Default") of the terms of this Declaration, the Community Organization may, but shall not be obligated to, proceed to make any payment required in order to avoid foreclosure or to redeem the Property after foreclosure. Upon making any such payment, the Community Organization shall succeed to all rights of the Owner and shall assume all of the Owner's rights and obligations, subject to the terms of this Declaration. In such event the Owner shall forthwith quit the Property and relinquish possession thereof to the Community Organization.

8. Alterations.

8.1 Construction and Alterations. Any post-purchase construction on the Property requiring issuance of a building permit, including addition of a new building, expansion of an existing building, or the alteration of existing Property, is subject to the following conditions:

- (a) Owner shall pay all costs;
- (b) All construction shall be performed in a workmanlike manner and shall comply with all applicable laws and regulations;
- (c) All construction shall be consistent with the permitted uses set forth in Section 3.1;
- (d) At least 30 days prior to commencing construction, Owner shall furnish to Community Organization a copy of any plans, building permits and approval of any design review authority; and
- (e) No construction shall commence without the prior written consent of Community Organization

8.2 Community Organization will not give consent to any improvements that exceed the original footprint or in any way lessens the long-term affordability of the home.

8.3 Prohibition of Liens. Owner shall not permit a lien of any type to attach to the title of the Property without the prior written consent of the Community Organization.

9. Liability, Insurance, Damage and Destruction, Eminent Domain.

9.1 Owner's Liability and Indemnification of Community Organization. The Owner has sole responsibility and liability to all persons and authorities related to Owner's possession, occupancy, and use of the Property and shall defend, indemnify, and hold the Community Organization harmless from all liability and claims of liability for injury or damage to person or property from any cause on or about the Property. Owner waives all claims against the Community Organization for such injury or damage. In the event the Community Organization is required to pay any sum that is Owner's responsibility or liability, Owner shall reimburse the Community Organization for such payment and all expenses caused thereby, including attorneys' fees and costs.

9.2 Casualty Insurance. Owner shall, at Owner's sole expense, keep all Property continuously insured against loss or damage by fire and extended coverage hazards for the full replacement value of such Property.

9.3 Liability Insurance. Owner shall, at Owner's sole expense, maintain continuously in effect liability insurance covering the Property in the amounts of not less than one hundred thousand dollars (\$100,000) for injury to or death of any one person; three hundred thousand dollars (\$300,000) for injury to or death of any number of persons in one occurrence; and one hundred thousand dollars (\$100,000) for property damage. Upon 30 days' notice to Owner, the dollar amounts of this coverage shall be adjusted upon the Community Organization's demand given not more often than annually. Such insurance shall specifically insure Owner against all liability assumed under this Declaration, as well as all liability imposed by law, and shall also insure the Community Organization as an additional insured so as to create the same liability on the part of insurer as though separate policies had been written for Community Organization and Owner.

9.4 Copies and Endorsements. The Owner shall provide the Community Organization with copies of all policies and renewals of policies. All policies shall also contain endorsements providing that they shall not be cancelled, reduced in amount or coverage or otherwise modified by the carrier without thirty (30) days' prior written notice to Community Organization. The Community Organization shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance.

9.5 Damage and Destruction. Except as provided below, in the event of fire or other damage to the Property, Owner shall take all steps necessary to ensure the repair of such damage and the restoration of the Property to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Owner shall also promptly take all steps necessary to ensure that the Property is safe and that the damaged does not constitute a danger to persons or property.

9.6 Election Not to Rebuild. If Owner, using reasonable judgment and relying on professional estimates, determines that either:

(a) Full repair and restoration of the Property is physically impossible, or

(b) Insurance proceeds will pay for less than eighty percent (80%) of the cost of repair and restoration (provided Owner has fulfilled all the insurance requirements set forth in Section 9.2 above)

then Owner may elect not to repair or restore the Property, in which case all insurance proceeds payable to Owner on account of such damage shall be paid as provided in Section 9.7 below.

9.7 Allocation of Insurance Proceeds. The insurance proceeds shall be paid first to cover any expenses of collecting the proceeds. Remaining proceeds shall be paid to the Owner (or Owner's Permitted Mortgagee to the extent required by the Permitted Mortgage) up to the Maximum Purchase Price (as of immediately prior to the damage) calculated according to the provisions of Section 4 above. The balance of such proceeds, if any, shall be paid to the Community Organization.

9.8 Eminent Domain and Public Dedications. If the Property is taken by reason of eminent domain or other action of public authority prior to the expiration of this Declaration and:

- (a) Complete Taking: The Property is taken either in its entirety or to such extent that the Property is lost or damaged beyond repair, the Declaration shall terminate as of the date Owner is required to give up possession of the Property, and the entire amount of any monetary compensation shall be allocated in the way described in Section 9.7 above for insurance proceeds; or
- (b) Partial Taking: The taking of a portion of the Property results in damage to the Property only to such an extent that the Property can reasonably be restored to a residential use consistent with this Declaration, Owner shall utilize such of the monetary compensation as the Community Organization shall determine for such restoration. Any balance remaining after, or in the absence of such allocation, shall be allocated as provided for in Subsection 9.8.a.
- (c) Proceedings: Any and all proceedings brought by a party in connection with any damages as a result of any taking referred to in this Section shall be conducted at the sole expense of such party. If any provision of law requires that such proceedings be brought by or in the name of the Owner, the Owner shall join in such proceedings or permit the same to be brought in the Owner's name. Each party agrees to do all acts and to execute all documents that may be required to enable the other to maintain such proceedings. If the party required to join in the proceedings incurs any cost or expense in doing so, such party shall be entitled to reasonable reimbursement and this entitlement shall constitute a first charge against any monetary compensation for the taking.

10. Enforcement

- (a) If the Community Organization shall determine that Owner, or any other person or entity subject to this Declaration has violated any of the covenants contained in this Declaration, the Community Organization, or its successors, may enforce this Declaration by proceeding at law, or in equity, against the persons or entities violating or attempting to violate any of the covenants contained in this Declaration, either to restrain any violation hereof, seek specific performance, or to recover damages, including costs and attorney fees.
- (b) Without limitation on any other rights or remedies of the Community Organization, its successors and assigns, the Community Organization shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:
 - (1) specific performance of the provisions of this Declaration,
 - (2) upon violation by Owner of any of the covenants contained herein, Community Organization shall have the option to purchase the Property at the purchase price designated in the warranty deed transferring the Property to Owner; and
 - (2) voiding of any rental arrangement or mortgage that violates this Declaration;
- (c) If any action is brought to enforce this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.

(d) The Owner hereby grants to the Community Organization and its duly authorized representatives the right to enter upon the Property upon reasonable notice for the purpose of enforcing the restrictions contained in this Declaration and to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Declaration.

11. General Provisions

11.1 Notices. All notices and other communications which are required under this Declaration shall be in writing and will be deemed to have been duly given (a) upon receipt if express mail, return receipt requested and postage prepaid, or (b) the following business day if sent by recognized overnight courier, with proof of delivery requested and charges prepaid, to:

HomeStretch Nonprofit Housing Corporation
400 Boardman Ave., Suite 10
Traverse City, Michigan 49684

or to such other address as the Community Organization may specify by written notice to an Owner.

11.2 No Waiver. The Community Organization's failure to exercise any remedy available to it, or its failure to take action with respect to, any breach of the Declaration shall not be deemed to be a waiver of that or any subsequent breach of the same or of any other provision. The Community Organization may grant waivers in the terms of this Declaration, but any such waiver must be in writing and signed by the Community Organization before being effective.

11.3 Severability and Duration. If any provision of this Declaration, or any portion thereof, is invalid or unenforceable under any law, such provision, or portion thereof, shall be deemed reformed or deleted, but only to the extent necessary to comply with such law, and the remaining provisions of this Declaration shall remain in full force and effect and enforced to the fullest extent permitted by law. The Community Organization's intention is that its rights and options under this Declaration shall continue in full force and effect. In the event any such right or option shall be construed to be subject to any rule of law limiting its duration, the time period for the exercise of such right or option shall be construed to expire within fifteen (15) years after its creation.

11.4 Miscellaneous.

(a) This Declaration is binding upon all Owners and inures to the benefit of the Community Organization and its successors and assigns in accordance with the provisions of this Declaration. This Declaration confers no benefits, rights, or remedies on, and may not be enforced by, any person other than the Community Organization, its successors or assigns, except a person that is designated in writing as a third-party beneficiary by the Community Organization. The provisions of this Declaration and the rights of any designated third-party beneficiary affected may be amended, waived, or terminated without the consent of or notice to any such third-party beneficiary. Any third party that is specifically designated as a beneficiary is subject to all limitations and conditions set forth herein.

- (b) This Declaration may be amended or modified only in writing executed by the Community Organization. Any such changes shall be binding on any Owner that consents or that acquires an interest in the Property after such change.
- (c) This Declaration shall be interpreted in accordance with and governed by the laws of the State of Michigan.
- (d) Whenever a pronoun is used in this Declaration, it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.
- (e) As part of any enforcement action on the part of The Community Organization, the Owner shall pay all court costs and reasonable attorney's fees incurred by The Community Organization in connection with enforcement of this Declaration.

(The rest of this page intentionally left blank.)

IN WITNESS WHEREOF, the undersigned has executed and delivered this Declaration as of the date first set forth above.

COMMUNITY ORGANIZATION: HomeStretch Nonprofit Housing Corporation

By: _____
Jonathan Stimson

Its: Executive Director

State of Michigan)
) SS:
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____ 20____, by Jonathan Stimson, Executive Director, of HomeStretch Nonprofit Housing Corporation, a Michigan nonprofit corporation, on behalf of the corporation.

Notary Public; County of _____,
State of Michigan
Acting in the County of _____
My Commission Expires: _____

Reviewed by and when recorded return to:
Homestretch Nonprofit Housing Corp.
400 Boardman Ave. Suite 10
Traverse City, Michigan 49684

- Exhibits:
- A Legal Description
 - B Intent to Sell Notice
 - C Permitted Mortgages

Exhibit A

LEGAL DESCRIPTION

Exhibit B

INTENT TO SELL NOTICE

I/we, _____ *{fill in your name}*, as Owner, as of today's date, hereby give notice to HomeStretch Nonprofit Housing Corporation, as Community Organization, of my intent to sell the Property located at _____ *{fill in property address}*.

Further, as of this date I/we _____ *{have/have not}* a prospective buyer. If I/we have not identified a prospective buyer, I/we am not making a recommendation in this regard.

If I/we have identified a potential buyer, that persons name(s) is/are _____ *{fill in proposed buyer's name}*.

Signed: _____

Date: _____

Exhibit C

PERMITTED MORTGAGES

The provisions set forth in this Exhibit shall be understood to be provisions of Section 6 of this Declaration to which the Exhibit is attached and in which the Exhibit is referenced. All terminology used in this Exhibit shall have the meaning assigned to it in the Declaration.

A) STANDARD PERMITTED MORTGAGE: A "Standard Permitted Mortgage," as identified in Section 6(a) of the Declaration to which this Exhibit is attached shall be a mortgage or a deed of trust securing a promissory note that meets the following requirements.

- 1) Such Mortgage shall run in favor of either (a) a so-called "institutional lender" such as, but not limited to, a federal, state, or local housing finance agency, a federally insured bank (including federally insured savings and loan associations or a federally insured credit union), an insurance company, a pension and/or profit-sharing fund or trust, or any combination or affiliate of the foregoing, the policies and procedures of which institutional lender or an affiliate thereof are subject to direct governmental supervision, or (b) a "community development financial institution" as certified by the U.S. Department of the Treasury, or similar non-profit lender to housing projects for low and moderate income persons.
- 2) Such Mortgage shall be a first lien on the Property (the "Security").
- 3) Such Mortgage and related documentation shall provide, among other things, that in the event of a default in any of the mortgagor's obligations thereunder, the holder of such Mortgage shall notify the Community Organization of such fact and the Community Organization shall have the right (but shall not have the obligation) within 120 days after its receipt of such notice, to cure such default in the mortgagor's name and on mortgagor's behalf, provided that current payments due the holder during such 120-day period (or such lesser time period as may have been required to cure such default) are made to the holder, and shall further provide that said holder shall not have the right, unless such default shall not have been cured within such time, to accelerate the note secured by such Mortgage or to commence to foreclose under the Mortgage on account of such default.
- 4) Such Mortgage and related documentation shall not contain any provisions other than provisions generally contained in mortgages used for similar transactions in the State of Michigan by institutional mortgagees or in Fannie Mae or Freddie Mac uniform instruments.
- 5) Such Mortgage and related documentation shall not contain any provisions which could be construed as rendering the Community Organization or any subsequent holder of the Community Organization's interest in and to this Declaration, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.
- 6) It is the intention of the parties hereto that the Community Organization's consent to such Mortgage shall be without any liability on the part of, or recourse to the Community Organization for any deficiency judgment.

7) Such Mortgage and related documentation shall provide that in the event any part of the Security is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the holder of the Mortgage.

B) RIGHTS OF PERMITTED MORTGAGEE: The rights of a holder of a Permitted Mortgage (Permitted Mortgagee) as referenced under Section 6 of the Declaration to which this Exhibit is attached shall be as set forth below.

1) A Permitted Mortgagee shall without requirement of consent by the Community Organization have the right, but not the obligation, to:

a) cure any default under this Declaration, and perform any obligation required under this Declaration, such cure or performance by a Permitted Mortgagee being effective as if it had been undertaken and performed by Owner;

b) acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Owner by this Declaration or otherwise by law, subject to the provisions, if any, in said Permitted Mortgage, which may limit any exercise of any such right, remedy or privilege; and

c) rely upon and enforce any provisions of the Declaration to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2) In the event that the Community Organization sends a notice of default under the Declaration to Owner, the Community Organization shall also send a notice of Owner's default to Permitted Mortgagee. Such notice shall be given in the manner set forth in Section 11.1 of the Declaration to the Permitted Mortgagee at the address that has been given by the Permitted Mortgagee to the Community Organization by a written notice to the Community Organization sent in the manner set forth in said Section 11.1 of the Declaration.

Trudy Galla

From: Searles, Therese <tsearles@fishbeck.com>
Sent: Thursday, August 31, 2023 1:28 PM
To: John Gallagher
Cc: Trudy Galla; Wenzlick, Susan; Hawkins, Jeff; Senkewitz, Shelbey
Subject: Proposal _Grant and Demolition Oversight_Brewery Creek
Attachments: PRO_LCLBA_Demo Oversight_2023_0831.pdf

Good Afternoon John,

Attached please find the requested proposal for Fishbeck to complete Blight Elimination Grant and demolition oversight services for the Leelanau County Land Bank Authority (LCLBA) for the Brewery Creek Parking Lot Improvements project. Please note, we have included proposed activities to be completed at the direction of the LCLBA and, based on available grant administration budget, we anticipate one on site visit for demolition oversight. Fishbeck appreciates the opportunity to be of service to the LCLBA. Please do not hesitate to contact me with any questions or concerns. I will be in attendance for the September 19th LCLBA regular meeting should the Board have any questions for me at that time.

Sincerely,

Therese Searles | Senior Geologist

Fishbeck | w: 269.544.6971 | c: 269.377.3101 | [Fishbeck.com](https://www.fishbeck.com)

Envirologic is now a part of Fishbeck

August 31, 2023

John A. Gallagher III
Leelanau County Treasurer
Land Bank Chair
8527 E. Government Center Drive, Suite 104
Suttons Bay, MI 49682

Proposal for Blight Elimination Demolition Oversight

Fishbeck is pleased to furnish a proposal to help the Leelanau County Land Bank Authority (LCLBA) with demolition and blight elimination oversight for your Round One State Land Bank Authority Blight Elimination Grant. Our proposed scope of services and associated fee are outlined below.

Understanding of the Project

The LCLBA was awarded \$57,000 by the State Land Bank Authority (SLBA) for the Brewery Creek project. You have requested a scope of work and cost estimate for assistance with demolition oversight and grant reporting services. We believe the grant's administration budget will pay for all or most of the scope of services as described below subject to the performance of the demolition contractor and requested changes by the LCLBA.

Scope of Service

Fishbeck will provide demolition oversight for the LCLBA's Blight Elimination Grant Brewery Creek Parking Lot Improvements project. This project includes removal of a deteriorated building foundation, the associated building utility leads, accessory concrete structures, 650 lineal feet of concrete curb and gutter, 470 square yards of asphalt pavement, six utility poles, and eight signs at the site commonly known as South Fisherman Cove, Traverse City, Michigan (PID 004-033-042-00).

It is Fishbeck's understanding that Leelanau County, or its representatives, are handling the preparation of the demolition specifications, Request for Proposal (RFP), and contractor selection process. It is Fishbeck's further understanding that the contractor will complete the requested demolition scope of services as defined in the demolition specifications/RFP, in accordance with all applicable rules and regulations, including photo documenting and mapping utility disconnections. Fishbeck's scope of work may include, at your request:

- Coordinating with demolition contractor after contractor is selected by the county.
- Assisting coordination with property owners for utility disconnections.
- Ensuring appropriate state and local demolition permits are secured and notifications are submitted.
- Providing periodic onsite demolition oversight (current budget anticipates one on site visit).
- Providing communication to ensure compliance with SLBA demolition procedures.
- Compiling demolition invoices and support materials and preparing a request for reimbursement for the SLBA.

Round 1 projects must be completed by December 31, 2023.

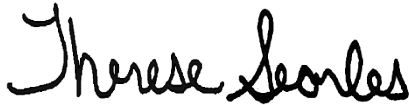
Cost and Authorization

The LCLBA will be charged for time and materials according to Fishbeck's standard billing rates, not to exceed the total/grant admin budget of \$3,882 for grant administration pursuant to the LCLBA's contract with the SLBA. If additional services such as multiple site visits are deemed necessary, costs may exceed the existing grant admin budget. Fishbeck will not incur additional costs without prior authorization from the LCLBA.

Attached is our Professional Services Agreement. If you concur with our scope of services, please sign in the space provided and return the executed contract to the attention of Shelbey Senkewitz (ssenkewitz@fishbeck.com). This proposal is made subject to the attached Terms and Conditions for Professional Services. Invoices will be submitted every four weeks and payment is due upon receipt.

Thank you for this opportunity. We look forward to working with you on this project. If you have any questions or require additional information, please contact me at 269.377.3101 or tsearles@fishbeck.com.

Sincerely,



Therese Searles
Senior Geologist



Susan Wenzlick
Senior Brownfield Specialist

Attachments

By email

Copy: Jeff Hawkins – Fishbeck

Professional Services Agreement

PROJECT NAME Blight Elimination Demolition Oversight
FISHBECK CONTACT Therese Searles
CLIENT Leelanau County Land Bank Authority
CLIENT CONTACT John A. Gallagher III
ADDRESS 8527 E. Government Center Drive, Suite 104, Suttons Bay, MI 49682

Client hereby requests and authorizes Fishbeck to perform the following:

SCOPE OF SERVICES: Scope of services as described in our August 31, 2023, proposal.

AGREEMENT. The Agreement consists of this page and the documents that are checked:

- Terms and Conditions for Professional Services, attached.
- Proposal dated August 31, 2023
- Other:

METHOD OF COMPENSATION:

- Lump Sum for Defined Scope of Services
- Hourly Billing Rates plus Reimbursable Expenses
- Other:

Budget for Above Scope of Services: Not to exceed the total/grant admin budget of Three Thousand Eight Hundred Eighty-Two Dollars (\$3,882).

ADDITIONAL PROVISIONS (IF ANY): N/A

APPROVED FOR:
Leelanau County Land Bank Authority

ACCEPTED FOR:
Fishbeck



BY: _____
TITLE: _____
DATE: _____

BY: _____
TITLE: Vice President
DATE: August 31, 2023

1. **METHOD OF AUTHORIZATION.** Client may authorize Fishbeck to proceed with work either by signing a Professional Services Agreement or by issuance of an acknowledgment, confirmation, purchase order, or other communication. Regardless of the method used, these Terms and Conditions shall prevail as the basis of Client’s authorization to Fishbeck. Any Client document or communication in addition to or in conflict with these Terms and Conditions is rejected.
2. **CLIENT RESPONSIBILITIES.** Client shall provide all criteria and full information as to requirements for the Project and designate in writing a person with authority to act on Client’s behalf on all matters concerning the Project. If Fishbeck’s services under this Agreement do not include full-time construction observation or review of Contractor’s performance, Client shall assume responsibility for interpretation of contract documents and for construction observation, and shall waive all claims against Fishbeck that may be in any way connected thereto.
3. **HOURLY BILLING RATES.** Unless stipulated otherwise, Client shall compensate Fishbeck at hourly billing rates in effect when services are provided by Fishbeck employees of various classifications.
4. **REIMBURSABLE EXPENSES.** Those costs incurred on or directly for Client’s Project. Reimbursement shall be at Fishbeck’s current rate for mileage for service vehicles and automobiles, special equipment, and copying, printing, and binding. Reimbursement for commercial transportation, meals, lodging, special fees, licenses, permits, insurances, etc., and outside technical or professional services shall be on the basis of actual charges plus 10 percent.
5. **OPINIONS OF COST.** Any opinions of probable construction cost and/or total project cost provided by Fishbeck will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures, Fishbeck cannot warrant that bids or ultimate construction or total project costs will not vary from such estimates.
6. **PROFESSIONAL STANDARDS; WARRANTY.** The standard of care for services performed or furnished by Fishbeck will be the care and skill ordinarily used by members of Fishbeck’s profession practicing under similar circumstances at the same time and in the same locality. Fishbeck makes no warranties, express or implied, under this Agreement or otherwise, in connection with Fishbeck’s services.
7. **TERMINATION.** Either Client or Fishbeck may terminate this Agreement by giving ten days’ written notice to the other party. In such event, Client shall pay Fishbeck in full for all work previously authorized and performed prior to the effective date of termination, plus (at the discretion of Fishbeck) a termination charge to cover finalization work necessary to bring ongoing work to a logical conclusion. Such charge shall not exceed 30 percent of all charges previously incurred. Upon receipt of such payment, Fishbeck will return to Client all documents and information which are the property of Client.
8. **SUBCONTRACTORS.** Fishbeck may engage subcontractors on behalf of Client to perform any portion of the services to be provided by Fishbeck hereunder.
9. **PAYMENT TO FISHBECK.** Invoices will be issued every four weeks, payable upon receipt, unless otherwise agreed. Interest of 1 percent per four-week period will be payable on all amounts not paid within 28 days from date of invoice, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Any attorney’s fees or other costs incurred in collecting any delinquent amount shall be paid by Client.

Client agrees to pay on a current basis, in addition to any proposal or contract fee understandings, all taxes including, but not limited to, sales taxes on services or related expenses which may be imposed on Fishbeck by any governmental entity.

If Client directs Fishbeck to invoice another, Fishbeck will do so, but Client agrees to be ultimately responsible for Fishbeck’s compensation until Client provides Fishbeck with that third party’s written acceptance of all terms of this Agreement and until Fishbeck agrees to the substitution.

In addition to any other remedies Fishbeck may have, Fishbeck shall have the absolute right to cease performing any basic or additional services in the event payment has not been made on a current basis.

10. **HAZARDOUS WASTE.** Fishbeck has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at any site, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposure to such substances or conditions. Fishbeck shall not be responsible for any alleged contamination, whether such contamination occurred in the past, is occurring presently, or will occur in the future, and the performance of services hereunder does not imply risk-sharing on the part of Fishbeck.
11. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, Fishbeck’s total liability to Client for any cause or combination of causes, which arise out of claims based upon professional liability errors or omissions, whether based upon contract, warranty, negligence, strict liability, or otherwise is, in the aggregate, limited to the greater of \$250,000 or the amount of the fee earned under this Agreement.

To the fullest extent permitted by law, Fishbeck’s total liability to Client for any cause or combination of causes, which arise out of claims for which Fishbeck is covered by insurance other than professional liability errors and omissions, whether based upon contract, warranty, negligence, strict liability, or otherwise is, in the aggregate, limited to the total insurance proceeds paid on behalf of or to Fishbeck by Fishbeck’s insurers in settlement or satisfaction of Client’s claims under the terms and conditions of Fishbeck’s insurance policies applicable thereto.

Higher limits of liability may be considered upon Client’s written request, prior to commencement of services, and agreement to pay an additional fee.

12. **DELEGATED DESIGN.** Client recognizes and holds Fishbeck harmless for the performance of certain components of the Project which are traditionally specified to be designed by the Contractor.
13. **INSURANCE.** Client shall cause Fishbeck and Fishbeck’s consultants, employees, and agents to be listed as additional insureds on all commercial general liability and property insurance policies carried by Client which are applicable to the Project. Client shall also provide workers’ compensation insurance for Client’s employees. Client agrees to have their insurers endorse these insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.

Upon request, Client and Fishbeck shall each deliver to the other certificates of insurance evidencing their coverages.

Client shall require Contractor to purchase and maintain commercial general liability and other insurance as specified in the contract documents and to cause Fishbeck and Fishbeck’s consultants, employees, and agents to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project. Contractor must agree to have their insurers endorse these insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.
14. **INDEMNIFICATION.** Fishbeck will defend, indemnify, and hold Client harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures to the extent caused by Fishbeck’s negligence or willful misconduct. Client agrees to defend, indemnify, and hold Fishbeck harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures allegedly caused by Fishbeck’s performance of services hereunder, except for injury or loss to the extent caused by the negligence or willful misconduct of Fishbeck. These indemnities are subject to specific limitations provided for in this Agreement.
15. **CONSEQUENTIAL DAMAGES.** Client and Fishbeck waive consequential damages for claims, disputes, or other matters in question relating to this Agreement including, but not limited to, loss of business.
16. **LEGAL EXPENSES.** If either Client or Fishbeck makes a claim against the other as to issues arising out of the performance of this Agreement, the prevailing party will be entitled to recover its reasonable expenses of litigation, including reasonable attorney’s fees. If Fishbeck brings a lawsuit against Client to collect invoiced fees and expenses, Client agrees to pay Fishbeck’s reasonable collection expenses including attorney fees.
17. **OWNERSHIP OF WORK PRODUCT.** Fishbeck shall remain the owner of all drawings, reports, and other material provided to Client, whether in hard copy or electronic media form. Client shall be authorized to use the copies provided by Fishbeck only in connection with the Project. Any other use or reuse by Client or others for any purpose whatsoever shall be at Client’s risk and full legal responsibility, without liability to Fishbeck. Client shall defend, indemnify, and hold harmless Fishbeck from all claims, damages, losses, and expenses, including attorney’s fees arising out of or resulting therefrom.
18. **ELECTRONIC MEDIA.** Data, reports, drawings, specifications, and other material and deliverables may be transmitted to Client in either hard copy, digital, or both formats. If transmitted electronically, and a discrepancy or conflict with the electronically transmitted version occurs, the hard copy in Fishbeck’s files used to create the digital version shall govern. If a hard copy does not exist, the version of the material or document residing on Fishbeck’s computer network shall govern. Fishbeck cannot guarantee the longevity of any material transmitted electronically nor can Fishbeck guarantee the ability of the Client to open and use the digital versions of the documents in the future.
19. **GENERAL CONSIDERATIONS.** Client and Fishbeck each are hereby bound and the partners, successors, executors, administrators, and legal representatives of Client and Fishbeck are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither Client nor Fishbeck shall assign this Agreement without the written consent of the other.

Neither Client nor Fishbeck will have any liability for nonperformance caused in whole or in part by causes beyond Fishbeck’s reasonable control. Such causes include, but are not limited to, Acts of God, civil unrest and war, labor unrest and strikes, acts of authorities, and events that could not be reasonably anticipated.

This Agreement shall be governed by the law of the principal place of business of Fishbeck.

This Agreement constitutes the entire agreement between Client and Fishbeck and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

End of Terms and Conditions for Professional Services