



CITY OF WASHINGTON, ILLINOIS

City Council Consent Agenda Communication

Meeting Date: May 19, 2025

Prepared By: Dennis Carr – Interim City Administrator/City Engineer

Agenda Item: The Hengst Foundation Letter of Intent Discussion

Explanation: The Hengst Foundation has submitted a revised Letter of Intent. This letter was submitted to the previous Council and Mayor, but staff felt it would be important for the current Council to see where the letter of intent currently sits. I will provide a brief summary of the items in the LOI below:

The Foundation –

- Looking at the northeastern 50ish acres of the City's 223-acre parcel between the Bypass 24 and Cruger Road
- The Foundation operates as a 501(c)(3) not-for-profit organization
- Willing to purchase or lease (99+ years) the property from the City
- Would like to construct an amphitheater with a maximum capacity of 5,000 people
 - o Only 2,000 covered fixed seats
 - o Other area would be a park-like setting with blankets or lawn chair seating
- Will provide for 1,700 parking spots
- Will construct concessions, bathrooms and other support facilities
- The proposed design envisions a casual park setting with shade trees and lawns creating a picnic-friendly environment for spectators
- Will comply with all applicable City, State, and Federal laws and codes
- Will commission a sound study to determine the level of sound that will be emitted from the venue
- At a bare minimum, will follow State of Illinois Noise Ordinance
 - o Would not exceed 72 dB during daytime hours (7:00 am to 10:00 pm)
- Will begin construction within 90 days of the City beginning construction on the roadway
- Will grade the storm water detention basin
-

The City -

- Will build a roadway with storm sewer, lighting and bicycle facilities from Dallas Road to the parking lots for access
- Will extend water, sewer, and other utilities to the property
- Will survey the property
- Will provide proof of clear title for the property
- Will rezone property to C-3 with a special use permit
- Will maintain the storm water detention basin upon its completion

Fiscal Impact:

Roadway/utility engineering budgeted at \$300,000

Roadway and utilities construction estimated at \$3.5 million

Lease terms originally proposed would recoup \$3.5 million in the first 15 years

Property appraisals:

- \$43,600/acre (with roadway and utilities)
- \$23,000/acre (no infrastructure)

Recommendation Summary:

The Mayor has asked and Staff supports delaying a decision on the Letter of Intent until after the City Council Goal Setting Session has been completed.

Action Requested: Discussion on the Letter of Intent.

THE HENGST FOUNDATION

Corporate Office
115 Washington Square
Washington, Illinois 61571

LETTER OF INTENT

PERSONAL & CONFIDENTIAL

April 28, 2025

Dear Mayor and City Council Members:

On behalf of The Hengst Foundation, I am pleased to submit this Letter of Intent for the purpose of proposing the construction and operation of a new outdoor performance venue in Central Illinois.

The Hengst Foundation is organized as a Private Foundation and its Application for Recognition of Exemption has been filed with the Internal Revenue Service and is pending approval at this time.

As a Private Foundation, the Hengst Foundation is organized and operated exclusively for charitable and educational purposes in accord with §501(c)(3) of the Internal Revenue Code of 1986. More specifically, the Foundation is organized for the purpose of promoting the arts by building and operating a performing arts center, amphitheater and related facilities in or around Washington, Illinois. No part of the net earnings of the Foundation shall inure to the benefit of, or be distributable to its member, directors, officers or other private persons, except to the extent that the Foundation may pay reasonable compensation for services rendered in furtherance of the Foundation's purposes.

NON-BINDING PROVISIONS

Upon execution by The Hengst Foundation and the City of Washington of this Letter of Intent, the following numbered paragraphs (collectively, the "Non-Binding Provisions") reflect only the general understanding of the matters described in them, and each party acknowledges that the Non-Binding Provisions are not intended to constitute a complete statement of, or a legally binding or enforceable obligation on the part of the City of Washington or The Hengst Foundation and neither party shall have any liability to the other with respect to the Non-Binding Provisions until a definitive agreement ("Agreement") is prepared, authorized, executed and delivered by and between them. If the Agreement is not prepared, authorized, executed and delivered for any reason, no party to this Letter of Intent shall have any liability to any other party to this Letter of Intent based upon, arising from or relating to the Non-Binding Provisions.

1. Specific Purposes:

The primary objectives and purposes of the Foundation will include the following:

- a. Promoting the arts by building and operating a performing arts center, amphitheater, and ancillary facilities, and making arts and cultural programs accessible to the local and regional residents of Washington and Central Illinois.
- b. Elevating the quality of life of residents in and around Washington, Illinois and throughout the Central United States through artistic and cultural experiences that enhance understanding and acceptance of multiple cultures and nationalities.

2. Location:

The City will sell or lease to the Foundation approximately 50 acres of vacant land owned by the City of Washington and located generally in the northeast corner of the real estate located between the Route 24 Bypass on the North, Cruger Road on the South, North Main Street on the East and Dallas Road on the West (the “Property”). The exact location within the real estate owned by the City of Washington will be mutually agreed upon by the parties hereto.

The Property will have full and free access to and from public highways, streets or roads, sufficient for the Foundation’s use of the Property.

The Property will have water, sewer, gas, telephone, and electricity lines which are sufficient to service the Foundation’s use of the Property at normal costs and rates.

The size and location of the Property will allow for ample parking and provide sufficient distance and a buffer from residential uses in the City of Washington.

There will not be any condition, easement or restriction affecting the Property, in the Foundation’s sole judgment that would hinder, prevent or make more expensive the Foundation’s use of the Property.

The Property will not be subject to any special assessments or special service areas, and there will not have been any public improvements made which could result in any special assessments against the Property.

The Property will not have been used for chemical manufacturing, printing, waste disposal, storage or dispensing of chemicals, or hazardous substances, or as a landfill or dump; the Property will not contain any underground tanks or pipes of any kind; and the Property will not contain any hazardous wastes or chemicals.

The Property has generally been comprehensively planned for commercial and residential uses. The operation of an outdoor amphitheater is consistent with the City’s vision for the area.

The proposed design of the Foundation’s facilities envisions a casual park setting with shade trees and lawns creating a picnic-friendly environment for spectators. The Foundation aims to foster a relaxing atmosphere during summer nights.

3. Survey.

The City, at the City's sole cost and expense, shall cause to be prepared a current American Land Title Association ("ALTA") Survey (the "Survey") of the Property, prepared and certified by a registered land surveyor. The Survey will show no encroachments onto the Property from any adjacent property, no encroachments by or from the Property onto any adjacent property, and no violation or encroachments upon any recorded building lines, restrictions or easements affecting the Property.

"Survey" means a current ALTA survey of the Property, certified by a professional surveyor licensed by the State of Illinois and certified to the Foundation (and other parties designated by the Foundation) prepared in accordance with the standard for Land Title Surveys and the American Congress of Surveying and Mapping Class A survey, setting forth the legal description and street address of the Property and showing thereon all buildings and other improvements (including fences), the number of stories in such buildings, easements (visible or recorded), building lines, curb cuts, party walls (if any), parking, sewage, water, electricity, gas and other utility facilities (together with recording information concerning the documents creating any such easements and building lines), roads and other rights-of-way and means of physical and record ingress and egress to and from the Property by public roads (including the dimension of abutting streets) and the net (after deduction of land dedicated or used or subject to easements for roads, highways, fire lanes, utilities, storm drains or any other public purpose) and gross area of the land included in the Property, and spotting improvements on adjoining property which are within twenty-five (25) feet of the property lines of the Property.

The Survey shall be in a form acceptable for recording in the County of Tazewell, Illinois.

4. Title Insurance Policy.

Prior to the transfer of possession of the Property, the City will, at the City's sole cost and expense, deliver to the Foundation a Commitment for Title Insurance issued by a title insurance company regularly doing business in Tazewell County, Illinois showing the City's merchantable title in the Property and committing the company to issue an ALTA policy insuring title to the Property in the Foundation. With such Title Commitment, the City shall also furnish the Foundation with one (1) copy of all documents affecting the Property. The City shall pay all title examination, abstracting fees, or other expenses charged by the Title Company for the purpose of issuing the Title Commitment and the final Title Insurance Policy.

The City shall, at the city's sole cost and expense, deliver to the Foundation not more than forty-five (45) days and not less than thirty (30) days prior to the transfer of possession to the Foundation, an Owner's Title Insurance Policy issued in accordance with the form of Commitment approved by the Foundation without any intervening liens, encumbrances or exceptions.

5. Amphitheater:

The Foundation will construct and operate an outdoor amphitheater that will accommodate up to 5,000 patrons. A portion of that total seating capacity will consist of fixed seating, with the remaining seating capacity to be general admission (lawn) seating. The Foundation believes that premium seating is an industry trend that offers significant value to the venue and ample revenue streams.

In addition to the amphitheater, the Foundation will construct and operate support structures, such as permanent concessions, permanent restrooms and off-street parking facilities (the "Venue").

Parking will be a priority for the Foundation. At the present time, not more than 1,700 parking spaces are being proposed.

6. Acquisition of Property:

The Foundation wishes to purchase the Property from the City. The purchase price and other terms shall be mutually agreed upon by the Foundation and the City.

In the alternative, the City will lease the Property to the Foundation pursuant to a long-term lease ground lease agreement (the "Ground Lease"). The initial term of the Ground Lease will be not less than 99 years and will be renewable at the option of the Foundation for not less than two (2) additional terms.

Rent under the Ground Lease will consist of cash rent payments. The cash rent shall be paid not less frequently than annually.

Rent shall commence upon the Infrastructure being installed, constructed and available at the Property.

During the period of time that the Venue is under construction, rent shall be paid at a nominal rate. Upon the completion of construction of the Venue, the rent shall increase each year for the first five years after construction of the Venue is completed. Thereafter, the rent for the balance of the initial term shall remain constant.

7. Zoning:

The City of Washington will cause the Property to be rezoned from its current zoning classification to C-3 with a Special Use Permit to accommodate the Foundation's use of the Property, or any other zoning classification and with such permits as shall be necessary for the Foundation's use of the Property.

In addition, the City, at the City's sole cost and expense, will obtain and issue prior to the transfer of possession of the Property to the Foundation, any other necessary special use permits, building permits or rezoning of the Property to a classification under the Zoning Ordinances of the City of Washington, Illinois that would permit the operation of the Venue on the Property.

8. Licenses.

All obligations of the Foundation will be contingent upon the Foundation obtaining all necessary liquor licenses, health department licenses, and any other license necessary for the Foundation's operation of the Venue.

9. Financing of the Project:

The total cost of constructing the Venue, including the amphitheater, parking facilities, and concessions will be paid for by the Foundation through donations and contributions.

The Foundation's obligations to purchase or lease the Property will be subject to the Foundation receiving donations and contributions of not less than the total cost to construct the Venue.

10. Infrastructure:

The Property is undeveloped, open ground owned by the City. Within twelve months after the Foundation has acquired possession of the Property, the City shall:

- a. Provide full and free access to and from public highways, streets or roads, sufficient for the Foundation's use of the Property.
- b. Provide water, sewer, gas, telephone and electricity lines to the Property which will be sufficient to service the Foundation's use of the Property at normal costs and rates.
- c. Provide storm sewer, storm water detention facilities, street lighting, and off-street parking facilities to service the Property and Venue.
- d. Provide bike paths, walking trails and recreational areas in and around the Property.
- e. Operate, maintain, repair, reconstruct, replace and upgrade storm water detention facilities, street lighting and off-street parking facilities to service the Property.

(herein referred to as the "Infrastructure").

Commencement of construction of the Infrastructure will occur upon receipt by the City of notice from the Foundation that the Foundation has received not less than the full cost to construct the Venue in the form of donations and contributions, and that the Foundation is prepared to commence construction of the Venue within 90 days.

The City will provide the Infrastructure without cost to the Foundation. Once constructed, the Infrastructure will be and remain public property and public facilities, that will be operated, maintained, repaired, replaced, and reconstructed by the City of Washington.

The Foundation will pay for the water and sewer service at standard City rates and costs.

11. Compliance with City Codes:

The Foundation will comply with all applicable City, State and Federal laws and codes applicable to the Property and the Venue, including compliance with all building codes, sound regulations, and health and safety regulations.

Prior to the Foundation commencing construction of the Venue, the Foundation will commission a sound study to determine the level of sound that will be emitted from the Venue. That study will identify physical features of the Property and the Venue that will reduce the level of sound that leaves the Property. The study will also provide expected sounds levels at and crossing Cruger Road.

The City does not have any sound standards that apply to the Foundation's Venue, other than its Noise Ordinance. The State of Illinois, on the other hand, has issued administrative rules that address sound emanating from properties. Under the provisions of the Illinois Administrative Code, the allowable Octave Bank Sound Pressure Levels (dB) of sound emitted from the Foundation's Property to any residential land may not exceed 72 dB during daytime hours (7:00 am to 10:00 pm) and may not exceed 63 dB during nighttime hours (10:00 pm to 7:00 am). The sound levels are measured at least 25 feet from the property-line of the sound source.

The Foundation will comply with the Illinois Administrative Code standards for sound emitted from the Property as are in effect at the time of the commencement of construction of the Venue. In connection with the construction of the Venue, the Foundation will undertake reasonable measures to attenuate the sound emitted from the Property such that the Octave Bank Sound Pressure Levels (dB) emitted from the Property, once fully constructed, will satisfy or be less than the state standards. Such measures may include topography modifications that place the stage in an area that reduces line of sight to residences, changes in orientation of the amphitheater, berms, landscaping and an optimized or distributed sound system.

12. Construction:

Construction of the Venue will be undertaken by private building contractors employed by the Foundation. The Venue will be a private project and will not be subject to municipal competitive bidding processes, or the payment of prevailing wages. While the Foundation intends to utilize building contractors, architects and others that will pay wages that are fair and comparable in the area, the construction of the Venue will not be a public project.

Prior to the commencement of the construction of the Venue, the Foundation will provide the City with architectural drawings and construction specifications for the Venue. Notwithstanding the providing of architectural and construction documents to the City, the Foundation will be solely responsible for the design and construction of the Venue, as well as overseeing the construction of the Venue.

In connection with the construction of the Venue, the Foundation will grade the storm water detention facility that will serve the Property. Upon completion of the grading of the storm water

detention facility, the City shall be fully responsible for its operation, maintenance, repair, reconstruction, replacement and upgrade.

The Foundation, subject to receiving all funding and the receipt by the Foundation of all necessary approvals, will commence construction of the Venue no later than 90 days after the City commences construction of the Infrastructure. The Foundation's intent is that the construction of both the Venue and the Infrastructure will occur and be substantially completed at the same time. Construction is estimated to be completed within 12 months of the commencement of construction.

Prior to commencement of construction, the City shall provide the Foundation with access to and from a public road for purposes of ingress and egress to and from the Property.

13. Commencement of Operations:

The Foundation will use the Property for the operation of an outdoor amphitheater. Prior to commencing operations, the Foundation will obtain all necessary federal, state and local approvals, permits and any business-related licenses, including but not limited to liquor licenses, as may be required for the Venue.

The first concert at the Venue is anticipated to take place within 180 days after final completion of construction of the Venue.

BINDING PROVISIONS

Upon execution by The Hengst Foundation and the City of Washington of this Letter of Intent, the following lettered paragraphs collectively, the "Binding Provisions") will constitute the legally binding and enforceable agreement of The Hengst Foundation and the City of Washington (in recognition of the significant costs to be borne by all parties in pursuing this proposed transaction and further in consideration of their mutual undertakings as to the matters described herein).

A. Reasonable Efforts. The Hengst Foundation and the City of Washington will negotiate in good faith and use their reasonable efforts to arrive at a mutually acceptable Agreement for approval, execution, and delivery on or before the termination date set forth herein.

B. Exclusive Dealings. Until the Agreement has been duly executed and delivered by all the parties or until the Binding Provisions have been terminated as hereinafter provided below, whichever occurs sooner, (i) the City of Washington will not enter into any negotiations, discussions, agreements or understandings for the purpose of selling or leasing the Property to any other person or entity and (ii) the Foundation will not enter into any negotiations, discussions, agreements or understandings for the purpose of buying or leasing any real property other than the Property as described herein.

C. Costs. The Hengst Foundation and the City of Washington will each be responsible for and bear all of their own respective costs and expenses, including without limitation expenses

of their legal counsel, accountants and other representatives, incurred at any time in connection with this Letter.

D. Confidentiality:

Non-Disclosure. The City of Washington, City officials and City officers and employees (the “City Parties”) agree, except as directed by the Foundation, that City Parties will not at any time during or after the term of this Agreement disclose any Confidential Information to any person whatsoever, or permit any person whatsoever to examine or make copies of any reports, plans, specifications, source code, or documents prepared by the Foundation or City Parties, where they came into the City Parties’ possession or under City Parties’ control by reason of the evaluation of the Foundation’s organization or project.

Return of Confidential Information. All documents, records, notes, analyses, compilations, studies, and other physical property, whether or not pertaining to Confidential Information furnished to City Parties by the Foundation, or produced by City Parties or others in connection with City Parties’ evaluation of the Foundation’s organization or project shall be and remain the sole property of the Foundation and shall be returned to the Foundation immediately as and when requested by the Foundation. Even if the Foundation does not so request, City Parties shall return and deliver all such property upon termination of City Parties’ evaluation of the Foundation’s project, for any reason, and City Parties will not retain any such property or any reproduction of such property upon such termination.

Survival of Obligations. The obligations to protect the Confidential Information required hereunder shall survive any termination of this Letter of Intent and shall continue forever.

MISCELLANEOUS PROVISIONS

I. The Binding Provisions of this Letter may be terminated: (i) at any time by mutual written consent of The Hengst Foundation and the City of Washington; or (ii) upon written notice by any party to the other party if the Agreement has not been executed by all parties as provided in this Letter of Intent; provided, however, that the termination of the Binding Provisions shall not affect the liability of a party for breach of any of the Binding Provisions prior to the termination. Upon termination of the Binding Provisions, the parties shall have no further obligations hereunder, except as otherwise stated herein, which provisions shall survive any such termination.

The Hengst Foundation and the City of Washington hereby expressly acknowledge that (a) any action taken by The Hengst Foundation in connection with this Letter of Intent shall not be deemed to be an agreement of The Hengst Foundation to purchase the Property and that no such obligation shall be imputed unless and until a written agreement with the respect thereto has been signed by both City of Washington and The Hengst Foundation; (b) the parties have not agreed on the material terms of any agreement relating to the purchase and sale of the Property; and (c) either the City of Washington or The Hengst Foundation may determine, each in its sole discretion, to terminate all negotiations with respect to the purchase or lease of the Property at any time prior to the execution of a purchase and sale agreement.

II. This Letter of Intent is only a statement of the parties’ mutual intentions with respect to the proposed project and it does not purport to address all material matters upon which agreement must be reached in order for the Foundation’s project to be completed. It is not intended by the parties to be a binding commitment or agreement or to impose any legal obligations on the

parties except for the provisions of confidentiality, disclosure of information, standing still, governing law and this section. If either party breaches any binding provision of this Letter, the breaching party will pay all of the fees (including but not limited to attorneys' fees), costs, expenses and damages of the non-breaching party arising out of such breach, including without limitation any fees, costs and expenses of enforcement. For purposes of this paragraph, the term "attorneys' fees" shall mean and include all attorney and paralegal fees whether incurred for the purpose of preparation, research, negotiation, trial, appellate, collection or otherwise.

III. This Letter will be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to its conflict of law provisions.

If the terms outlined herein are acceptable, the City of Washington should execute this letter where indicated below and return it to my attention no later than June 30, 2025 at 5:00 p.m.. Upon such execution, the City of Washington shall cease to market the Property and shall not solicit or accept any offers nor engage in any discussions concerning the sale of Property (other than the transaction described herein) for a period of One Hundred Eighty (180) days from the date of the City of Washington's execution hereof.

Respectfully submitted,

THE HENGST FOUNDATION

By _____
R. Rennie Atterbury, President

AGREED and ACCEPTED this _____ day of _____, 2025.

CITY OF WASHINGTON

By _____
_____, its Mayor

ATTEST:

City Clerk