



CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WI
GENERAL GOVERNMENT AND
FINANCE COMMITTEE MEETING
TUESDAY, FEBRUARY 6, 2024 AT 5:45 P.M.
Port Washington City Hall, 100 W. Grand Avenue, Port Washington, WI
53074
Council Chambers Side Conference Room

AGENDA

1. Roll Call
2. Approve Minutes of the Previous Meeting
3. Consideration and Possible Action on an Amendment to the Fire Services Contract with the Town of Port Washington
4. Consideration and Possible Action on Revolving Loan Fund for Cavalier Wine Bar
5. Consideration and Possible Action on Original "Class B" Liquor and Class "B" Beer License for Cavalier Wine Bar LLC (324 Lake Street, Suite 3)
6. Consideration and Possible Action on Original "Class A" Liquor and Class "A" Beer License for Shree Umiyakrupa LLC (Grand Ave Mobil, 223 W. Grand Avenue)
7. Consideration and Possible Action on the Approval of a Contract for Services from Bray Associates – Architects Inc. Related to the Contemplated New Public Safety Complex
8. Consideration and Possible Action to Grant Wisconsin Bell Inc. Doing Business As AT&T a Utility Easement at 305 E. Washington Street, Inventors Brewpub and Edison Hall
9. Consideration and Possible Action on Developers Agreement with TBF Development LLC for WEDC Grant
10. Chairman's Business
11. Member's Business
12. Public Comments/Appearances
13. Adjournment

Committee Members: Alderpersons- Jonathan Pleitner, Dan Benning, Deborah Postl

Persons with disabilities requiring special accommodations for attendance at the meeting should contact the City Clerk at least one (1) business day prior to the meeting. Notice is hereby given that Common Council members or members of other governmental bodies who are not members of this board, commission or committee may be present at this meeting to gather information about a subject over which they have decision-making authority. In that event this meeting may also constitute a simultaneous meeting of the Council or of such other governmental bodies. Whether a simultaneous meeting is occurring depends on whether the presence of one or more Council members or members of such other governmental bodies results in a quorum of the Council or of such other governmental bodies and, if there is a quorum, whether any agenda items listed above involve matters within the Council's or the other governmental bodies' jurisdiction. If a simultaneous meeting is occurring, no action other than information gathering will be taken at the simultaneous meeting. [State ex rel. Badke vs. Greendale Village Board, 173 Wis. 2d 553 (1993).]



CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WI
**GENERAL GOVERNMENT AND
FINANCE COMMITTEE MEETING**
TUESDAY, JANUARY 16, 2024 AT 6:00 P.M.
Port Washington City Hall, 100 W. Grand Avenue, Port
Washington, WI 53074
Council Chambers Side Conference Room

MINUTES

1. **Roll Call-** Members present were Alderpersons Jonathan Pleitner, Dan Benning, and Deborah Postl. Also present was Interim City Administrator/City Clerk Susan Westerbeke, and ACA/HR Director Emily Blakeslee.
2. **Approve Minutes of the Previous Meeting-** MOTION MADE BY ALD. POSTL, SECONDED BY ALD. BENNING TO APPROVE THE MINUTES OF THE PREVIOUS MEETING AS PRESENTED. Motion carried unanimously.
3. **Consideration and Possible Action on “Class B” Liquor and Class “B” Beer License for Inventors Brewpub LLC (305 E. Washington Street and Cameron Huck-Agent)-** The City Clerk reviewed the alcohol license information and confirmed all fees have been paid, and background checks were completed and approved by the Police Chief. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO RECOMMEND APPROVAL OF THE ALCOHOL LICENSE AS PRESENTED. Motion carried unanimously.
4. **Consideration and Possible Action on a Software Service Agreement with BSA for a New Financial Management Program-** Finance Director-CityTreasurer Mark Emanuelson was present to discuss the Financial Management Software System RFP review process and provided feedback related to BS&A Software. The RFP generated four qualified responses. Two of the respondents were interviewed. BS&A is recommended. BS&A includes payroll and utility billing systems. This system has online applications available. MOTION MADE BY ALD. POSTL, SECONDED BY ALD. BENNING TO RECOMMEND APPROVAL OF THE SELECTION OF BS&A AS THE CITY’S NEW FINANCIAL SOFTWARE VENDOR AND AUTHORIZE STAFF TO ENTER INTO A SERVICE CONTRACT CONTINGENT UPON A REVIEW BY THE CITY ATTORNEY AS PRESENTED. Motion carried unanimously.
5. **Consideration and Possible Action on a Proposal for Professional Services – Lead Service Line Inventory and Replacement Plan by CDM Smith/City Water-** Public Works Director Rob Vanden Noven was present to review the financial and budgetary information related to this project. Also present were City Engineer Roger Strohm, Water Utility Superintendent Dan Fisher, and Matthew Bednarski of CDM Smith Construction to review the Lead Service Line Inventory and Replacement Plan (LCRR). The Lead Service Line Inventory identifies materials of each public and private service line as lead, non-lead, or galvanized requiring replacement, and lead status unknown. The LCRR requires water systems to provide households with an initial notification of lead, galvanized requiring replacement or lead status unknown within 30 days of the completion of service line inventory, and then City Water on an annual basis after that. Under consideration is Phase 1, which includes engaging CDM Smith for professional services, including Task 1, which is not to exceed \$38,500 and Task 2 which is not to exceed \$83,500. It is recommended to reallocate \$75,000 from the CIP currently dedicated for master planning. Master planning will be postponed to the 2025 CIP. The remaining \$47,000 will be paid by the operating budget Outside Services Employed. The inventory is due in October 2024. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO RECOMMEND APPROVAL THE PROPOSAL FOR PROFESSIONAL SERVICE LINE INVENTORY AND REPLACEMENT PLAN BY CDM SMITH/CITY WATER AS PRESENTED. Motion approved unanimously.
6. **Chairman’s Business-** None.
7. **Member’s Business-** None.

8. Public Comments/Appearances- None.

9. Adjournment- ADJOURNMENT- MOTION BY ALD. POSTL, SECONDED BY ALD. BENNING TO ADJOURN THE MEETING AT 6:26 P.M. Motion carried unanimously.

Respectfully submitted,
Susan L. Westerbeke, City Clerk.

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: General Government & Finance Committee; Common Council

FROM: Mark Emanuelson, Finance Director / Treasurer

DATE: Tuesday, February 6, 2024

SUBJECT: Consideration and Possible Action on an Amendment to the Fire Services Contract with the Town of Port Washington

ISSUE: Should the Common Council adopt an amendment to the Fire Services Contract with the Town of Port Washington?

STAFF RECOMMENDATION: Staff recommends adopting an amendment to the Fire Services Contract with the Town of Port Washington.

RECOMMENDED MOTION: "I move that the Amendment to the Fire Services Contract with the Town of Port Washington be approved." OR "Move to approve staff's recommendation."

BACKGROUND/DISCUSSION: The City of Port Washington provides fire services to the Town of Port Washington. On an annual basis the agreement is amended to continue these services for a calendar year. Attached you will find a copy of the proposed written amendment, along with the calculation for the base charge for the 2024 contract year. The 2024 base charge is \$117,011.44. This represents a \$20,387 or 14.8% decrease from 2023. The factors impacting the cost are outlined below.

- A 3% decrease in the Town's percentage of combined equalized valuation.
- A decrease in insurance costs allocated to the Fire Department.
- A decrease in the debt service attributable to the Fire Department.
- A decrease in the building replacement calculation based on updated methodology.

STRATEGIC PLAN:

1. **Strategic Direction:** Creating Accountability Through Policies & Procedures
2. **Impact on Strategic Direction:** This is a long-standing agreement between the City and Town of Port Washington that has served both communities' fire response needs.

LEGAL:

1. **City Attorney Review:** No
2. **Legal Comments & Conclusions:** N/A
3. **Statutory References:** N/A

FISCAL IMPACT: \$117,011.44

1. Amount of Recommendation/Cost of Project: \$117,011.44

Initial Project Cost Estimate: N/A

Approved Budget Project Cost: N/A

Prior Year Expenditures: N/A

Total Project Costs to Date: N/A

2. Source of Funding: General Fund

3. Operating and Maintenance Cost: N/A

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government & Finance Committee will review the item prior to the Common Council meeting.

PUBLIC OUTREACH: Town of Port Washington staff will be contacted prior to the Common Council meeting to let them know this item is on the agenda for consideration.

IF APPROVED, NEXT STEPS: If approved, Staff will coordinate with the Town to execute the amendment.

ATTACHMENTS:

- Amendment to the Fire Services Contract with the Town of Port Washington
- Calculation for the Fire Services Base Charge

**AMENDMENT TO FIRE SERVICES CONTRACT BETWEEN THE
CITY OF PORT WASHINGTON AND TOWN OF PORT WASHINGTON**

WHEREAS, the Fire Services Contract between the City of Port Washington and the Town of Port Washington is amended as follows:

1. The Contract will be extended one year and be in effect from January 1, 2024 through December 31, 2024.
2. The base charge for the contract year will be **\$117,011.44**.

The City of Port Washington and Town of Port Washington do hereby agree to the proposed amendments to the Fire Services Contract for the contract year 2024.

CITY OF PORT WASHINGTON

TOWN OF PORT WASHINGTON

Theodore Neitzke IV Mayor

Mike Didier Chairman

Susan L. Westerbeke City Clerk

Heather Krueger Town Clerk

(Date)

(Date)

**2024 FIRE SERVICES CONTRACT WITH
TOWN OF PORT WASHINGTON**

City's Equalized Valuation	\$	1,594,172,800.00
Town's Equalized Valuation	\$	317,347,600.00
Total Equalized Valuation	\$	1,911,520,400.00
Town's Percentage of Total Equalized Valuation		16.60184%

Fire Department Budget	\$	457,900.00
Insurance	\$	22,545.00
Debt Service	\$	77,350.00

Building Replacement (maint)	\$	30,015.00
2024 Equipment Replacement	\$	117,000.00
TOTAL	\$	<u>704,810.00</u>

Base Charge	(TOTAL*Town's	\$	117,011.44
Percentage of Total Equalized Valuation)			

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: Common Council

FROM: Bob Harris, Director of Planning & Development

DATE: February 6, 2024

SUBJECT: Consideration and Possible Action on Revolving Loan Fund for Cavalier Wine Bar; Located at 324 N. Lake Street; Cavalier Wine Bar LLC, Applicant

ISSUE: The Common Council is being asked to approve an application for a \$25,000 Revolving Loan Fund (RLF) loan for the purpose of assisting in the financing for a proposed wine bar to be located in the Newport Shores mixed-use building.

STAFF RECOMMENDATION: Approve the RLF application as presented.

RECOMMENDED MOTION: “I move to approve the revolving loan fund request of \$25,000 for the Cavalier Wine Bar with the loan contingencies as recommended by the Community Development Authority.”

BACKGROUND/DISCUSSION:

ISSUES: (For additional information, refer to the attached memo from Ozaukee Econ Devp.)

Request and Terms:

- \$25,000
- 5 years @ 4.25% with 6-month deferral of principal

Site and Use:

- Location to be ground floor commercial space at the northeast corner of the Newport Shores building.
- Primary use will be a wine bar serving wine, beer, and (non-alcoholic) mocktails.

RLF Info:

- Current RLF balance: ~\$300,000

STRATEGIC PLAN:

1. **Strategic Direction:** SD 4: Catalyzing Development to Generate Revenue
2. **Impact on Strategic Direction:** An approved RLF will assist with the opening of a new business in a vacant commercial space.

LEGAL:

1. **City Attorney Review:** NA

FISCAL IMPACT: N/A

COMMUNITY DEVELOPMENT AUTHORITY RECOMMENDATION: At its January 22, 2024 meeting the CDA unanimously recommended the Common Council approve the RLF loan request with the following loan contingencies:

1. That a \$25,000 RLF loan is provided to Cavalier Wine Bar, LLC (“Company”). The loan would be used for leasehold improvements.
2. That a loan of \$25,000 is provided to the Company by two private investors.
3. That the RLF loan is provided with a five-year term and amortization and an interest rate of 4.25 percent.
4. That the RLF loan has a six-month deferral of principal payments.
5. A personal guaranty of Kelly Brown, principal Cavalier Wine Bar, LLC

PUBLIC OUTREACH: This matter was first heard before a regular public meeting of the Community Development Authority on January 22nd.

IF APPROVED, NEXT STEPS: N/A

ATTACHMENTS:

- 1) Explanatory Memo from Ozaukee Economic Development: “Revolving Loan Fund Loan – Cavalier Wine Bar, LLC” (December 11, 2023)



MEMORANDUM

TO: City of Port Washington – Community Development Authority
City of Port Washington – Common Council

FROM: Kathleen Cady Schilling, Executive Director
Ozaukee Economic Development

DATE: December 11, 2023

SUBJECT: REVOLVING LOAN FUND LOAN: Cavalier Wine Bar, LLC

The purpose of this memorandum is to provide a summary and staff analysis of the request from Cavalier Wine Bar, LLC for a Revolving Loan Fund (RLF) loan for start-up costs related to their wine bar. Cavalier Wine Bar will be located at 324 N Lake Street in the new Newport Shores building. The business has requested a \$25,000 loan. This loan will be one of the simplified micro loans within the Revolving Loan Fund Program. The simplified loan program limits new loans to \$25,000, but allows for reduced loan fees and utilizes simplified loan documents.

Background

The Cavalier will be a wine bar that will serve wine, craft beer and mocktails. The vision is to create a gathering space that can also be utilized for small events and offer private party rentals. The site's location along Lake Michigan, allows it to offer some of the best views in the City. Long term, the owner would like to offer tea/coffee shop for the morning/afternoon hours.

The Cavalier Wine Bar will fill a niche that the City of Port Washington does not have, although it has a winery, it does not have a specific wine bar. Additionally, Cavalier will be offering specialty mocktails. While the trend of drinking non-alcoholic beverages is increasing, Port currently does not have many options. Most restaurants/bars in the area simply serve ice tea, soda and lemonade as their mocktail options. This will allow people who are choosing a non-alcoholic lifestyle or just an evening, an option to join in the experience with friends who may want an alcoholic option. The space will also focus on having wines from throughout the world and a selection of craft beers.

The Cavalier also plans to offer the space to be utilized as an event space for small corporate events, baby and bridal showers or small receptions. The target market for the bar will be Ozaukee County residents who are educated professionals who are regular consumers of wine or who seek social activity. The main competitors for the bar will be the lounge at the Twisted Willow, Vines to Cellar (Port Washington's winery) and other wine bars in the county (Ernie's Wine Bar in Cedarburg, Art of Joy in Cedarburg and SIP MKE in Mequon). The location of Cavalier combined with the extensive wine list and mocktail offerings should give it an edge.

The Cavalier will be owned by Kelly Brown. Ms. Brown currently has owned a business, Locally Inspired, in downtown Port Washington for 3 years. Financially, this business is successful. Ms Brown worked with the Small Business Development Center at UW-Milwaukee in developing her business plan and financials for this project. Additionally, she developed a team of advisors for the project including Athena Agoudemos from the SBDC, Brittany Rosales, a food truck owner/operator, John Weinrich, former owner of Newport Shores, and Gerjan Van De Broek, developer.

Cavalier has provided detailed projected financials for the next three years, showing that the wine bar will turn a profit within year one and should see solid returns in year two and three.

Funding Request

The Company is requesting that the \$25,000 RLF loan be provided with a term of five years and an interest rate of 4.25 percent, with a six month deferral of principal to ease the original start-up costs. Projected costs for this project are \$78,000. Costs for the project include \$38,500 for leasehold improvements, \$25,000 for equipment, \$15,00 for going into soft costs including inventory, marketing, and initial payroll. The company is receiving two private loans totaling \$25,000, a \$15,000 Kiva loan and \$12,500 from the landlord in tenant improvements.

Since this loan is utilizing the simplified loan program, collateral for this loan will be a personal guaranty by the owners. This loan program only allows loans up to \$25,000.

Contingencies

If the City approves the loan request, it is recommended that the following conditions accompany the approval:

1. That a \$25,000 RLF loan is provided to Cavalier Wine Bar, LLC. The loan would be used for leasehold improvements.
2. That a loan of \$25,000 is provided to the Company by two private investors.
3. That the RLF loan is provided with a five-year term and amortization and an interest rate of 4.25 percent.
4. That the RLF loan have a six month deferral of principal payments.

5. A personal guaranty of Kelly Brown, principal Cavalier Wine Bar, LLC

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AGENDA ITEM MEMORANDUM

City of Port Washington

TO: General Government & Finance Committee and Common Council

FROM: Susan Westerbeke, City Clerk

DATE: Tuesday, February 6, 2024

SUBJECT: Consideration and Possible Action on Original “Class “B” Liquor and Class “B” Beer License for Cavalier Wine Bar, LLC (324 Lake Street, Suite 3, Kelly Brown-Agent)

ISSUE: Should the General Government & Finance Committee and Common Council approve an Original “Class B” Liquor and Class “B” Beer License for Cavalier Wine Bar LLC and Kelly Brown-Agent?

STAFF RECOMMENDATION: The City Clerk has reviewed and approved the application and required supporting documentation. All required fees have been paid and the background record check was completed and approved by Police Chief Hingiss. The City Clerk is requesting approval of the license for Cavalier Wine Bar, LLC.

RECOMMENDED MOTION: “I move to approve the Original “Class B” Liquor and Class “B” Beer License for Cavalier Wine Bar, LLC and Kelly Brown as Agent as presented.”

BACKGROUND/DISCUSSION: Approval of Alcohol Licenses and Agent are required for any establishment who intends to sell, store or allow consumption of alcohol beverages on the premises. This licensed establishment and its Agent Kelly Brown intend to store, sell, serve and allow consumption of Liquor, Wine and Beer products at Cavalier Wine Bar, located at 324 Lake Street in Suite 3, which is located within Newport Shores on the east side, main floor of the building.

STRATEGIC PLAN:

1. **Strategic Direction:** Creating Accountability Through Policies & Procedures
2. **Impact on Strategic Direction:** Consistency is following statutory requirements and municipal code for licensing.

LEGAL:

1. **City Attorney Review:** No
2. **Legal Comments & Conclusions:** N/A
3. **Statutory References:** N/A

FISCAL IMPACT: There is no fiscal impact.

1. **Amount of Recommendation/Cost of Project:**
Initial Project Cost Estimate:

Approved Budget Project Cost:
Prior Year Expenditures:
Total Project Costs to Date:

2. Source of Funding:

3. Operating and Maintenance Cost:

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government and Finance Committee will have met prior to the Common Council meeting to consider this application.

PUBLIC OUTREACH:

IF APPROVED, NEXT STEPS: If approved, the establishment will be issued the appropriate license by the City Clerk.

ATTACHMENTS: None.

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: General Government & Finance Committee and Common Council

FROM: Susan Westerbeke, City Clerk

DATE: Tuesday, February 6, 2024

SUBJECT: Consideration and Possible Action on Original “Class A” Liquor and Class “A” Beer License for Shree Umivakrupa, LLC (223 W. Grand Avenue, Mohammad Siddiqie-Agent)

ISSUE: Should the General Government & Finance Committee and Common Council approve an Original “Class A” Liquor and Class “A” Beer License for Shree Umivakrupa LLC and Mohammad Siddiqie-Agent?

STAFF RECOMMENDATION: The City Clerk has reviewed and approved the application and required supporting documentation. All required fees have been paid and the background record check was completed and approved by Police Chief Hingiss. The City Clerk is requesting approval of the license for Shree Umivakrupa, LLC.

RECOMMENDED MOTION: “I move to approve the Original “Class A” Liquor and Class “A” Beer License for Shree Umivakrupa, LLC, D/B/A Grand Ave Mobil and Mohammad Siddiqie as Agent as presented.”

BACKGROUND/DISCUSSION: Approval of Alcohol Licenses and Agent are required for any establishment who intends engage in the selling, storage, or distribution of alcohol on the premises. This licensed establishment and its Agent intend to store, sell, and distribute Liquor, Wine and Beer products at Grand Ave Mobil gas station, located at 223 W. Grand Avenue. The property will not change ownership, this is a change of business ownership only at this time. The Agent being presented for approval is the existing Agent on the premises.

STRATEGIC PLAN:

1. **Strategic Direction:** Creating Accountability Through Policies & Procedures
2. **Impact on Strategic Direction:** Consistency is following statutory requirements and municipal code for licensing.

LEGAL:

1. **City Attorney Review:** No
2. **Legal Comments & Conclusions:** N/A
3. **Statutory References:** N/A

FISCAL IMPACT: There is no fiscal impact.

1. **Amount of Recommendation/Cost of Project:**

Initial Project Cost Estimate:
Approved Budget Project Cost:
Prior Year Expenditures:
Total Project Costs to Date:

2. **Source of Funding:**
3. **Operating and Maintenance Cost:**

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government and Finance Committee will have met prior to the Common Council meeting to consider this application.

PUBLIC OUTREACH:

IF APPROVED, NEXT STEPS: If approved, the establishment will be issued the appropriate license by the City Clerk.

ATTACHMENTS: None.

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: General Government & Finance Committee; Common Council

FROM: Mark Emanuelson, Finance Director / Treasurer

DATE: Tuesday, February 6, 2024

SUBJECT: Consideration and Possible Action on the approval of a contract for services from Bray Associates – Architects Inc. related to the contemplated new public safety complex.

ISSUE: Should the Common Council approve a contract for services from Bray Associates – Architects Inc. related to the contemplated new public safety complex?

STAFF RECOMMENDATION: Staff recommends approving a contract for services from Bray Associates – Architects Inc. related to the contemplated new public safety complex.

RECOMMENDED MOTION: “I move approving a contract for services from Bray Associates – Architects Inc. related to the contemplated new public safety complex.” OR “Move to approve staff’s recommendation.”

BACKGROUND/DISCUSSION: At the June 20, 2023, meeting of the Common Council, the Council approved the appropriation of \$75,000 to conduct a space needs analysis, site assessment, and concept plan for a public safety complex.

Staff engaged Bray Associates – Architects Inc. to provide those services. The attached agreement identifies a cost of \$11,900 for the space needs assessment and concept plan. If the concept plan is approved at an upcoming meeting, the next steps would be to perform site surveying and additional site geotechnical, environmental, and wetland evaluation. The estimated costs for those services are \$31,000.

Absent specific Common Council approval to move forward with design, the impact of this agreement will be limited to the \$42,900 identified above. Then if the Common Council approves moving forward the formal facility design in preparation for construction, this agreement will engage Bray Associates – Architects Inc. for those services as delineated in the contract agreement at an anticipated rate of 5.7% of construction costs.

In addition, staff has engaged CD Smith as the City’s project construction manager to provide various cost analysis on behalf of the city and identify potential project savings opportunities and alternatives in construction and design for the council to consider as the project moves forward.

STRATEGIC PLAN:

1. **Strategic Direction:** Ranking Priorities to Identify Funding Sources
2. **Impact on Strategic Direction:** Addressing the replacement of these City facilities has been recognized as a key strategic governance initiative. Initiating this analysis marks the initial step towards addressing this priority and ensuring the future success of City infrastructure for public safety.

LEGAL:

1. **City Attorney Review:** YES
2. **Legal Comments & Conclusions:** N/A
3. **Statutory References:** N/A

FISCAL IMPACT:

1. **Amount of Recommendation/Cost of Project:** \$42,900
Initial Project Cost Estimate: \$75,000
Approved Budget Project Cost: N/A
Prior Year Expenditures: N/A
Total Project Costs to Date: N/A
2. **Source of Funding:** One-time revenues
3. **Operating and Maintenance Cost:** TBD

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government & Finance Committee will review the item prior to the Common Council meeting.

PUBLIC OUTREACH: None.

IF APPROVED, NEXT STEPS: If the Public Safety concept plan is approved at an upcoming meeting, the next steps would be to perform site surveying and additional site geotechnical, environmental, and wetland evaluation. The estimated costs for those services are \$31,000.

ATTACHMENTS:

Contract for services from Bray Associates – Architects Inc.



AIA® Document B133® – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the twenty second day of December in the year two thousand twenty-three
(In words, indicate day, month and year.)

BETWEEN the Architect’s client identified as the Owner:
(Name, legal status, address, and other information)

City of Port Washington
100 W. Grand Avenue
Port Washington, Wisconsin 53074

and the Architect:
(Name, legal status, address, and other information)

Bray Associates – Architects, Inc.

Legal status: Corporation

Business address:
1227A North 8th Street
Post Office Box 955
Sheboygan, Wisconsin 53082-0955

Other office locations:
220 Emerson Place, Suite 301
Davenport, Iowa 52801

829 1st Street
Milwaukee, Wisconsin 53204

1465 41st Street, Suite 10
Moline, Illinois 61265

for the following Project:
(Name, location, and detailed description)

Architect’s Project Number 3663
City of Port Washington – New Public Safety Complex
Architectural and engineering services based on a two-phased approach commencing with master planning and concluding with the design and engineering for a new public safety complex.

Phase 1 – Master Planning

The Architect will create a program and conceptual master plan for the Owner’s fire department/emergency medical services, police department, and municipal court. This process will involve developing preliminary site plans, floor plans, and renderings. The Architect will support the Construction Manager in developing preliminary cost estimates. The outcomes of this phase will enable the Owner to proceed with the formal design process, finalize site selection, and support efficient and confident decision-making.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Phase 1 deliverables will include:

1. Space programming identifying quantity and size of spaces to be included in new public safety complex
2. Preliminary site plan(s)
3. Preliminary floor plan(s)
4. Preliminary project description outlining the quantity and quality goals for aspects of the project not yet shown on the preliminary site and floor plan(s)
5. Documentation to support the Construction Manager in creating the budget
6. Materials to support the Owner in communicating the proposed project to the Common Council and broader community

Phase 2 – Design Phase

The Architect shall not proceed with Phase 2 services without prior written approval by the Owner. Phase 2 will include engineering, design, planning, the creation of specifications and construction documents, support of public bidding and procurement, and observation of construction for a new Public Safety Complex.

The Construction Manager (if known):

(Name, legal status, address, and other information)

C.D. Smith Construction Co., Inc.
125 Camelot Drive
Fond du Lac, Wisconsin 54935

The Owner and Architect agree as follows.

TABLE OF ARTICLES

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4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
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11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The Owner's program will be determined during Phase 1. The program will be validated and refined during Phase 2.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

During Phase 1, the Architect shall assist the Owner in review of potential site(s) for the new public safety center. The specific site is unknown at time of execution of this agreement but the Owner is currently negotiating to acquire a potential site for the new public safety center. The Architect shall support the Owner in evaluating up to five (5) potential site(s) for the new public safety center through the creation of conceptual site plans for sites being considered.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

The Owner's budget for the Cost of the Work is not known at the time of execution.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

The preliminary design and construction milestone dates are the best available at the time of execution. Revision to this timeline will be made by contract amendment.

.1 Design phase milestone dates, if any:

Phase 1 – Master Planning

Programming and space needs verification = October 2023 – March 2024

Conceptual site plan, floor plan, and Construction Manager budget development = December 2023 – April 2024

Authorization to proceed with Phase 2 – Design Phase = Mid-April – Early May 2024

Schematic Design = May – June 2024

Design Development = July – August 2024

Construction Documents = September 2024 – January 2025

.2 Construction commencement date:

March – April 2025

.3 Substantial Completion date or dates:

May – June 2026

.4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:

(Indicate agreement type.)

- AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner’s requirements for accelerated or fast-track design and construction, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

To be determined by mutual agreement of the Owner, Architect, and Construction Manager. Per Paragraph 5.4.1 accelerated, phased or fast-track design and construction provide a benefit, but also carries with it associated risks. Such risks include incurring additional costs for the Architect and Architect’s consultants to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents. The preparation and issuance of phased Construction Documents may require additional compensation to the Architect and Architect’s consultants.

§ 1.1.7 The Owner’s anticipated Sustainable Objective for the Project:

(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

The Owner’s sustainable objectives shall be determined by mutual agreement of the Owner and Architect. Leadership in Energy and Environmental Design (LEED) or other sustainable design benchmarking process or certification may be pursued but services associated with these pursuits are not included in the Architect’s Basic Services.

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

(List name, address, and other contact information.)

Susan Westerbeke
City Clerk / Interim City Administrator
City of Port Washington
100 W. Grand Avenue
Port Washington, Wisconsin 53074
swesterbeke@portwashingtonwi.gov

It shall be the Owner’s responsibility to ensure the Owner’s identified representatives in 1.1.8 and 1.1.9 are communicating with each other. The Architect shall not be responsible for coordinating communication between the representatives identified in 1.1.8 and 1.1.9.

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:

(List name, address, and other contact information.)

Robert J Vanden Noven, P.E.
Director of Public Works
City of Port Washington
100 W. Grand Avenue
Port Washington, Wisconsin 53074
RVandenNoven@portwashingtonwi.gov

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

Unknown at time of execution of this agreement

.2

(Paragraphs deleted)

.3

.4

.5

Other consultants and contractors:

(List any other consultants and contractors retained by the Owner.)

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Matthew D. Wolfert, AIA, NCARB, LEED AP
Bray Associates - Architects, Inc.
829 South 1st Street
Milwaukee, Wisconsin 53204
mwolfert@brayarch.com

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

To be determined by Architect

.2 Heating, Ventilation and Air Conditioning (HVAC) Engineer:

MSA Professional Services, Inc.
12308 Corporate Parkway, Suite 400
Mequon, Wisconsin 53092

.3 Electrical Engineer, Plumbing, Fire Protection (performance specifications), Data / Telecommunications Wiring, and Security System Designer:

MSA Professional Services, Inc.
116 Fremont Street
Kiel, Wisconsin 53042

.4 Civil Engineer, Site Utilities Designer, Stormwater Management Designer, Landscape Architect, and Wisconsin Department of Natural Resources Permitting:

Init.

/

Kapur & Associates, Inc.
7711 N. Port Washington Rd.
Milwaukee, Wisconsin 53217

.5 Geotechnical Engineer:
To be determined by Architect

.6 Wetland Delineator:
To be determined by Architect

.7 Phase 1 Environmental Engineer:
To be determined by Architect

.8 Land Surveyor:
Kapur & Associates, Inc.
7711 N. Port Washington Rd.
Milwaukee, Wisconsin 53217

§ 1.1.12.2 Consultants retained under Supplemental Services:

§ 1.1.13 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 **Insurance.** The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000.00) for each occurrence and two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than five hundred thousand dollars (\$ 500,000.00) each accident, five hundred thousand dollars (\$ 500,000.00) each employee, and five hundred thousand dollars (\$ 500,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million dollars (\$ 2,000,000.00) per claim and two million dollars (\$ 2,000,000.00) in the aggregate.

§ 2.6.7 Excess liability insurance with policy limits of not less than five million dollars (\$5,000,000.00) for each occurrence and five million dollars (\$5,000,000.00) in the aggregate, covering claims that exceed the limits of Architect's primary Commercial General Liability and Automobile Liability insurance policies.

§ 2.6.8 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.9 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3. Services not set forth in this Article 3 are Supplemental or Additional Services. Basic Services shall include the following:

- Civil engineering
- Site utilities design
- Landscape architecture
- Stormwater management design
- Structural engineering
- Plumbing design

Fire protection design (performance specifications)
Heating, ventilation, and air conditioning (HVAC) engineering
Electrical engineering
Data / telecommunications design
Security system design
Geotechnical services (limited to design phase exploration borings)
Wetland delineation services
Phase 1 environmental design services
Wisconsin Department of Natural Resources permitting services
Land surveying services (if needed)

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or

procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project. The Owner shall assist the Architect in obtaining cost estimates and actual cost information during all phases of the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or

approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;

- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

The Architect maintains the right to withhold the issuance of a Certificate of Substantial Completion. In the event Architect intends to hold review and certification, the Architect must notify both the Construction Manager and the Owner what documentation the Architect determines is missing. Such notice shall be provided as soon as possible upon receipt of a request for issuance of a Certificate of Substantial Completion.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	Architect - Included in Basic Services
§ 4.1.1.2 Programming	Architect - Included in Basic Services
§ 4.1.1.3 Multiple Preliminary Designs	Architect - Included in Basic Services
§ 4.1.1.4 Measured drawings	Not Provided
§ 4.1.1.5 Existing facilities surveys	Not Provided
§ 4.1.1.6 Site evaluation and planning	Architect - Included in Basic Services
§ 4.1.1.7 Building Information Model management responsibilities	Not Provided
§ 4.1.1.8 Development of Building Information Models	Architect shall provide a model at its sole discretion, with all proprietary information omitted and only to parties that agree to the Architect's release. If the model is provided it is being done for the sole convenience of the user. The user shall in no circumstances rely on the model for anything. The Architect shall have no responsibility for any use of the model by any other party. The Architect shall only provide the model at the end of each phase and shall not allow any party access to the design team's model at any phase of the project.

(Row deleted)

§ 4.1.1.9 Civil engineering	Architect - Included in Basic Services
§ 4.1.1.10 Landscape design	Architect - Included in Basic Services
§ 4.1.1.11 Architectural interior design	Architect - Included in Basic Services
§ 4.1.1.12 Value analysis	Not Provided
§ 4.1.1.13 Cost estimating	Not Provided
§ 4.1.1.14 On-site project representation	Architect (bi-weekly) – Included in Basic Services
§ 4.1.1.15 Conformed documents for construction	Not Provided
§ 4.1.1.16 As-designed record drawings	Not Provided
§ 4.1.1.17 As-constructed record drawings	Not Provided
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22 Telecommunications/data wiring design	Architect - Included in Basic Services
§ 4.1.1.23 Security evaluation and planning	Not Provided
§ 4.1.1.24 Commissioning	Not Provided
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.28 Theatrical lighting design	Not Provided

(Row deleted)

§ 4.1.1.29	Theatrical rigging design	Not Provided
§ 4.1.1.30	Sound system design	Not Provided
§ 4.1.1.31	Acoustical design	Not Provided
§ 4.1.1.32	Audio visual equipment design	Not Provided
§ 4.1.1.33	Food service equipment design	Not Provided
§ 4.1.1.34	Natatorium / pool design and engineering	Not Provided
§ 4.1.1.35	Digital building energy modeling	Not Provided
§ 4.1.1.36	Detailed roof survey and building envelope analysis	Not Provided
§ 4.1.1.37	Detailed life cycle cost analysis of building systems, finishes, etc.	Not Provided
§ 4.1.1.38	Design of non-conventional / deep foundations systems	Not Provided
§ 4.1.1.39	Security system design and engineering	Architect - Included in Basic Services
§ 4.1.1.40	Department of Natural Resources permitting	Architect - Included in Basic Services
§ 4.1.1.41	Wetland delineation	Architect - Included in Basic Services
§ 4.1.1.42	Bureau of Endangered Resources (BER) review and application	Architect - Included in Basic Services
§ 4.1.1.43	Archeological and / or historical studies	Not Provided
§ 4.1.1.44	Geothermal conductivity analysis	Not Provided
§ 4.1.1.45	Geothermal ground source design and engineering	Not Provided
§ 4.1.1.46	Storm water management calculations and report	Not Provided
§ 4.1.1.47	Storm water management design	Architect - Included in Basic Services
§ 4.1.1.48	Boundary and / or topographic surveys	If Needed, Architect – Included in Basic Services
§ 4.1.1.49	Soil borings (limited to design phase exploration borings)	Architect - Included in Basic Services
§ 4.1.1.50	Traffic impact studies	Not Provided
§ 4.1.1.51	Design of public roadways, streets, intersections, or traffic signals (design of private, on site circulation is included in Basic Services)	Not Provided
§ 4.1.1.52	Municipality, utility and other impact fees	Not Provided
§ 4.1.1.53	Design of potable water well and/or septic field	Not Provided
§ 4.1.1.54	Site utilities design	Architect - Included in Basic Services
§ 4.1.1.55	Phase I environmental design	Architect - Included in Basic Services

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect’s responsibility is provided below.

(Describe in detail the Architect’s Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect’s Services documents that can be included as an exhibit to describe the Architect’s Supplemental Services.)

Supplemental Services identified in Section 4.1.1 as the Architect’s responsibility shall be provided as Basic Services.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner’s responsibility is provided below.

(Describe in detail the Owner’s Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager shall be included in Basic Services;
- .8 Preparation for, and attendance at, up to three (3) public presentations, meetings or hearings during Phase 2 shall be included in Basic Services;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating more than five (5) Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 bi-weekly () visits to the site by the Architect during construction
- .3 two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 two (2) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within sixty (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner and shall work with the Architect to establish requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5. The Architect shall provide the design schedule to the Owner and Construction Manager for which any changes to the design schedule must be approved by the Architect.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 If needed, the Architect shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Architect shall furnish geotechnical services limited to design phase exploration borings. If required, the Owner shall furnish services of geotechnical engineers beyond the design phase exploration borings, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or unused contingencies for changes in the Work; or other costs that are the responsibility of the Owner. The Cost of the Work at completion of the Project shall be the total cost of construction of all elements of the Project designed or specified by the Architect during Phase 3.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not

include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination and Reimbursable Expenses incurred.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

To be mutually agreed upon between Owner and Architect, if becomes applicable.

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

To be mutually agreed upon between Owner and Architect, if becomes applicable.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8. The Architect agrees to comply with the Owner's determination regarding the requirements of Wisconsin Statutes Sections 19.32 and 19.39 and Sections 19.81 to 19.98 – Wisconsin Public Records Law and Open Meeting law.

§ 10.9 The invalidity of any provision of this Agreement shall not invalidate this Agreement or its remaining provisions. If it is determined that any provision of this Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case this Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing this Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

Phase 1 – Master Planning:

Compensation shall be a fixed fee in the amount of Eleven Thousand Nine Hundred Dollars (\$11,900.00)

The following services will likely be needed during Phase 1 and will be invoiced when the services are provided. These fees are included in our Phase 2 percentage of the Cost of the Work fee and will be credited against the Phase 2 fee.

Geotechnical services: Seven Thousand Five Hundred Dollars (\$7,500.00)

Phase 1 environmental services: Seven Thousand Five Hundred Dollars (\$7,500.00)

Wetland delineation services: Four Thousand Dollars (\$4,000.00)

Land surveying services (if needed): Twelve Thousand Dollars (\$12,000.00)

.2 Percentage Basis
(Insert percentage value)

Phase 2 – Design Phase:

If the Cost of the Work is \$20,000,000 or greater, compensation shall be Five and Seven Tenths Percent (5.7%) of the Cost of the Work.

Compensation shall be based on the of the Cost of the Work per project / per school and to be determined as follows:

New Construction Per Project	Fee
\$1,500,000 - \$2,999,999	8.500%
\$3,000,000 - \$4,999,999	8.000%
\$5,000,000 - \$7,499,999	7.500%
\$7,500,000 - \$9,999,999	7.000%
\$10,000,000 – \$12,499,999	6.750%
\$12,500,000 - \$14,999,999	6.500%
\$15,000,000 - \$17,499,999	6.250%

\$17,500,000 - \$19,999,999	6.000%
\$20,000,000 or greater	5.700%

Addition / Renovation Per Project	Fee
\$1,500,000 - \$2,999,999	8.750%
\$3,000,000 - \$4,999,999	8.375%
\$5,000,000 - \$7,499,999	8.000%
\$7,500,000 - \$9,999,999	7.500%
\$10,000,000 – \$12,499,999	7.375%
\$12,500,000 - \$14,999,999	7.000%
\$15,000,000 - \$17,499,999	6.500%
\$17,500,000 - \$19,999,999	6.250%
\$20,000,000 or greater	6.000%

If the Cost of the Work of a project is less than \$1,500,000, the fee will be negotiated based on the scope of the project and services required.

The above percentage fee shall include accepted alternates and aspects of the Project designed by the Architect and Architect’s Consultants.

The Architect shall be compensated for the design of:

- unaccepted additive alternates,
- accepted deductive alternates, and
- aspects of the Project designed but removed from the Project through value engineering or similar processes.

Compensation for those portions of the Project shall be payable to the extent services are performed on those portions in accordance with the schedule set forth in Section 11.5, based on (1) the Owner accepted Guaranteed Maximum Price, or (2) if the Guaranteed Maximum Price has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

.3 Other
(Describe the method of compensation)

§ 11.2 For the Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Supplemental and any Sustainability Services shall be provided upon prior written approval of the Owner of such services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Additional services shall be provided upon prior written approval of the Owner of such services.

§ 11.4

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	twenty	percent (20	%)
Design Development Phase	twenty	percent (20	%)
Construction Documents Phase	forty-five	percent (45	%)
Construction Phase	fifteen	percent (15	%)
<hr/>				
Total Basic Compensation	one hundred	percent (100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1
- .2
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents limited to final construction documents;
- .5 Postage, handling, and delivery limited to final construction documents;
- .6
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures approved by the Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus five percent (5 %) of the expenses incurred.

(Paragraphs deleted)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$ 0) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

5 % five percent per annum

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

Init.

/

Architect's Certificate of Insurance

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Theodore Neitzke IV, Mayor

(Printed name and title)

OWNER (Signature)

Susan Westerbeke, City Clerk

(Printed name and title)

Per § 62.09(10)(f), Wis. Stat., I certify that the necessary funds have been provided to pay the liability incurred under this Agreement.

OWNER (Signature)

Mark Emanuelson, City Treasurer

(Printed name and title)

Matthew D. Wolfert

ARCHITECT (Signature)

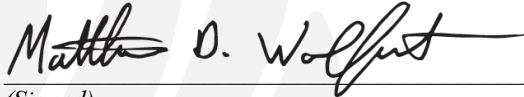
Matthew D Wolfert, AIA, NCARB, LEED AP
President

(Printed name, title, and license number, if required)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Matthew D. Wolfert, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:32:09 CT on 01/30/2024 under Order No. 3104239492 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

President

(Title)

January 30, 2024

(Dated)

AGENDA ITEM MEMORANDUM

City of Port Washington

**TO: Common Council
General Government and Finance Committee**

FROM: Roger Strohm, City Engineer

DATE: February 6, 2024

SUBJECT: Consideration and Possible Action to Grant Wisconsin Bell Inc. doing business as AT&T a Utility Easement at 305 E Washington Street, Inventors Brewpub and Edison Hall

ISSUE: Should the City grant an easement to AT&T to install below ground conduit and cables to transmit signals used in the provision of communication, video, and information services to Inventors Brewpub and Edison Hall at 305 E Washington Street?

STAFF RECOMMENDATION: Staff recommends that the City grant an easement to AT&T to install below ground conduit and cables to transmit signals used in the provision of communication, video, and information services to Inventors Brewpub and Edison Hall at 305 E Washington Street.

RECOMMENDED MOTION: I move to approve the staff recommendation, or I move to grant an easement to install below ground conduit and cables to transmit signals used in the provision of communication, video, and information services to Inventors Brewpub and Edison Hall at 305 E Washington Street.

BACKGROUND/DISCUSSION: AT&T has an existing pedestal on the west side of the Harbor Walk near Washington Street. The Harbor Walk is adjacent to the west side of Inventors Brew Pub and Edison Hall. The Inventors Brew Pub and Edison Hall building was designed with utility connections near the southwest corner of the building. Since the building was approved and constructed with a zero-foot (0') setback from the west property line, the most expedient manner to provide communication and internet service to the building is through city property (the Harbor Walk) from the existing pedestal. This easement is parallel to an easement the City recently granted to WEPCO.

STRATEGIC PLAN:

1. **Strategic Direction:** Creating Accountability Through Policies & Procedures
2. **Impact on Strategic Direction:** This project holds the City accountable by ensuring safe and expedient utilities to new developments.

LEGAL:

1. **City Attorney Review:** Yes.
2. **Legal Comments & Conclusions:** The City Attorney reviewed and edited the proposed easement language from WEPCO.
3. **Statutory References:**

FISCAL IMPACT: None.

1. Amount of Recommendation/Cost of Project:

Initial Project Cost Estimate: \$0

Approved Budget Project Cost: N/A

Prior Year Expenditures: \$0

Total Project Costs to Date: \$0

2. Source of Funding: N/A

3. Operating and Maintenance Cost: None.

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government and Finance Committee is reviewing this item prior to the City Council meeting.

PUBLIC OUTREACH: None.

IF APPROVED, NEXT STEPS: AT&T will record the easement after the appropriate signatures are obtained.

ATTACHMENTS:

AT&T – Wisconsin Non-Exclusive Utility Easement

AT&T - WISCONSIN NON-EXCLUSIVE UTILITY EASEMENT

DOCUMENT NUMBER

UT_A02LS1G

For a valuable consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, the undersigned, **CITY OF PORT WASHINGTON, a Wisconsin municipal corporation** (hereinafter the "Grantor"), hereby grants and conveys to **Wisconsin Bell Inc., d/b/a AT&T - Wisconsin, a Wisconsin corporation**, and its affiliates, successors and assigns (hereinafter collectively the "Grantees") a non-exclusive utility easement upon and beneath that part of Grantor's property hereinafter referred to as the Easement Area (described below).

The purposes of this Easement are to construct, reconstruct, modify, supplement, maintain, operate and/or remove underground facilities, conduit and cables for the transmission of signals used in the provision of communication, video and/or information services, and also including one (1) above-ground equipment cabinet and support pad or pedestal, marker posts and signs, together with the right to have commercial electrical service extended beneath the Easement Area to provide service to such facilities, and the right of ingress and egress over and across the Easement Area, and, temporarily, over such adjoining lands of Grantor as reasonably necessary for the purpose of access to and use of the utility easement granted herein.

Grantor's property is legally described as: Outlot 1 of Certified Survey Map No. 3978 as recorded in the office of the Register of Deeds for Ozaukee County, Wisconsin, as Document No. 1038137, and being a part of the Northwest ¼ of the Southwest ¼ of Section 28, Township 11 North, Range 22 East, City of Port Washington, Ozaukee County, Wisconsin (the "Property").

The Easement Area is legally described as: those certain strips of land of varying dimensions, being that part of Outlot 1 of Certified Survey Map No. 3978 as recorded in the office of the Register of Deeds for Ozaukee County, Wisconsin, as Document No. 1038137 and being a part of the Northwest ¼ of the Southwest ¼ of Section 28, Township 11 North, Range 22 East, City of Port Washington, Ozaukee County Wisconsin, the location and boundaries of which Easement Area are more particularly shown and described in Exhibit A, attached hereto and incorporated by reference herein.

The Property is commonly known by its street address of: 305 E. Washington Street, Port Washington, WI.

The Grantor represents and warrants to the Grantee that Grantor is the true and lawful owner of the Property and has full right and power to grant and convey the non-exclusive utility easement rights conveyed herein.

Grantee hereby agrees, at Grantee's sole expense, to restore or cause to have restored all of Grantor's land and property disturbed by Grantee's activities in use of the Easement Area to the condition existing prior to the disturbance of such land and property.

RETURN ADDRESS:

Matthew D Grimm
220 Wisconsin Ave.,
Waukesha, WI. 53186

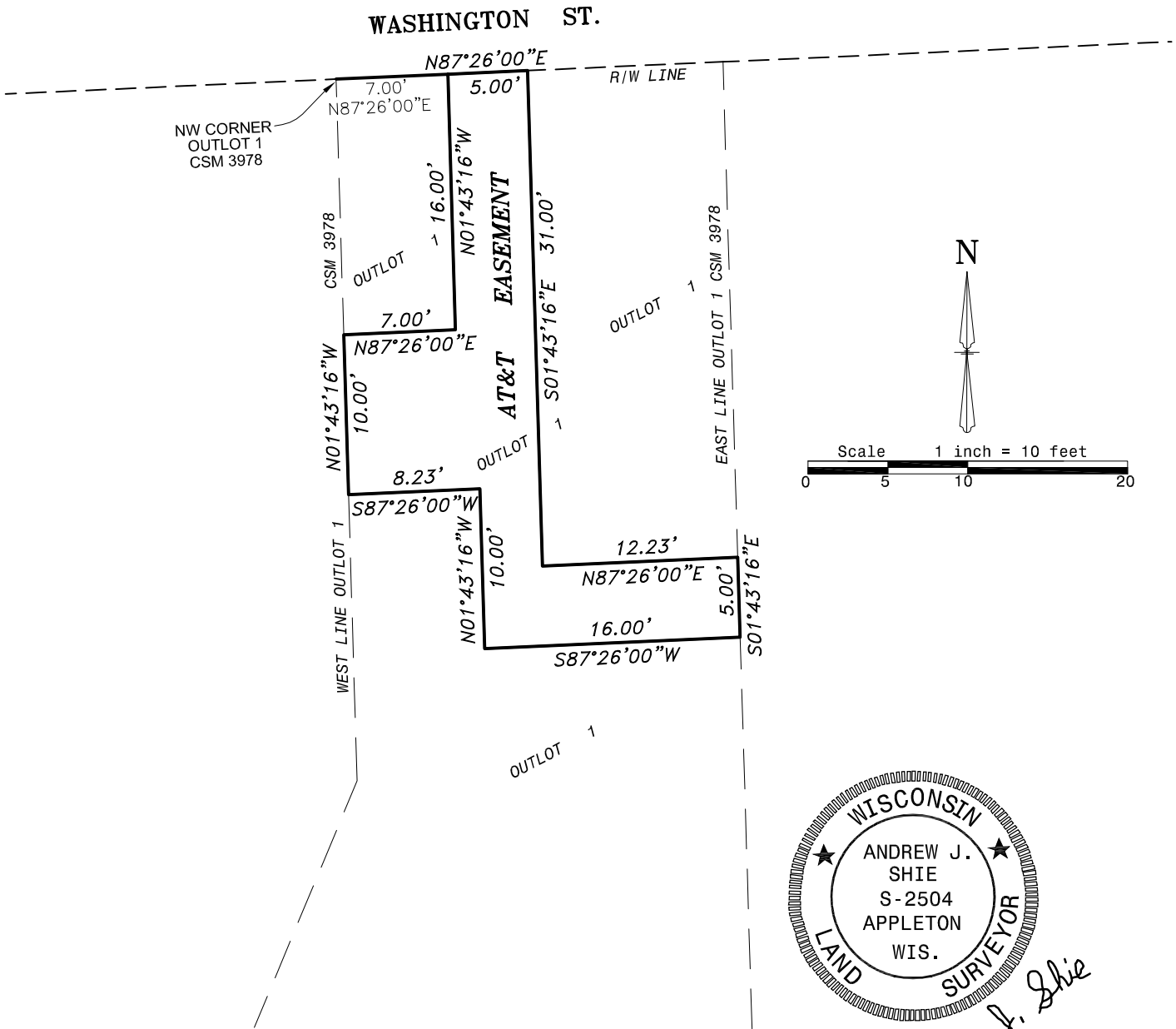
PARCEL NUMBER: 16-098-17-01-002

EXHIBIT "A" FOR AT&T EASEMENT

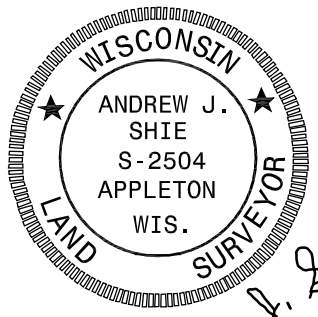
LEGAL DESCRIPTION OF AT&T EASEMENT:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 3978, LOCATED IN THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, IN SECTION 28, TOWNSHIP 11 NORTH, RANGE 22 EAST, CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID OUTLOT 1; THENCE NORTH 87 DEGREES 26 MINUTES 00 SECONDS EAST 7.00 FEET, ALONG THE NORTH LINE OF SAID OUTLOT 1, TO THE POINT OF BEGINNING; THENCE NORTH 87 DEGREES 26 MINUTES 00 SECONDS EAST 5.00 FEET, ALONG THE NORTH LINE OF SAID OUTLOT 1; THENCE SOUTH 01 DEGREES 43 MINUTES 16 EAST 31.00 FEET; THENCE NORTH 87 DEGREES 26 MINUTES 00 EAST 12.23 FEET; THENCE SOUTH 01 DEGREES 43 MINUTES 16 EAST 5.00 FEET, ALONG THE EAST LINE OF SAID OUTLOT 1; THENCE SOUTH 87 DEGREES 26 MINUTES 00 SECONDS WEST 16.00 FEET; THENCE NORTH 01 DEGREES 43 MINUTES 16 WEST 10.00 FEET; THENCE SOUTH 87 DEGREES 26 MINUTES 00 SECONDS WEST 8.23 FEET; THENCE NORTH 01 DEGREES 43 MINUTES 16 WEST 10.00 FEET, ALONG THE WEST LINE OF SAID OUTLOT 1; THENCE NORTH 87 DEGREES 26 MINUTES 00 EAST 7.00 FEET; THENCE NORTH 01 DEGREES 43 MINUTES 16 WEST 16.00 FEET, TO THE POINT OF BEGINNING.



UT# A02LS1G
FOX VALLEY
LAND SURVEYING
 4321 W. College Ave., Suite 200
 Appleton, WI 54914
 920-474-5025
 PROJECT NO. 112228-1



Andrew J. Shie
 1/5/2024

DEVELOPER'S AGREEMENT

AGREEMENT (this "Agreement") made and entered into this ____ day of February, 2024, between the City of Port Washington, Wisconsin, a municipal corporation ("City"), TBF Development LLC, a Wisconsin limited liability company ("TBF"), Inventors Brewpub LLC, a Wisconsin limited liability company ("Inventors"), and Adam Draeger, an adult resident of Aurora, Colorado ("Draeger"), (herein collectively referred to as the "Parties," and separately as a "Party.")

RECITALS

WHEREAS, the City and TBF previously entered into a Development Agreement dated November 15, 2016, as amended on April 5, 2017 (Amendment No. 1), October 4, 2017 (Amendment No. 2), May 3, 2018 (Amendment No. 3), and March 1, 2022 (Amendment No. 4) (hereinafter together referred to as the "Development Agreement"); and

WHEREAS, pursuant to the Development Agreement, the City previously paid to TBF a Development Grant in the sum of \$1,000,000 to be used by TBF to pay the costs of constructing a 25,000 square foot mixed-use building on that certain parcel of land located at 305 E. Washington Street, Port Washington, Wisconsin, Tax Key No. 16-098-16-01.000 (the "Premises"), the currently planned uses of which include a brewpub, restaurant, event space, and offices (the "North Slip Project"); and

WHEREAS, the terms and conditions governing payment of the Development Grant to TBF, and the use and repayment of said Grant by TBF, are set forth in the Development Agreement; and

WHEREAS, Inventors, which will be the primary tenant in the new building on the Premises, previously received a \$150,000 loan from the City's revolving loan fund to purchase equipment to be used in Inventors' brewpub/restaurant business operations; and

WHEREAS, Draeger is currently the managing member of, and holds a majority interest in, both TBF and Inventors; and

WHEREAS, TBF shall serve as contract administrator and fiscal agent for the completion of the North Slip Project; and

WHEREAS, TBF, Inventors, and Draeger have jointly requested that the City obtain a \$250,000 Community Development Investment ("CDI") grant from the Wisconsin Economic Development Corporation ("WEDC"), and disburse said grant funds to TBF and Inventors to be used to pay additional construction costs of the aforesaid building; and

WHEREAS, the City's receipt of the \$250,000 CDI grant funds from WEDC requires a local match of 75% (i.e., \$750,000), which local match shall be satisfied with public and private investment funding previously committed to and expended for the North Slip Project by TBF and the City; and

WHEREAS, the City has entered into that certain *Community Development Investment Grant Agreement Between the Wisconsin Economic Development Corporation and City of Port Washington*, dated and effective June 29, 2022 (the "CDI Grant Agreement"), and is or will be able to disburse the CDI grant funds to TBF, Inventors, and Draeger upon the terms and conditions set forth herein; and

WHEREAS, Section 4.(f) of the CDI Grant Agreement requires that the City request all CDI grant funds no later than February 29, 2024, such that time is of the essence.

NOW, THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and in consideration of the mutual promises set forth herein, it is agreed as follows:

1. **Incorporation of Recitals.** The foregoing Recitals and the documents referenced therein are incorporated by reference as if fully set forth herein and as substantive provisions hereof and are not recited merely for convenience or reference. Capitalized terms used and not otherwise defined herein have the meanings ascribed in such documents.
2. **TBF, Inventors and/or Draeger's Responsibilities.** TBF, Inventors and/or Draeger shall have the following responsibilities and perform the following actions under this Agreement:
 - a. **Invoices.** TBF shall promptly provide to the City itemized invoices for eligible construction expenses on the North Slip Project, with proof of payment for reimbursement purposes, relating to TBF's \$250,000 portion of said construction work, as required by WEDC.
 - b. **Reports.** TBF shall provide to the City written quarterly performance reports during the construction phase of the North Slip Project, with a final written report due upon substantial completion of construction, as required by WEDC.
 - c. **Indemnification.** TBF, Inventors, and Draeger shall, jointly and severally, indemnify and hold harmless the City, its officers, members, employees, and agents from any and all costs, court costs, expenses, attorney's fees, damages, losses, liabilities, judgments, financial penalties, and interest, up to \$250,000 in the aggregate, caused by or resulting from the occurrence of any one or more Event(s) of Default set forth in Section 7 of the CDI Grant Agreement, which may entitle WEDC to a return of any or all CDI grant funds disbursed for the North Slip Project, or to any other remedy set forth in Section 8 of the CDI Grant Agreement. Full payment of such amounts shall be delivered to the City within thirty (30) calendar days of delivery of written demand therefor by the City. If payment in full is not delivered to the City as and when due, TBF, Inventors, and Draeger shall be jointly and severally liable for the full unpaid balance, plus interest at the annual rate of twelve percent (12%) from the date of such written demand until paid in full.
 - d. **Guarantees.** At the time of execution of this Agreement, Draeger shall execute and deliver to the City, in a form acceptable to the City Attorney, a written Continuing Guaranty (Unlimited) which provides that, upon demand, he shall reimburse the City up to \$250,000 in the aggregate if the City is required under the terms of the CDI Grant Agreement to repay the WEDC some or all of the CDI grant funds paid by WEDC for the North Slip Project. At the time of execution of this Agreement, Draeger, on behalf of TBF and Inventors, shall also execute and deliver to the City, in a form acceptable to the City Attorney, written guarantees which provide that, upon demand, TBF and Inventors shall, jointly and severally, reimburse the City up to \$250,000 in the aggregate if the City is required under the terms of the CDI Grant Agreement to repay the WEDC some or all of the CDI grant funds paid by WEDC for the North Slip Project.

- e. **Life Insurance.** Draeger, at Draeger's expense, shall obtain, maintain, and provide the City with written verification of the existence of a term life insurance policy, issued by an insurer licensed to do business in Wisconsin and acceptable to the City, on Draeger's life, in an amount of not less than \$ 250,000, naming the City as sole, irrevocable primary beneficiary, to secure the performance of Draeger's obligations under this Agreement. Upon request, Draeger shall provide the City with written verification of the existence of such insurance policy. Draeger shall maintain said life insurance policy in force with the City named as the sole, irrevocable primary beneficiary thereof for a period of five (5) years from the Effective Date of the CDI Grant Agreement, i.e., until June 28, 2027, after which date said insurance policy may be canceled.

 - f. **Attorney's Fees.** Inventors and Draeger shall be jointly and severally liable for and pay reimbursement to the City in the sum of \$ 25,000 for attorney's fees expended by the City with respect to the North Slip Project. Said sum shall be paid in six (6) consecutive monthly installments of \$3,750 each beginning on June 30, 2025, and on the 30th day of each month thereafter, and one final installment of \$2,500 on or before December 31, 2025. If full payment of any installment is not delivered to the City as and when due, interest on said past due installment shall accrue at the annual rate of twelve percent (12%) until paid in full.

 - g. **Audit Information.** Upon commercially reasonable notice by the City, TBF shall provide the City Treasurer or the City's Finance Department, or such other person or entity designated by the City, access to financial records and statements related to the North Slip Project during the period prior to substantial completion of the building constructed as part of the North Slip Project, and for at least three (3) years after substantial completion of said building, for audit purposes.
3. **City's Responsibilities.** In furtherance of this Developer's Agreement, the City shall have the following responsibilities and perform the following actions under this Agreement:
- a. **Reports.** Submit to WEDC the quarterly and final written performance reports provided by TBF pursuant to Section 2.b. of this Agreement, to ensure compliance with the requirements of the WEDC grant program.

 - b. **Disbursement of Grant Funds.** Disburse payment of \$250,000 to TBF upon receipt of an invoice in said amount, provided that not less than \$750,000 shall have been previously paid as a local match in the form of public and private investment funding for the North Slip Project.

 - c. **Information.** Provide documentation, as reasonably requested by TBF, to assist in complying with the terms and conditions of other grant awards relating to the North Slip Project for which the City's \$250,000 CDI Grant constitutes matching funds.

 - d. **Acknowledgement.** Ensure WEDC-acknowledgement is included in the final North Slip Project documents.

 - e. **Audit Information.** Upon commercially reasonable notice by TBF, provide TBF, or such other person or entity designated by TBF, access to financial records and

statements related to the North Slip Project during the period prior to substantial completion of the building constructed as part of the North Slip Project, and for at least three (3) years after substantial completion of said building, for audit purposes.

4. **Binding Effect.** This Agreement shall be binding upon the Parties hereto, and upon the Parties' successors, assigns, heirs, and representatives. This Agreement may not be assigned by TBF, Inventors or Draeger without the prior written consent of the City, which consent may be withheld, conditioned, or delayed in the City's sole discretion. Any assignee approved by the City shall assume all of the obligations to the City under this Agreement.
5. **No Third-Party Beneficiaries.** This Agreement is intended solely to regulate the obligations of the Parties hereto with respect to one another. Nothing in this Agreement is intended to create, admit, or imply any liability to any third-party, nor to provide any benefit to any person, firm, corporation, or entity not a party to this Agreement.
6. **Notice.** Any notice required hereunder shall be given in writing, signed by the party giving notice, and personally delivered or mailed by certified or registered mail, return receipt requested, to the following persons and addresses (or to such other person or address as a party may designate in advance and in writing to the other parties from time to time):

To the City: City Administrator
 c/o City Hall
 100 W. Grand Ave.
 P.O. Box 307
 Port Washington, WI 53074

To TBF: Gertjan van den Broek
 P.O. Box 331
 Port Washington, WI 53074

To Inventors: Adam Draeger
 435 N. Lake Street
 Port Washington, WI 53074

To Draeger: Adam Draeger
 23428 E. Briarwood Place
 Aurora, CO 80016

Copies to: Eric E. Eberhardt, Esq.
 Antoine, Hoeft & Eberhardt, S.C.
 P.O. Box 366
 Port Washington, WI 53074

 Bruce A. McInay, Esq.
 McInay Button Law LLC
 1971 Washington Street
 Grafton, WI 53024

7. **Severability.** If one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision. If any such provision is held to be invalid as applied to any person, entity or circumstances, such determination shall not affect the applicability of such provision to any other person, entity, or circumstances.
8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. A facsimile or digital signature is deemed the equivalent of an original signature.
9. **Recording.** Any Party may record a copy of this Agreement in the office of the Register of Deeds for Ozaukee County, Wisconsin.
10. **Authority.** City officials who have executed this Agreement have the authority to do so pursuant to approval granted by the Common Council at a lawfully convened meeting.
11. **Amendments.** This Agreement may be amended at any time by mutual consent of the Parties. Any such amendments shall be in writing and shall become effective only upon execution by duly authorized representatives of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Developer’s Agreement to be duly executed and delivered as of the date first above written.

CITY OF PORT WASHINGTON,
a Wisconsin municipal corporation

TBF DEVELOPMENT LLC,
a Wisconsin limited liability company

By: _____
Theodore Neitzke IV, Mayor

By: _____
Adam Draeger, Managing Member

By: _____
Susan L. Westerbeke, City Clerk

INVENTORS BREWPUB, LLC
a Wisconsin limited liability company

By: _____
Adam Draeger, Managing Member

Adam Draeger, Individually

ACKNOWLEDGEMENTS

STATE OF WISCONSIN)
) ss.
COUNTY OF OZAUKEE)

Personally came before me this _____ day of February, 2024, the above-named Theodore Neitzke IV and Susan L. Westerbeke, to me known to be the Mayor and City Clerk, respectively, of the City of Port Washington, Wisconsin, a municipal corporation, and to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said municipal corporation, by its authority.

_____, Notary Public
State of Wisconsin
My commission _____.

STATE OF _____)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of February, 2024, the above-named Adam Draeger, to me known to be the Managing Member of TBF Development LLC, a Wisconsin limited liability company, and Managing Member of Inventors Brewpub, LLC, a Wisconsin limited liability company, and to me known to be the person who executed the foregoing instrument, and acknowledged the same as the act and deed of said limited liability companies, by their authority.

_____, Notary Public
State of _____
My commission _____.

STATE OF _____)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of February, 2024, the above-named Adam Draeger, to me known to be the person who executed the foregoing instrument and acknowledged the same as his individual act and deed.

_____, Notary Public
State of _____
My commission _____.