

ENROLLED ORDINANCE 177-69

AUTHORIZE THE EXECUTION OF REVOLVING LOAN FUND CONTRIBUTION AGREEMENT
BETWEEN WAUKESHA COUNTY AND THE WAUKESHA COUNTY CENTER FOR GROWTH

WHEREAS, the Waukesha County Center for Growth, Inc. (WCCG) was created in 2016 as a countywide business-led economic development organization; and

WHEREAS, the WCCG serves as the central point of contact for businesses looking to grow in or relocate to Waukesha County, obtain business consulting or access to capital for business and job growth; and

WHEREAS, in 2019 the WCCG created the first revolving loan fund to provide access to loans as gap financing to help small businesses expand and create new job opportunities and multi-family housing projects to meet projected employment growth in Waukesha County; and

WHEREAS, the revolving loan fund known as the GROW Fund is administered by a certified community development financial institution; and

WHEREAS, as authorized in the 2023 adopted budget, Waukesha County will contribute to the GROW Fund to spur economic growth, grow tax base, and generate investment income that can be used to lower the County's annual contribution for the operation of the WCCG; and

WHEREAS, the expansion of the GROW Fund is funded with \$3.0 million of American Rescue Plan Act (ARPA) funds and \$1.5 million in professional baseball park district excess sales taxes distributed to Waukesha County in accordance with 2019 Wisconsin Act 28, which allows the use of these funds for economic development; and

WHEREAS, permissible uses of the ARPA funds include using calculated lost revenue to fund general government services such as expanding a revolving loan fund; and

WHEREAS, a revolving loan fund contribution agreement between the WCCG and Waukesha County will identify the parameters by which the contributed funds will be used including provisions for the return of funding.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS
that the Waukesha County Department of Parks and Land Use, through its Director or his designee, is hereby authorized to:

1. Execute on behalf of Waukesha County, the Revolving Loan Fund Contribution Agreement Between Waukesha County and the Waukesha County Center for Growth (the "Agreement") substantially in the form on file with the Department of Parks and Land Use.

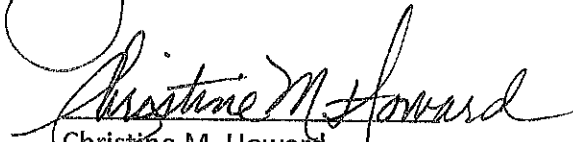
2. Execute appropriate amendments to the Agreement, from time to time which are deemed reasonable and appropriate by the County Executive and the Corporation Counsel.
3. Execute on behalf of Waukesha County, Agreement addendums to increase funding contributions as approved by the Waukesha County Board.

AUTHORIZE THE EXECUTION OF REVOLVING LOAN FUND CONTRIBUTION AGREEMENT
BETWEEN WAUKESHA COUNTY AND THE WAUKESHA COUNTY CENTER FOR GROWTH

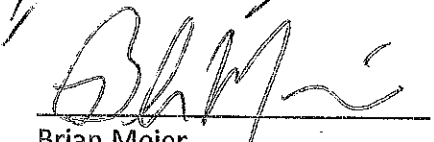
Presented by:
Land Use, Parks, and Environment Committee


Thomas A. Michalski, Chair

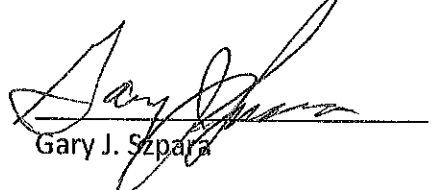

Jennifer Grant


Christine M. Howard


Robert L. Kolb


Brian Meier


Chris Mommaerts


Gary J. Szpala

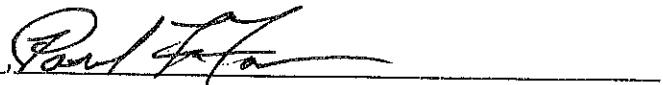
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 12/20/2022 
Margaret Wartman, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X

Vetoed: _____

Date: 12-21-2022 
Paul Farrow, County Executive

VOTE RESULTS

21

YES

0

NO

0

ABSTAIN

4

ABSENT

Ordinance 177-O-075

Ordinance 177-O-075: Authorize The Execution Of Revolving Loan Fund Contribution Agreement Between Waukesha County And The Waukesha County Center For Growth



Passed By Majority Vote

D1 - Foti	AYE	D10 - Thieme	ABSENT	D19 - Enriquez	AYE
D2 - Weil	AYE	D11 - Howard	AYE	D20 - Schellinger	ABSENT
D3 - Morris	AYE	D12 - Wolff	ABSENT	D21 - Gaughan	AYE
D4 - Batzko	AYE	D13 - Decker	AYE	D22 - Szpara	AYE
D5 - Grant	AYE	D14 - Mommerts	AYE	D23 - Hammitt	AYE
D6 - Walz	AYE	D15 - Kolb	AYE	D24 - Bangs	AYE
D7 - LaFontain	AYE	D16 - Crowley	AYE	D25 - Johnson	AYE
D8 - Michalski	AYE	D17 - Meier	AYE		
D9 - Heinrich	ABSENT	D18 - Nelson	AYE		

10th Meeting, 177th Year of the County Board Supervisors - December 20 2022 06:07:30 PM
 December 20 2022



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2 BETWEEN WAUKESHA COUNTY AND THE WAUKESHA COUNTY CENTER FOR GROWTH
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34 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS
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41 of Parks and Land Use.
- 42 2. Execute appropriate amendments to the Agreement, from time to time which
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44 Corporation Counsel.
- 45 3. Execute on behalf of Waukesha County, Agreement addendums to increase
46 funding contributions as approved by the Waukesha County Board.

**REVOLVING LOAN FUND CONTRIBUTION AGREEMENT BETWEEN
WAUKESHA COUNTY AND THE WAUKESHA COUNTY CENTER FOR GROWTH**

This AGREEMENT is made between Waukesha County ("County"), a Wisconsin Quasi-Municipal Corporation and the Waukesha County Center for Growth, Inc. ("WCCG"), a Wisconsin nonstock corporation, having its principal mailing address at 2717 N. Grandview Boulevard #300 Waukesha, WI 53188, as of the _____ day of _____, 202_ ("Effective Date"). The County and WCCG may each be referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the County and WCCG have created an economic development strategy to provide a central point of contact for businesses looking for workforce, financial and site selection assistance and connect businesses with organizations that have the resources to provide the assistance;

WHEREAS, as part of the economic development strategy, WCCG has established a community development loan fund ("CDLF"), referred to as the Generating Resources and Opportunity in Waukesha County Fund or GROW Fund (the "Fund") to support economic development in Waukesha County;

WHEREAS, the Fund is designed to assist businesses located in Waukesha County looking to expand operations, or which will locate in Waukesha County as a result of the loan. The Fund also assists developers with projects to make available housing to meet the projected workforce growth and talent attraction in Waukesha County;

WHEREAS, WCCG has retained the services of a certified community development financial institution ("CDFI") with experience in establishing, operating, managing, and servicing the revolving loans; and

WHEREAS, Waukesha County desires to contribute funds into the Fund to assist in business retention and attraction to grow the tax base and assist in the development of housing stock to meet the project workforce needs to ensure the economic vibrancy of the County.

NOW, THEREFORE, in consideration of the forgoing recitals and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the County and WCCG hereby agree as follows:

A. WCCG's Obligations.

WCCG agrees to:

1. Contract with a CDFI with experience in establishing, operating, managing, and servicing revolving loans.
2. Collaborate with the CDFI to establish guidelines and standards for risk management of the Fund, including loan loss tolerance, reserves and risk ratings, lending parameters,

lending guidelines, application practices and underwriting standards, all of which shall be incorporated into a loan procedures manual, and ensure the Fund is operated and managed in conformance therewith. The County shall be provided with advance written notice of any material change to the established guidelines and standards prior to implementation of the change.

3. With the CDFI, create a revolving loan fund oversight committee (“**Oversight Committee**”), with designees from WCCG and the CDFI, representing broad community interests and have special expertise and knowledge of commercial lending, economic development processes and larger scale housing development lending. The Oversight Committee will monitor loan utilization rates, overall performance of the Fund and make recommendations for adjustments to the Fund lending guidelines.
4. Actively solicit grants and contributions from financial institutions, businesses, and other community advocates to be contributed to the Fund to leverage contributions made through this Agreement, generate prospective loan customers and collaborate with the CDFI to establish targets and guidelines for the Fund to meet its objective of supporting economic development in Waukesha County.
5. Ensure that all funds shall be held in an account at a suitable federally insured financial institution.
6. Ensure the Fund provides to WCCG a referral fee equal to a minimum of one percent (1%) of the average total monthly outstanding principal balance of Loans in the Fund, measured as of the last day of each calendar month.
7. Provide to the County an annual report of the performance of the Fund, including, but not limited to the Fund’s current principal, interest and fees, loan activities (“**Financial Status Report**”) and past due reports. The annual report shall be delivered by January 31st of each year for the previous year’s performance.

B. County’s Obligations.

The County agrees to:

1. Make a one-time contribution in the amount of Four Million Five Hundred Thousand and 00/100 Dollars (\$4,500,000.00) to the Fund in fiscal year 2023 for the purposes of assisting in business retention and attraction to grow the tax base and make available housing to meet the projected workforce growth and talent attraction needs to ensure the economic vibrancy of Waukesha County (“**County Contribution**”).
2. Funds will be contributed into the Fund at 0% cost of funds.
3. The County may, but shall not be required to, make additional contributions to the Fund. Any additional funds contributed by the County shall be set forth in an addendum to this Agreement, and such funds shall be subject to the provisions of this Agreement.

C. Term.

This Agreement is effective as of the Effective Date and continues until terminated in accordance with Section E below (the “**Term**”).

D. Fund Performance.

The loan procedures manual developed by the CDFI and adopted by the Oversight Committee will set forth revolving loan performance measures. These measures may include, but not be limited to, a private investment to loan ratio and jobs created / retained per dollars lent or in the case of workforce sector housing projects the number of income qualifying units. WCCG shall deploy a minimum of 75% of the funds in a 12-month period. If the deployment falls below 75%, WCCG shall submit to the County, a strategy to increase deployment above 75%.

E. Termination.

1. Termination Rights. Either Party may terminate this Agreement (i) upon ninety (90) days' prior written notice to the other Party without cause; (ii) at any time by written notice by either Party if: (A) the other Party materially breaches any provision of this Agreement and the non-breaching Party reasonably determines the breach cannot be cured, or, if the non-breaching Party reasonably determines that the breach can be cured, but it has not been cured by the breaching Party within thirty (30) days after the breaching Party's receipt of written notice of such breach by the non-breaching Party; (B) either Party: (1) becomes insolvent, (2) is generally unable to pay, or fails to pay, its debts as they become due, (3) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, (4) makes or seeks to make a general assignment for the benefit of its creditors, or (5) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business; or (iii) at any time by written notice by the County if WCCG ceases its existence as a nonprofit organization, requiring it to transfer all remaining assets to another tax-exempt organization or to the County.
2. Post-Termination Obligations. Upon termination of this Agreement, each Party shall stop soliciting or obtaining additional capital for the Fund from any source, and the CDFI shall not originate any new Fund loans; provided that the termination of this Agreement shall not release either Party from any obligation incurred prior to the termination date. Notwithstanding termination of this Agreement, the CDFI shall continue to fulfill all other portfolio servicing obligations to the Fund hereunder until all outstanding amounts due under all loans in the Fund have been paid in full or until a suitable replacement for the CDFI can be found and reasonably transitioned into the portfolio servicing obligations.
3. Reserves. Upon termination of this Agreement, the Oversight Committee shall work with the CDFI to establish reserves as deemed reasonably necessary to satisfy any contingent liabilities and the costs and expenses associated with operating and winding up the Fund, including without limitation, the payment of fees and distributions to the CDFI and WCCG.
4. Final Distribution. To the extent of available funds, the Fund shall distribute any remaining assets in the following order of priority: (i) to any creditors to discharge debt obligations of the Fund; (ii) to any providers of restricted funds; and (iii) to the County to return the County Contribution.

F. Indemnification.

WCCG (as “**Indemnifying Party**”) shall defend, indemnify, and hold harmless the County and its boards, officers, and employees (collectively, the “**Indemnified Party**”) from and against any and all losses, damages, judgments, claims, penalties, fines, and costs resulting from any (i) material breach of this Agreement; or (ii) negligent act or omission or willful misconduct of the Indemnifying Party in the performance of this Agreement; provided that, the obligation to indemnify under this Section shall not extend to claims arising from the negligence or willful misconduct of the Indemnified Party.

G. Confidentiality.

The Parties hereto agree that any confidential and/or proprietary information provided by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) pursuant to this Agreement (“**Confidential Information**”) shall be kept strictly confidential by the Receiving Party and may not be disclosed to any third-party or publicly without the prior written consent of the Disclosing Party. Notwithstanding the foregoing, the Parties acknowledge that each is or may be subject to the Wisconsin Public Records Law (Wis. Stat. Secs. 19.31-19.39) and any successor statutes and regulations, and any Confidential Information received or maintained by the Parties may constitute public records subject to disclosure, and in such a case disclosure shall not be dependent upon prior written consent however prior notice of intent to disclose the records shall be provided to the Disclosing Party to allow the Disclosing Party an opportunity to seek a protective order. The Receiving Party agrees not to use Confidential Information for any purpose whatsoever except in performance of its obligations under this Agreement or as expressly permitted by this Agreement. The Receiving Party shall be responsible for any use or disclosure of Confidential Information by any of its employees and/or agents and shall ensure that such employees and agents are subject to confidentiality obligations at least as restrictive as those set forth in this Section G. Upon termination of this Agreement, the Receiving Party shall at the direction of the Disclosing Party return or destroy all Confidential Information received by the Receiving Party, subject to any records retention policy or obligation of the Receiving Party.

H. Miscellaneous.

1. Entire Agreement. This Agreement contains the entire agreement among the Parties relating to its subject matters and there are no other terms, conditions, promises, undertakings, statements, warranties, or representations, express or implied, concerning such subject matters. This Agreement cancels and supersedes all previous agreements and understandings, if any, written or verbal, among the Parties relating to this Agreement’s subject matters.
2. Amendment. This Agreement may not be materially changed, amended, modified, released, or discharged, in whole or in part, except by an instrument in writing referred to as an amendment to this Agreement and signed by all Parties.

3. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of the provisions of this Agreement.
4. Governing Law. This Agreement is entered into and shall be construed in accordance with the internal laws of the State of Wisconsin.
5. Severability. If any provision of this Agreement is finally determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall be construed as if the invalid or unenforceable provision had been deleted from the Agreement and the balance of the Agreement shall continue in full force and effect.
6. Waiver. A Party's failure at any time to require performance or observance by any Party of any term or condition of this Agreement, waiver of any succeeding breach of a term or condition, waiver of a term or condition itself, or any combination of the foregoing, shall not affect the full right of that Party to require such performance or observance at any subsequent time.
7. Notices. Any notices required or permitted under this Agreement shall be in writing and shall be considered given upon delivery, if personally delivered or e-mailed with evidence thereof, or one (1) business day after deposit with a nationally recognized commercial courier, or two (2) business days after deposit in the United States Postal Service, certified or registered mail, postage prepaid, in all cases addressed as follows:

If to Waukesha County Center for Growth, Inc.:

Executive Director
2717 N. Grandview Boulevard, Suite 300
Waukesha, WI 53188
nryf@waukeshagrowth.org

If to Waukesha County:

Department of Parks and Land Use Director
515 W. Moreland Blvd, Room 260
Waukesha, WI 53188
dshaver@waukeshacounty.gov

8. No Assignment. No Party to this Agreement may assign its interest in this Agreement to any other entity or individual without the express written consent of the other Party.
9. Relationship of Parties. Nothing in this Agreement creates or shall be construed to create a joint venture or partnership between the Parties. Neither Party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

10. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and nothing in this Agreement, express or implied, shall give or be construed to give to any person or entity, other than the Parties, any legal or equitable rights under this Agreement.
11. Authority. Each person signing this Agreement on behalf of a Party has, and hereby certifies that he or she has, authority to sign it on behalf of that Party.
12. Further Assurances. County and WCCG agree to and will cooperate fully with each other in the performance of this Agreement, and will execute such additional agreements, documents or instruments as may reasonably be required to carry out its intent.

WHEREFORE, WCCG and County have entered into this Agreement as of the Effective Date.

Waukesha County Center for Growth, Inc. Waukesha County

By: _____
Nicole Ryf
Executive Director

By: _____
Dale R. Shaver
Parks and Land Use Director