



CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WI  
GENERAL GOVERNMENT AND  
FINANCE COMMITTEE MEETING  
TUESDAY, JUNE 4, 2024 AT 5:00 P.M.  
Port Washington City Hall, 100 W. Grand Avenue, Port Washington, WI 53074  
Council Chambers Side Conference Room

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**AGENDA**

1. Roll Call
2. Appointment of Chairperson for the 2024-2025 Term
3. Appointment of Vice-Chairperson for the 20204-2025 Term
4. Approve Minutes of the Previous Meeting
5. Consideration and Possible Action on Authorizing Bray Architects to Proceed with Final Design of the Public Safety Building
6. Consideration and Possible Action on an Agreement with CD Smith, performing as the Construction Manager as Constructor for the Proposed Public Safety Building where the basis of payment is the Cost of the Work Plus a Fee with Guaranteed Maximum Price
7. Ordinance 2024-7: An Ordinance Repealing and Recreating Chapter 450 of the City Code Relating to Floodplain Zoning- 1<sup>st</sup> Reading
8. Chairman's Business
9. Member's Business
10. Public Comments/Appearances
11. 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, MAY 21, 2024 AT 5:30 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 Alderperson Jonathan Pleitner and Dan Benning. Ald. Deborah Postl was absent and excused. Also present was City Administrator Melissa Pingel, and City Clerk Susan Westerbeke.
- 2. Approve Minutes of the Previous Meeting-** MOTION MADE BY ALD. BENNING, SECONDED BY ALD. PLEITNER TO APPROVE THE MINUTES OF THE PREVIOUS MEETING AS PRESENTED. Motion carried unanimously.
- 3. Consideration and Possible Action on Approval of Establishments One-Day Extension of Alcohol Premises: Port Main Street Festival of the Arts Event-** The City Clerk reviewed the One-Day Extension of Alcohol Premises for the Establishments on N. Franklin and E. Main Streets to participate in the Port Festival of the Arts during the designated hours allowing patrons to purchase, carry out and consume beer and wine products in plastic cups during the hours of 11:00a.m. and 5:00p.m. within the festival grounds. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. PLEITNER TO RECOMMEND APPROVAL OF ESTABLISHMENTS ONE-DAY EXTENSION OF ALCOHOL PREMISES: PORT MAIN STREET FESTIVAL OF THE ARTS EVENT AS PRESENTED. Motion carried unanimously.
- 4. Presentation of Concept Design by Bray Architects for a Public Safety Building-** Matt Wolfert from Bray Architects and Cory Henschel of CD Smith were present to answer questions related to pending contracts as part of the project process. CD Smith Construction will have a contract which will allow them to go to bid for construction and provide consistent budgetary updates. The site is located on the corner of State Road 33 and County Road LL. Land surveying and wetland delineation are complete, and the soil boring report is currently being processed. Discussion was held.
- 5. Consideration and Possible Action on Approval of Owners Representation for the Public Safety Building Project-** Discussion, the Council requested an expanded scope of study. Discussion was held on questions, which need to be addressed by the Owners Representative. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. PLEITNER TO TAKE NO ACTION ON THIS ITEM. Motion carried unanimously.
- 6. Ordinance 2024-3: Amending Portions of Chs. 8, 36 and 485 of the City Code Relating to the Appointment and Commencement of Term of Office of Members of Certain City Boards, Commissions and Committees, and Amending Membership of the Plan Commission- 2<sup>nd</sup> Reading-** The current code states the date of appointment, and the term of office start dates, for some but not all appointed members of the City's boards, committees, and commissions. The appointments are made by the mayor and approved by the Common Council. This ordinance amends several sections of the City's Municipal Code to specify the mayoral appointment date, and the term of office starting date of all appointment members of the City's Boards, Commissions, and Committees. At the Common Council meeting during the third Tuesday in May, the Mayor will present BCC appointments, except for Police and Fire Commission and Library Board, as their respective appointment dates are dictated by State Statute. This Ordinance has returned to the Committee with the modifications requested by Common Council at their last meeting. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. PLEITNER TO RECOMMEND APPROVAL OF ORDINANCE 2024-3: AMENDING PORTIONS OF CHS. 8, 36, AND 485 OF THE CITY CODE RELATING TO THE APPOINTMENT AND COMMENCEMENT OF TERM OF OFFICE OF MEMBERS OF CERTAIN CITY BOARDS, COMMISSIONS AND COMMITTEES, AND AMENDING MEMBERSHIP OF THE PLAN COMMISSION AS PRESENTED. Motion carried unanimously.

- 7. Resolution 2024-4: Supporting a Grant Application for Historic Lighthouse Preservation Through the Wisconsin Department of Transportation Fiscal Year 2024 Redistribution Transportation Alternatives Program (TAP)-** Public Works Director Rob Vanden Noven was present to discuss Resolution 2024-4, the State/Municipal Agreement for an Infrastructure Alternative Program (TAP) Project grant related to the Historic Lighthouse Preservation. The grant application for the project to preserve the North Breakwater Pier Lighthouse was submitted to WisDOT. The funding is available through the Bipartisan Infrastructure Law (BIL) and the annual federal redistribution of funding that other states were unable to obligate. The TAP encompasses a variety of smaller-scale transportation projects such as pedestrian and bicycle facilities, recreation trails, safe routes to school projects, community improvements such as historic preservation and vegetation management, and environmental mitigation related to stormwater and habitat connectivity. Projects receiving the grant award can receive up to 80 percent of the funds required to complete the project. The city has not yet been notified of an award for this project. This resolution authorizing the grant application is a requirement prior to award of the grant to ensure the grantee will provide the local match. Discussion was held regarding funding for the proposed project. **MOTION MADE BY ALD. BENNING, SECONDED BY ALD. PLEITNER TO RECOMMEND APPROVAL OF RESOLUTION 2024-4: SUPPORTING A GRANT APPLICATION FOR HISTORIC LIGHTHOUSE PRESERVATION THROUGH THE WISCONSIN DEPARTMENT OF TRANSPORTATION FISCAL YEAR 2024 REDISTRIBUTION TRANSPORTATION ALTERNATIVES PROGRAM (TAP) AS PRESENTED. Motion carried unanimously.**
- 8. Consideration and Possible Action on a State/Municipal Agreement for an Infrastructure Transportation Alternatives Program (TAP) Project: Historic Lighthouse Preservation-** The Public Works Director discussed the State/Municipal Agreement (SMA) for an Infrastructure Transportation Alternatives Program (TAP) Project for the Historic Lighthouse Preservation. The city has not yet been notified of an award for this project. As a result of the short timeframes related to the project award, it is necessary to proceed with completing all required actions deemed to be grant eligible, including execution of the SMA. **MOTION MADE BY ALD. BENNING, SECONDED BY ALD. PLEITNER TO RECOMMEND APPROVAL OF THE STATE/MUNICIPAL AGREEMENT FOR AN INFRASTRUCTURE TRANSPORTATION ALTERNATIVES PROGRAM (TAP) PROJECT: HISTORIC LIGHTHOUSE PRESERVATION AS PRESENTED. Motion carried unanimously.**
- 9. Chairman's Business-** Discussion regarding a June work session to discuss Capital Projects and 2025 Budget preparation was held.
- 10. Member's Business-** Discussion was held regarding the General Government and Finance Committee's meeting dates and processes for items being presented and considered.
- 11. Public Comments/Apearances-** None.
- 12. Adjournment-** **MOTION MADE BY ALD. BENNING, SECONDED BY ALD. PLEITNER TO ADJOURN THE MEETING AT 6:13 P.M. Motion carried unanimously.**

Respectfully submitted,  
Susan L. Westerbeke, City Clerk

# AGENDA ITEM MEMORANDUM

## City of Port Washington

**TO:** Common Council

**FROM:** Rob Vanden Noven, Director of Public Works

**DATE:** June 4, 2024

**SUBJECT:** Consideration and Possible Action on Authorizing Bray Architects to Proceed with Final Design of the Public Safety Building

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**ISSUE:** Should the Common Council authorize Bray Architects to proceed with Phase 2 – Design Phase Services per the (attached) executed agreement that was approved by the Common Council on February 6, 2024?

**STAFF RECOMMENDATION:** Staff recommends the Common Council authorize Bray Architects to proceed with Phase 2 – Design Services per the (attached) executed agreement that was approved by the Common Council on February 6, 2024.

**RECOMMENDED MOTION:** I move to authorize Bray Architects to proceed with Phase 2 – Design Services per the agreement which was previously approved by the Common Council.

### **BACKGROUND/DISCUSSION:**

At the February 6, 2024 Common Council Meeting, the Council approved an agreement with Bray Architects for Phase 1 planning services for developing a program and conceptual master plan for a public safety building which will replace the current police and fire department buildings. The building would also hold a new municipal court/training room. An ad hoc committee consisting of representatives from Police, Fire, Administration, Public Works, Common Council, and the Police and Fire Commission has been working with Bray since August 2023 on developing a building layout and design which is intended to meet the needs of the two departments for the next 50 years, based on current population projections and projected increases in calls for service. The master planning phase has been completed, and Bray will present the concept plan at the Common Council meeting Tuesday night. Bray is now ready to begin Phase 2 – Design services to meet the proposed schedule which completes design work in time for early spring 2025 bidding, and construction to be completed by early summer 2026.

### **STRATEGIC PLAN:**

1. **Strategic Direction:**
2. **Impact on Strategic Direction:**

### **LEGAL:**

1. **City Attorney Review:** Yes.
2. **Legal Comments & Conclusions:** This agreement was approved by the City Attorney prior to the February 6, 2024 Council Meeting
3. **Statutory References:**

### **FISCAL IMPACT:**



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

- Design Fees are 5.7% of the total construction cost. Based on the current construction estimate of \$28,875,000, the cost of phase 2 final design is estimated at \$1,645,875.
  - Total approved Architectural costs to date: \$42,900 with a due diligence allowance of \$50,000
  - Total Building Costs including design, construction, construction management, owner's representative, and all soft costs (furniture, IT, security, land acquisition, etc), is estimated at \$35,000,000.

**2. Source of Funding:** Funding for 2024 Phase 2 design is anticipated to be approximately \$1.1M, to be funded with short term financing, followed by long term borrowing/financing in late 2024 or early 2025 for design completion and construction.

**3. Operating and Maintenance Cost:** To be determined.

**BOARD/COMMITTEE/COMMISSION RECOMMENDATION:** The Ad Hoc Committee recommends approval.

**PUBLIC OUTREACH:** Public outreach thus far includes public presentations by Bray on this project at the August 15, 2023, February 6, 2024, May 7, 2024, and May 21, 2024 Common Council Meetings.

**IF APPROVED, NEXT STEPS:** Begin design work per the attached schedule. Approve the agreement with the Construction Manager, CD Smith. Close on purchase of the County owned land at the NW corner of CTH LL and STH 33, and purchase access rights from WisDOT.

**ATTACHMENTS:** Bray presentation from May 21, 2024  
Bray Agreement  
Preliminary Architectural/Engineering Invoicing Schedule

## schematic design // project update

Port Washington Safety Building

2024-05-21

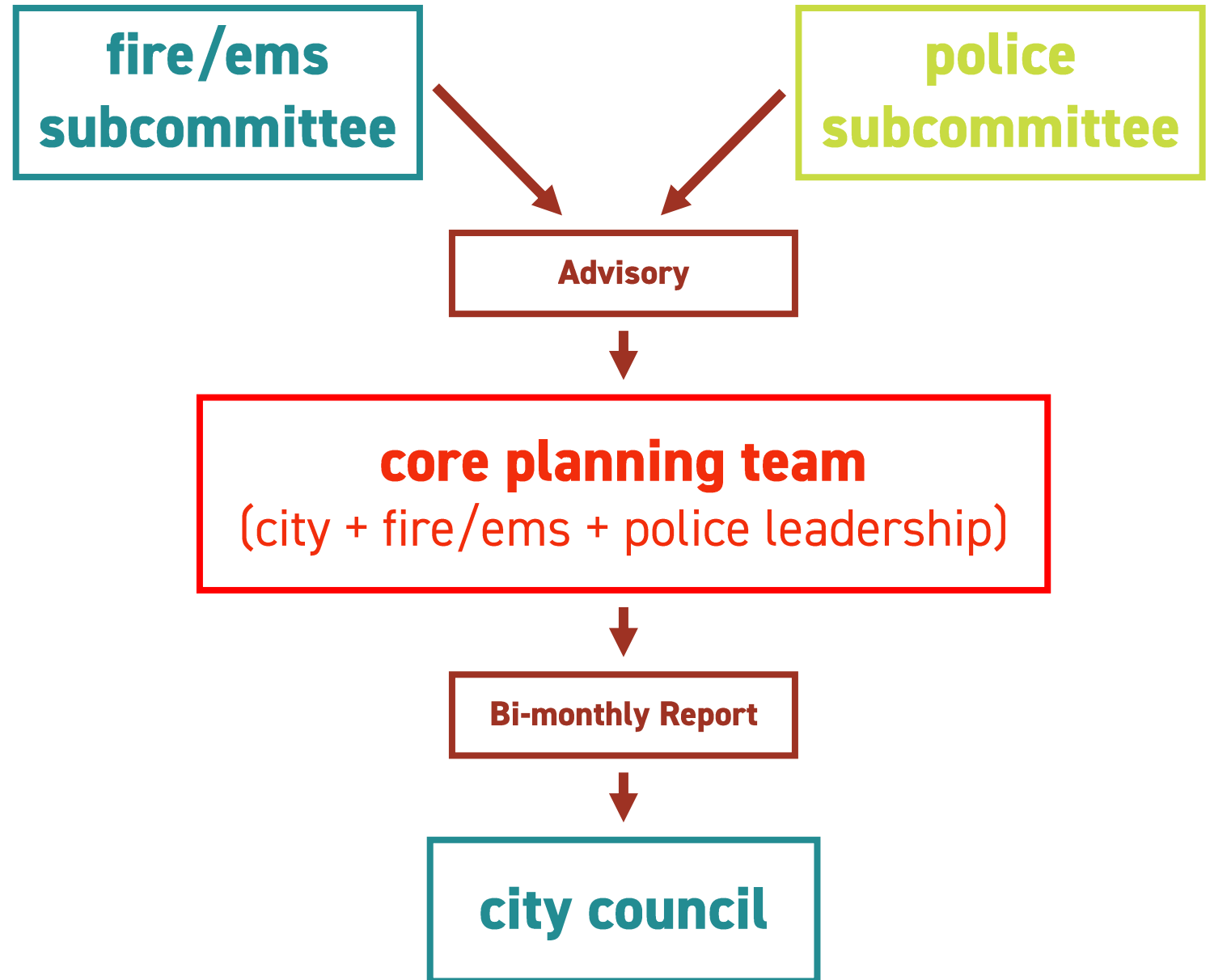




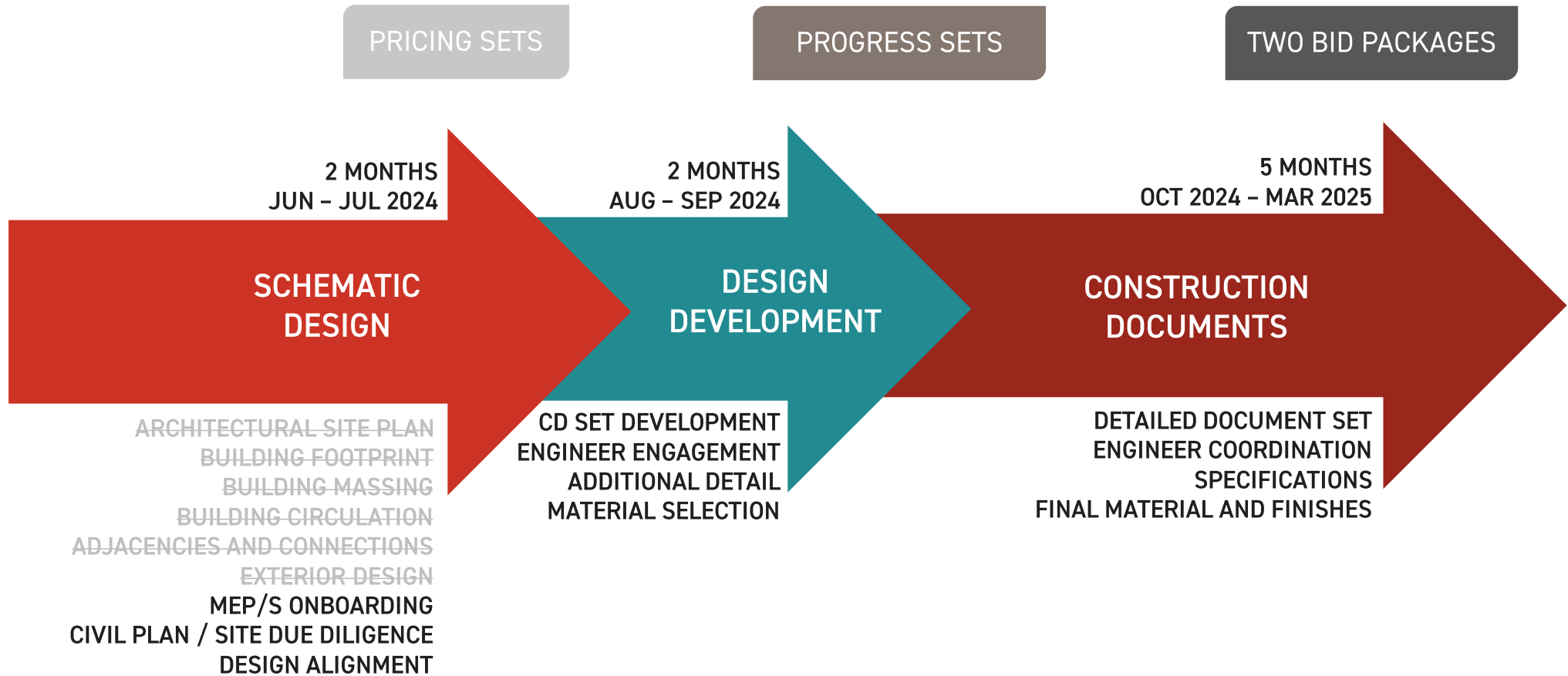
# committee structure

## Additional areas for input

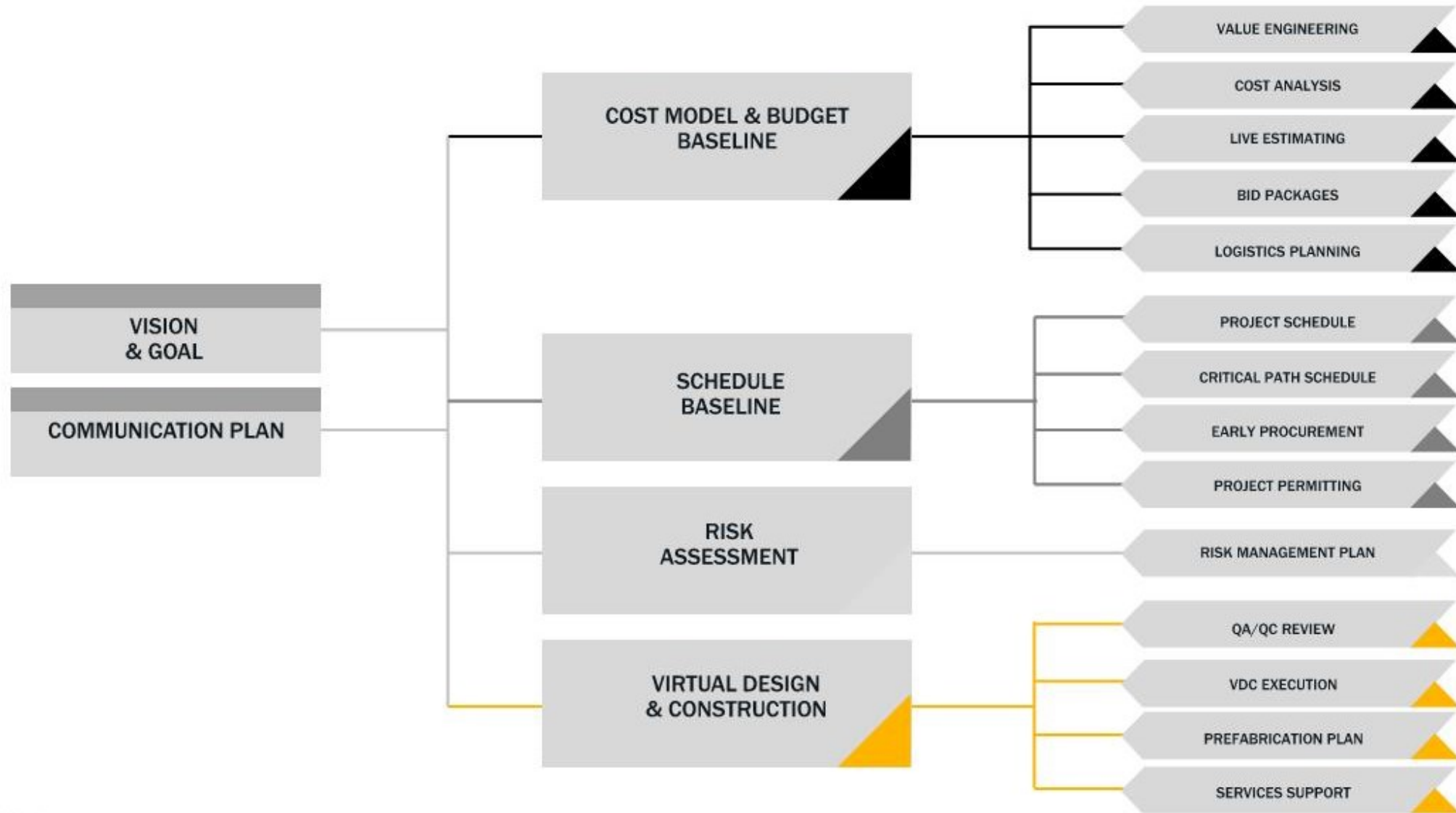
- Ad-Hoc committee
- Training (Fire/EMS + Police)
- Neighboring property owners
- Broader community
- Sustainability
- Others?



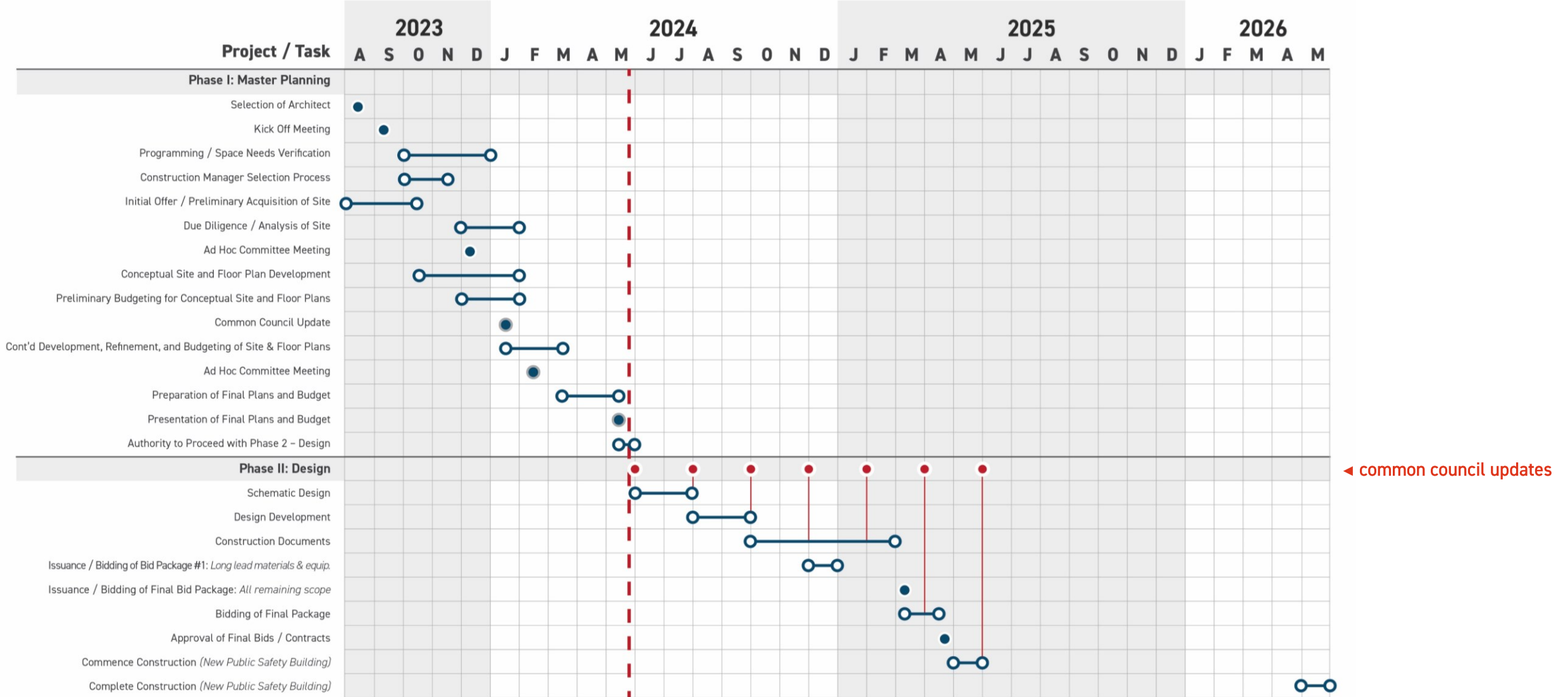
# design schedule



# CONSTRUCTION SERVICES



# project schedule preliminary



# studies building program

## Existing Facilities

Police (1994):	16,500 sf
Fire (1968):	11,200 sf
Shared:	Multiple Bldgs

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**Total: 27,700 sf**

+ shared areas  
(distributed)

## Preliminary Program (9/14/23)

Police:	22,500 sf
Fire:	23,000 sf
Shared:	24,600 sf

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**Total: 70,100 sf**

### Police Includes:

- Police Admin Suite
- Investigations
- Two-car Sally Port
- Vehicle Impound
- Squad Garage
- Booking
- Evidence
- Lockers

### Fire Includes:

- Command Staff Work
- 6x2 Apparatus Bay
- 3x Command Garage
- Antique Truck Bay
- Lockers
- Sleeping Units
- Dayroom/Kitchen

## Current Design

Police:	22,500 sf
Fire:	24,500 sf
Shared:	13,300 sf

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**Total: 60,300 sf**

### Shared Includes:

- Courtroom /Training
- Fitness Room
- Central Lobby
- Mechanical Rooms



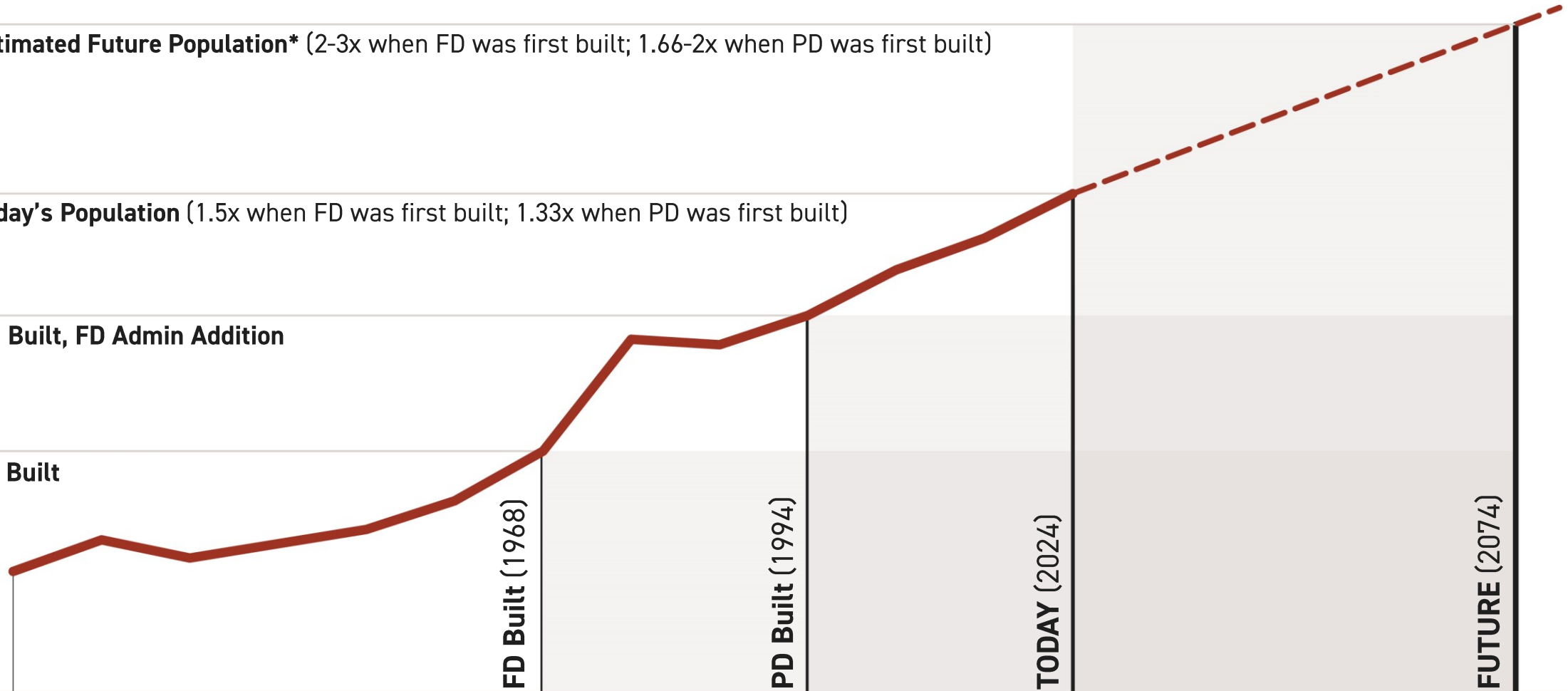
# studies planning for a 50-year building

Estimated Future Population\* (2-3x when FD was first built; 1.66-2x when PD was first built)

Today's Population (1.5x when FD was first built; 1.33x when PD was first built)

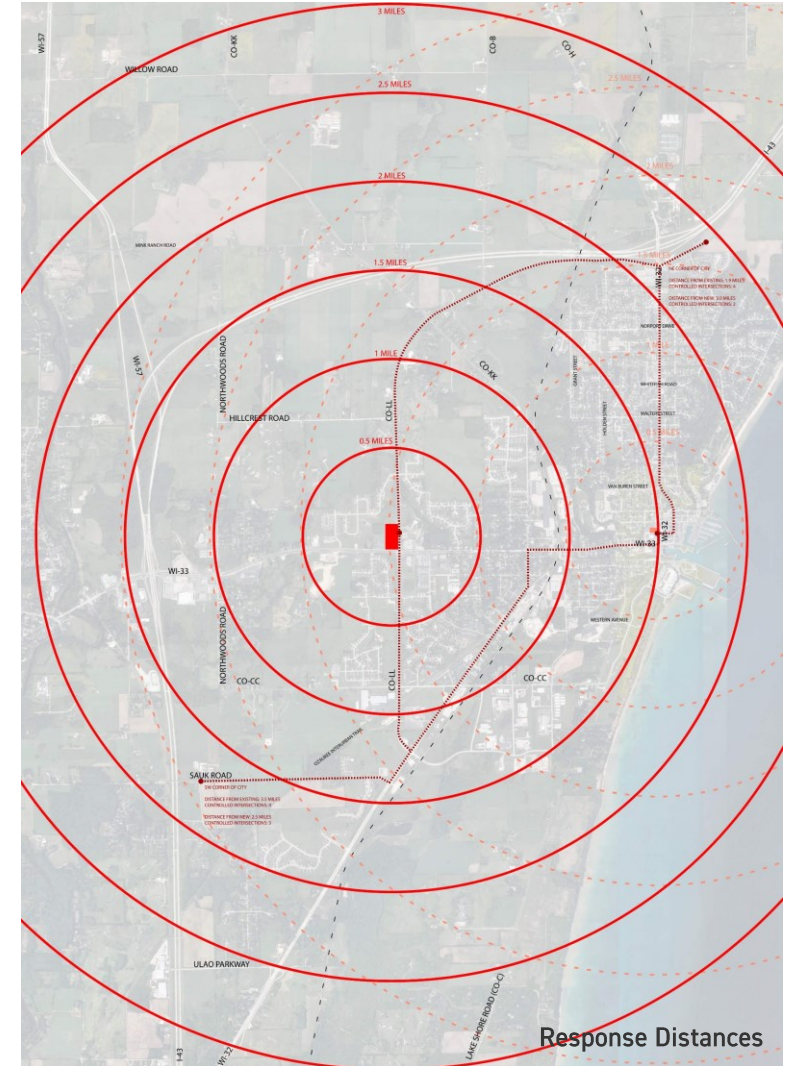
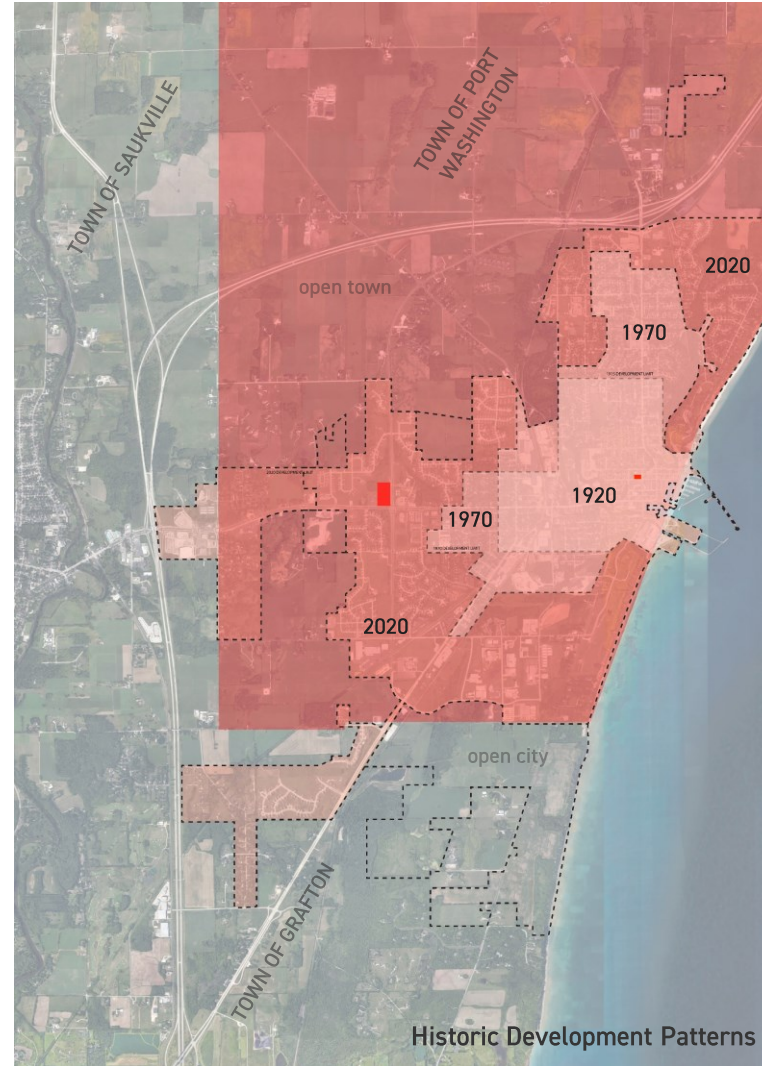
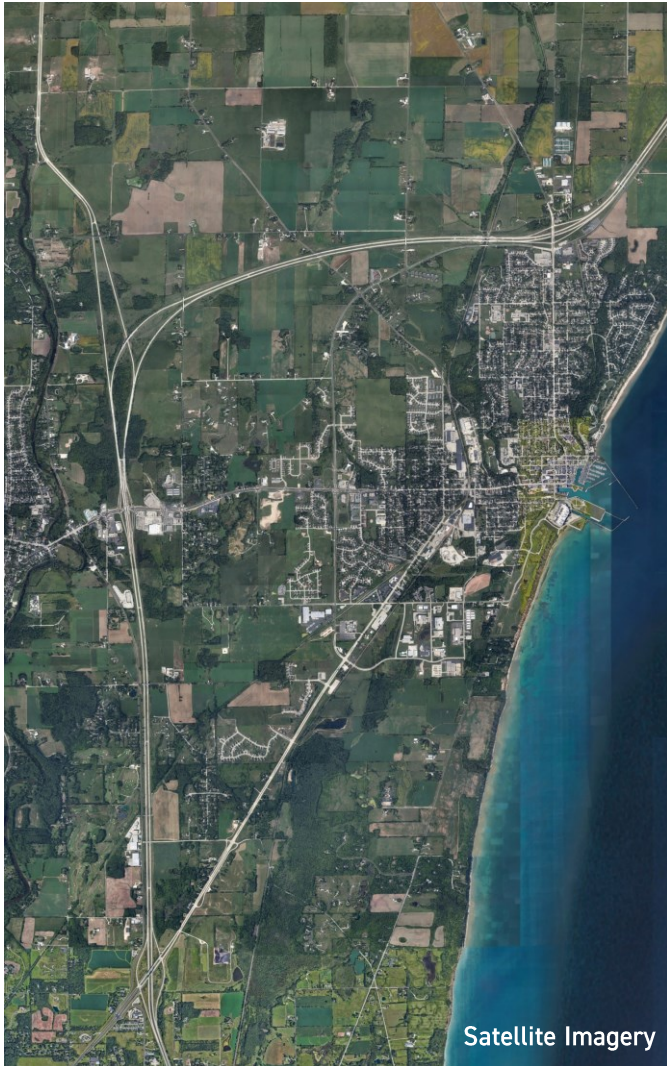
PD Built, FD Admin Addition

FD Built



\*Data from US Census Bureau (census.gov)  
Population projection extrapolated from last 60-year average

# studies site analysis







# plan proposed site

HWY 33 - W. GRAND

PROPERTY LINE

PROPERTY LINE



TRAINING

PARKING  
44 SPACES

SECURE POLICE PARKING  
10 SPACES

TRANSFORMER

PART TIME PARKING  
19 SPACES

TRASH

GENERATOR

POLICE  
DEPARTMENT

MUNICIPAL

FIRE DEPARTMENT

500' EASEMENT LINE

PROPERTY LINE

PROPERTY LINE

HWY LL - HERITAGE DRIVE



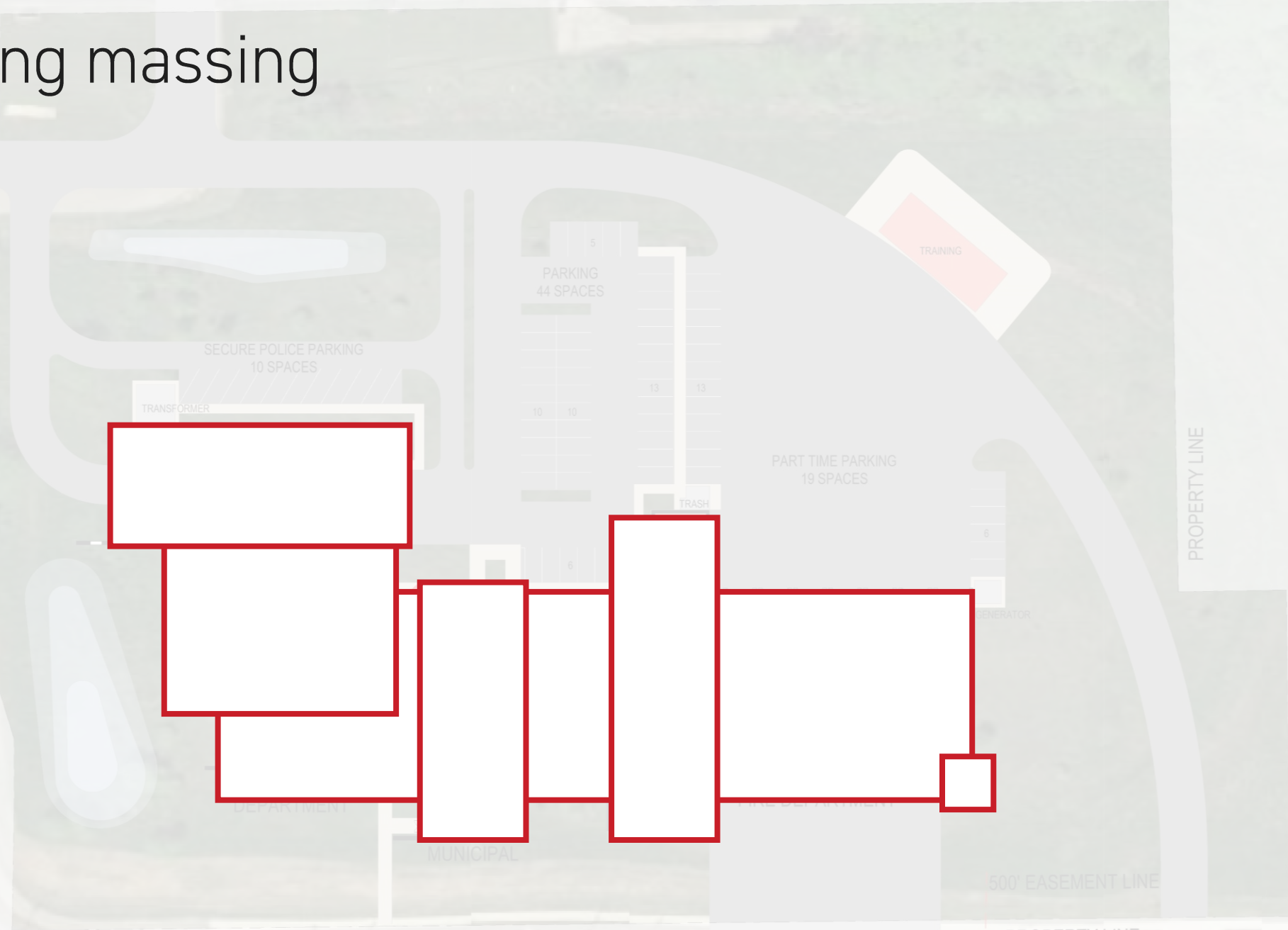


# plan building massing

HWY 33 - W. GRAND

PROPERTY LINE

PROPERTY LINE



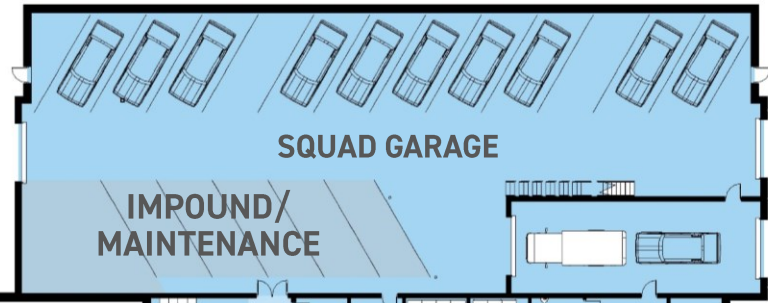
PROPERTY LINE

HWY LL - HERITAGE DRIVE

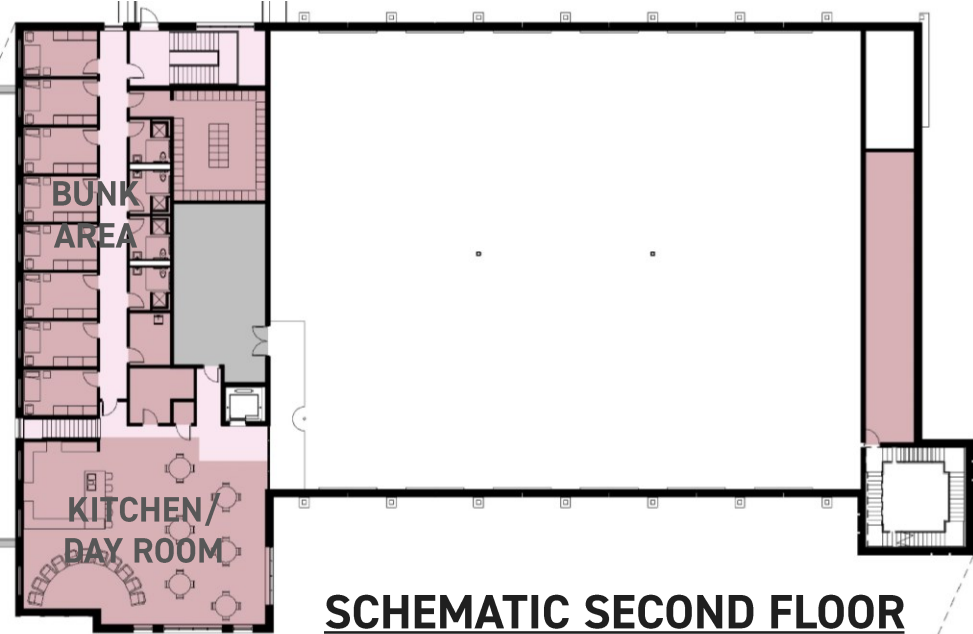
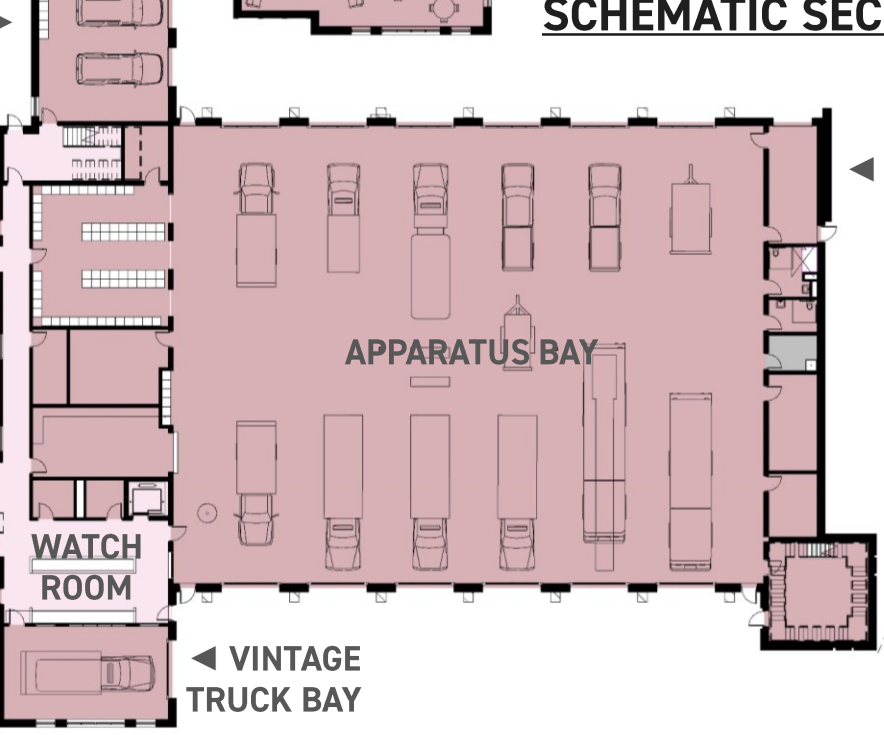
PROPERTY LINE



# plan building



**SCHEMATIC FIRST FLOOR PLAN**



**SCHEMATIC SECOND FLOOR**

◀ APPARATUS SUPPORT





# renderings aerial





# renderings building entrance





# renderings police department





# renderings fire department



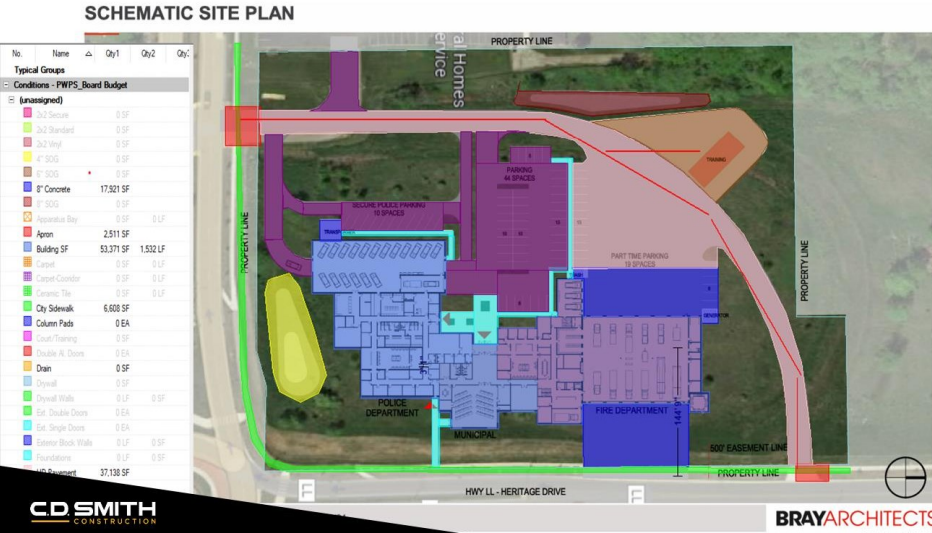


# renderings shared spaces





# pricing takeoffs and estimates



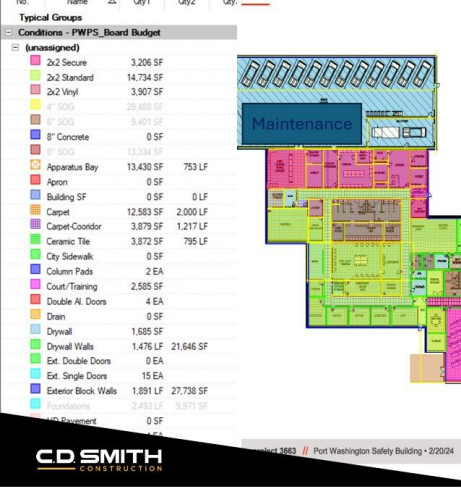
PROJECT NAME: Port Washington Public Safety Building  
 LOCATION: Port Washington  
 DATE: 03/27/2024  
 BUDGET TYPE: New Construction  
 BUDGET METHOD: Cost Plus Fee with GMP

ITEM #	DESCRIPTION	TOTAL	UNIT PRICE	QTY
001	GENERAL CONDITIONS (ADMINISTRATIVE)	1,111.00	0.00	0.00
002	GENERAL CONDITIONS (FIELD)	1,111.00	0.00	0.00
003	GENERAL CONDITIONS (TOTAL)	2,222.00	0.00	0.00
004	CONCRETE	71,292.00	0.00	0.00
005	FOUNDATION	37,138.00	0.00	0.00
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ITEM #	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE
001	CARPET	16,462	SF	7.50	\$123,465.00	
002	WALK OFF MAT	130	SF	10.50	\$1,365.00	
003	ALUMINUM ENTRANCES, STOREFRONTS, & HARDWARE				\$1,448,570.00	\$23.75
004	WINDOWS & GLASS				\$713,335.00	\$11.68
005	EXTERIOR STOREFRONT	10,939	SF	65.00	\$711,335.00	\$64.14
006	EXTERIOR PUNCHED OPENINGS				\$0.00	\$0.00
007	EXTERIOR CURTAINWALL	8,013	SF	88.00	\$705,264.00	\$88.00
008	SUNSHADES				\$0.00	\$0.00
009	FIRE RATED SECURITY WINDOW				\$0.00	\$0.00
010	EXTERIOR GLASS SIDELIGHTS				\$0.00	\$0.00
011	MISC. CALC & REPAIR				\$0.00	\$0.00
012	INTERIOR F.R. BORROWED LIGHTS	1	LS	25,000.00	\$25,000.00	\$25,000.00
013	BULLET PROOF / RESISTANT GLASS	1	LS	75,000.00	\$75,000.00	\$75,000.00
014	ALUMINUM DOORS, FRAMES, & HARDWARE				\$13,000.00	\$0.21
015	DOOR FRAME & HARDWARE (SINGLE, EXTERIOR)	2	EA	6,500.00	\$13,000.00	\$6,500.00
016	DOOR FRAME & HARDWARE (DOUBLE, EXTERIOR)	4	EA	6,500.00	\$26,000.00	\$6,500.00
017	DOOR FRAME & HARDWARE (SINGLE, INTERIOR)				\$0.00	\$0.00
018	DOOR FRAME & HARDWARE (DOUBLE, INTERIOR)				\$0.00	\$0.00
019	AUTOMATIC DOOR OPERATORS				\$0.00	\$0.00
020	HAND FLOORING				\$988,577.50	\$88.81
021	CERAMIC TILE				\$0.00	\$0.00
022	WALL TILE	7,990	SF	20.00	\$159,800.00	\$20.00
023	FLOOR TILE	3,872	SF	20.00	\$77,440.00	\$20.00
024	POLISHED CONCRETE				\$0.00	\$0.00
025	SEALED CONCRETE	9,975	SF	4.00	\$39,900.00	\$4.00
026	LOBBY FLOORING	1,781	SF	25.00	\$44,525.00	\$25.00
027	APPARATUS FLOORING	13,430	SF	12.80	\$171,824.00	\$12.80
028	POLICE GARAGE FLOORING	9,975	SF	12.50	\$124,687.50	\$12.50
029	WATERPROOFING MEMBRANE				\$0.00	\$0.00
030	FLOOR PREPARATION				\$0.00	\$0.00
031	MOISTURE MITIGATION SYSTEM				\$0.00	\$0.00
032	ACROUSTICAL CEILING				\$224,002.00	\$84.67
033	ACROUSTICAL CEILING	14,734	SF	6.00	\$88,404.00	\$6.00
034	LAT-IN, 2x2 - SECURE CEILING	3,206	SF	6.00	\$19,236.00	\$6.00
035	2x2 VINYL	3,907	SF	5.00	\$19,535.00	\$5.00
036	ACOUSING FABRIC PANELS	1,500	SF	20.00	\$30,000.00	\$20.00
037	LOBBY CEILING	1,381	SF	12.00	\$16,572.00	\$12.00
038	VINTAGE FIRE TRUCK	185	SF	7.00	\$1,295.00	\$7.00
039	COURT TRAINING	2,888	SF	10.00	\$28,880.00	\$10.00
040	KITCHEN/DARROOM	2,331	SF	10.00	\$23,310.00	\$10.00
041	FINISH ALLOWANCE				\$0.00	\$0.00



## SCHEMATIC BUILDING PLANS





renderings design revisions







**Thank you!**

**BRAYARCHITECTS**





# 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 8<sup>th</sup> Street  
Post Office Box 955  
Sheboygan, Wisconsin 53082-0955

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

829 1<sup>st</sup> Street  
Milwaukee, Wisconsin 53204

1465 41<sup>st</sup> 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.

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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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#### 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.")*

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§ 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.

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[ ] 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:

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*(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 1<sup>st</sup> 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:

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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.

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§ 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

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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.)*



<b>Supplemental Services</b>	<b>Responsibility</b> <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

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§ 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 1 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.)*

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§ 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:

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- .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.

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§ 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.

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§ 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%

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\$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**

Init.



§ 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.

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§ 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.)*

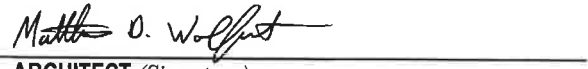
Architect's Certificate of Insurance

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

  
OWNER (Signature)

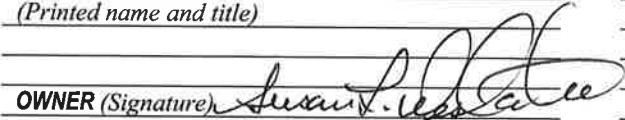
Theodore Neitzke IV, Mayor

(Printed name and title)


  
ARCHITECT (Signature)

Matthew D Wolfert, AIA, NCARB, LEED AP  
President

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

  
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

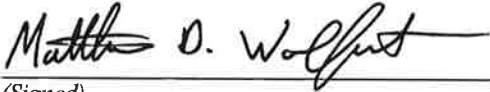
(Printed name and title)

Init.



**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)



April 19, 2024

## NEW PUBLIC SAFETY BUILDING PRELIMINARY ARCHITECTURAL/ENGINEERING INVOICING SCHEDULE

Category	Estimate	Notes
Estimated Construction Budget	\$ 28,875,000	Estimate: 82.5% of \$35,000,000
Architectural / Engineering Fee		
Phase 1 - Master Planning	\$ 11,900	Per Contract
Geotechnical Services	\$ 7,500	Per Contract
Phase 1 Environmental Services	\$ 7,500	Per Contract
Wetland Delineation Services	\$ 4,000	Per Contract
Land Surveying Services	\$ 12,000	Per Contract
Phase 1 Total:	\$ 42,900	
Phase 2 - Design Phase	5.70%	Per Contract
Phase 2 Total:	\$ 1,645,875	
Total Architectural/Engineering Fee	\$ 1,688,775	
Site Due Diligence Allowance	\$ 50,000	Additional Surveing, Geotechnical, etc.

Date		Architectural / Engineering Fee	Site Due Diligence	Monthly Total	Cumulative Total
March 24, 2024	Phase 1	\$ 11,900	\$ -	\$ 11,900	\$ 11,900
April 2024	Phase 1	\$ 31,000	\$ -	\$ 31,000	\$ 42,900
May 2024	5.00%	\$ 82,294	\$ 25,000	\$ 107,294	\$ 150,194
June 2024	7.50%	\$ 123,441	\$ 25,000	\$ 148,441	\$ 298,635
July 2024	7.50%	\$ 123,441	\$ -	\$ 123,441	\$ 422,076
August 2024	7.50%	\$ 123,441	\$ -	\$ 123,441	\$ 545,517
September 2024	7.50%	\$ 123,441	\$ -	\$ 123,441	\$ 668,958
October 2024	7.50%	\$ 123,441	\$ -	\$ 123,441	\$ 792,399
November 2024	7.50%	\$ 123,441	\$ -	\$ 123,441	\$ 915,840
December 2024	10.00%	\$ 164,588	\$ -	\$ 164,588	\$ 1,080,428
January 2025	10.00%	\$ 164,588	\$ -	\$ 164,588	\$ 1,245,016
February 2025	10.00%	\$ 164,588	\$ -	\$ 164,588	\$ 1,409,604
March 2025	5.00%	\$ 82,294	\$ -	\$ 82,294	\$ 1,491,898
April 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,509,509
May 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,527,120
June 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,544,731
July 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,562,342
August 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,579,953
September 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,597,564
October 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,615,175
November 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,632,786
December 2025	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,650,397
January 2026	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,668,008
February 2026	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,685,619
March 2026	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,703,230
April 2026	1.07%	\$ 17,611	\$ -	\$ 17,611	\$ 1,720,841
May 2026	1.09%	\$ 17,934	\$ -	\$ 17,934	\$ 1,738,775
Totals:	100.0%	\$ 1,688,775	\$ 50,000	\$ 1,738,775	

# AGENDA ITEM MEMORANDUM

## City of Port Washington

**TO: Common Council**

**FROM: Rob Vanden Noven, Director of Public Works**

**DATE:** June 4, 2024

**SUBJECT:** Consideration and Possible Action on an Agreement with CD Smith, performing as the Construction Manager as Constructor for the Proposed Public Safety Building where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**ISSUE:** Should the City of Port Washington enter into an agreement with CD Smith to perform as the construction manager/constructor of the proposed public safety building where the basis of payment is the cost of the work plus a fee with a guaranteed maximum price?

**STAFF RECOMMENDATION:** Staff recommends that the City enter into an agreement with CD Smith to perform as the construction manager and constructor for the proposed public safety building where the basis of payment is the cost of the work plus a fee with a guaranteed maximum price.

**RECOMMENDED MOTION:** I move to approve the staff recommendation, subject to City Attorney approval of the agreement.

**BACKGROUND/DISCUSSION:** On February 6, 2024, the Common Council approved the agreement with Bray Architects with the construction manager as constructor. In October 2023, qualifications were received from ten interested construction managers. In November 2023, staff reviewed the qualifications and selected three construction managers to submit proposals and be interviewed. From that process, CD Smith was selected to perform construction management services. CD Smith has been in attendance at all bi-weekly progress meetings with Bray since November 2023.

The construction manager/builder's role during the design stage is to provide input on the design so to guide the owner and architect toward a more constructible, less expensive building. The construction manager (CM) is also responsible for providing highly accurate construction cost estimates during the design. This partnership streamlines construction in that the CM has a higher level of project understanding and involvement in plan development which should lead to a smoother construction process with fewer surprises regarding delivery and constructability. Finally, by going with the CM method of delivery, the City gets to select the prime contractor, rather than the typical low bid process where the City is required to accept the bid of the lowest responsible bidder.

**STRATEGIC PLAN:**

1. **Strategic Direction:**
2. **Impact on Strategic Direction:**

**LEGAL:**

1. **City Attorney Review: Yes**



**2. Legal Comments & Conclusions:**

**3. Statutory References:**

**FISCAL IMPACT:**

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

Total Project Cost Estimate - \$35,000,000 (including soft costs, e.g. land costs, furniture, architectural fees, CM fees, etc)

CD Smith's fees as CM: \$8,000 lump sum for the design phase

The Payment & Performance Bond Fee: 0.90% of the Cost of the Work

The Construction Management Fee: 1.65% of the Cost of the Work

The General Liability Insurance Fee: 0.65% of the Cost of the Work .

Based on the current estimated construction cost (with contingencies) of \$30,294,726, the total CM fees are estimated at \$969,431.

**2. Source of Funding:** 2025 Capital Budget

**3. Operating and Maintenance Cost:** TBD

**BOARD/COMMITTEE/COMMISSION RECOMMENDATION:** Ad Hoc Committee recommends approval

**PUBLIC OUTREACH:** N/A

**IF APPROVED, NEXT STEPS:** Execute agreement per City Attorney approval, proceed with building design. After bidding is complete in the 1<sup>st</sup> quarter of 2025, a new agreement will be executed with CD Smith for the construction phase of the project.

**ATTACHMENTS:**

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

# DRAFT 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

**AGREEMENT** made as of the «15» day of «December» in the year «2023»  
(In words, indicate day, month, and year.)

**BETWEEN** the Owner:  
(Name, legal status, address, and other information)

« [City of Port Washington](#)  
[100 West Grand Avenue](#)  
[Port Washington, WI 5370](#)  
« »

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

« C.D. Smith Construction, Inc. »« »  
« 125 Camelot Drive »  
« Fond du Lac, WI 54935 »  
« »

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

[City of Port Washington Public Safety Building](#)« »  
« »

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

« [Bray Architects](#)  
[829 South First Street](#)  
[Milwaukee, WI 53204](#)  
« »

The Owner and Construction Manager agree as follows.

**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.

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B INSURANCE AND BONDS

#### 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, as described in Section 4.1.1:

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

Request for Qualifications dated September 26, 2023

§ 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.)*

Approximately 60,000 square foot police and fire department building located in the City of Port Washington

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

To Be Determined

§ 1.1.4 The Owner's anticipated design and construction milestone dates are to be determined.:

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
(Identify any requirements for fast-track scheduling or phased construction.)

« »

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

« »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager 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. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:  
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:  
(List name, address, and other contact information.)

Robert J. Vanden Noven»  
« City of Port Washington»  
« [100 West Grand Avenue](#)  
[Port Washington, WI 5370](#)  
[Rvandenoven@portwashington.gov](mailto:Rvandenoven@portwashington.gov)  
»  
« »  
« »

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:  
(List name, address and other contact information.)

« »

§ 1.1.10 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« »« »  
« »  
« »  
« »  
« »

.2 Civil Engineer:

« »« »  
« »  
« »  
« »  
« »



- .3 Other, if any:  
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

« »

§ 1.1.11 The Architect's representative:  
(List name, address, and other contact information.)

« »  
« Bray Architects  
Attn: Matthew D. Wolfert, AIA  
829 South First Street  
Milwaukee, WI 53204  
Mwolfert@brayarch.com

« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:  
(List name, address, and other contact information.)

Cory Henschel  
« Vice President»  
« chenschel@cdsmith.com»  
« 920-904-1890»  
« C.D. Smith Construction, Inc.  
125 Camelot Drive  
Fond du Lac, WI 54935»

« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

« »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

« »

§ 1.1.15 Other Initial Information on which this Agreement is based:

« »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement related to the performance of the Work and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in completing the project; to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Contract Documents. Construction Manager is not, however, a fiduciary of Owner. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified and agreed by the Parties, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.4 Wisconsin Lien Notice AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, CONSTRUCTION MANAGER HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES PERFORMING, FURNISHING, OR PROCURING LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION ON OWNER'S LAND MAY HAVE LIEN RIGHTS ON OWNER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO THE CONSTRUCTION MANAGER, ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. CONSTRUCTION MANAGER AGREES TO COOPERATE WITH THE OWNER AND THE OWNER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID, SUBJECT TO THE TERMS OF THE CONTRACT DOCUMENTS. THE FOREGOING WAS PROVIDED TO COMPLY WITH THE TERMS OF WISCONSIN STATUTE CHAPTER 779.02.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

## **§ 3.1 Preconstruction Phase**

### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and 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 Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

**§ 3.1.6** The Construction Manager's evaluation, review, and/or recommendations regarding the Owner Program or the Project's design, Drawings, Specifications, models, materials, material selections, site use and improvements, building systems, equipment, constructability, alternative design, life cycle data, cost reductions, accelerated or fast-track scheduling, procurement, phase constructions, substitutions, or alternates as part of any preconstruction services, construction services, value engineering, construction consulting, or other services, is made solely for the purpose of assisting the Owner in identifying potential constructability issues and cost savings for the Project and all such evaluation, review, or recommendations will be promptly referred to the Architect for its independent review, approval, and incorporation into the Contract Documents. The Construction Manager shall have no liability to the Owner, Architect, or others for such services, decisions made by the Owner or Architect based on the Construction Manager's recommendations, or any resulting impact on the Contract Documents or Project.

### § 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 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 Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

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

### § 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval. The Owner may enter into subcontracts for Separate Contractors if desired, however, the Construction Manager's Fee will apply to the cost of the Work for such Separate Contractors and Construction Manager shall manage the scopes of the Work for such Separate Contractors.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.



### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

« »

### § 3.1.15 Professional Services

Construction Manager's Preconstruction and Construction Phase Services shall not be deemed to be professional services.

## § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price shall be based on Construction Manager's bid packages for scopes of the Work, which shall be scoped at Construction Manager's discretion. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use (the "Construction Contingency") to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Unless otherwise agreed by Contractor, the Construction Contingency is not available to Owner for changes in scope, allowance overages, or any other item that would allow for an increase to the Contract Sum under the Contract Documents. Any unused Construction Contingency shall be returned to Owner at the time of final payment.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 3.3 Construction Phase

#### § 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

#### § 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

### § 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. 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.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing 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.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, 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.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 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.

### § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** 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.

§ 4.3 **Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect’s scope of services in the agreement.

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

§ 5.1 **Compensation**

§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

The lump sum amount of Eight Thousand Dollars (\$8,000.00).

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager’s Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

As set forth in Construction Manager’s Cost of Work Exhibit

Individual or Position	Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » ( « » ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 **Payments**

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice.

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

§ 6.1 **Contract Sum**

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee.

§ 6.1.2 The Construction Manager’s Fee is the sum of the Payment & Performance Bond Fee, the Construction Management Fee, and the General Liability Insurance Fee

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)*

The Payment & Performance Bond Fee: 0.90% of the Cost of the Work  
The Construction Management Fee: 1.65% of the Cost of the Work  
The General Liability Insurance Fee: 0.65% of the Cost of the Work .

§ 6.1.3 The method of adjustment of the Construction Manager’s Fee for changes in the Work:



« For changes in the Work which result in an increase in the Cost of Work, Construction Manager’s Fee shall increase in proportion to the increase in Cost of Work. For changes in the Work which result in a net decrease in the Cost of Work, Construction Manager’s Fee shall decrease in proportion to the net decrease in Cost of Work. »

§ 6.1.4 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the rate set forth in the Cost of Work Exhibit.

§ 6.1.6 Liquidated damages, if any:  
*(Insert terms and conditions for liquidated damages, if any.)*

« »

§ 6.1.7 Other:  
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

« »

## § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

## § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. In the case of any discrepancy, Construction Manager's Cost of Work Exhibit shall take precedence.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops at the rates identified in Construction Manager's Cost of Work Exhibit.

**§ 7.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site or engaged in Work for the Project at the rates identified in Construction Manager's Cost of Work Exhibit.

#### **§ 7.2.2.1 [INTENTIONALLY DELETED]**

**§ 7.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work at the rates identified in Construction Manager's Cost of Work Exhibit.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

## § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work, with the Owner’s prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner’s prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

### § 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract, except that costs to repair or complete Work due to Subcontractor or Separate Contractor default, damage, or other cause shall be included as a Cost of Work;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;



- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## **ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. Notwithstanding the above, Owner's rights related to lump sum Subcontracts and Self-Perform Work is limited to determining that the Construction Manager has charged the actual cost invoiced for lump sum Subcontractors or Self-Perform Work without markup. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the « 25th » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « 24th » day of the « next » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty » ( «30 » ) days after the Architect receives the Application for Payment.

§ 11.1.4 Contractor shall utilize the AIA G702 form for all Applications for Payment to Owner. With each Application for Payment, the Construction Manager shall allocate portions of the Work to the Schedule of Values. Construction Manager shall maintain payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency (including the Construction Contingency) for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager does not guarantee any specific line item provided as part of the GMP or identified in a Schedule of Values. Amounts stated for any category in the schedule of values are not restricted and Construction Manager, in its discretion, may allocate amounts from one category to any other category. Amounts allocated in any contingency category, including Construction Contingency, may be allocated in the Construction Manager's sole discretion to the Cost of Work. Regardless of the amounts stated in the Schedule of Values, Construction Manager shall be entitled to payment for all Costs of the Work, except to the extent such costs would exceed the GMP.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

#### § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

« Five percent (5%) until the Project is fifty percent (50%) complete with no retainage thereafter, provided that at all times Construction Manager shall withhold ten percent (10%) retainage on all Subcontractors unless otherwise agreed with Owner.» »

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

« Construction Manager's general conditions/general requirements»

#### § 11.1.8.2 [INTENTIONALLY DELETED]

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

« »

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager no later than thirty (30) days following:

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.



**§ 11.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

« 15 » % «per annum »

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

« »  
« »  
« »  
« »

**§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows: *(Check the appropriate box.)*

[ **«X»** ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ **« »** ] Litigation in a court of competent jurisdiction

[ **« »** ] Other: *(Specify)*

« »

If the Owner and Construction Manager 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, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such

steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

« »

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### § 14.3 Insurance and Bonds

The Construction Manager and Owner shall maintain insurance as set forth in A201-2017 General Conditions, as modified and agreed by the parties. Construction Manager shall maintain, for the duration of the Preconstruction Phase and Construction Phase, coverages as set forth in Exhibit B. Owner shall maintain, for the duration of Construction Phase, the Builder’s Risk coverage set forth in Article 11 of A201-2017 General Conditions, as modified and agreed by the parties.

Construction Manager shall not provide Payment and Performance bonds

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

« »

§ 14.5 Other provisions:

« »

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

§ 15.2 The following documents comprise the Agreement:

- .1 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
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

« »

.6 Other Exhibits:

.7

« Exhibit B – Construction Manager Insurance  
Exhibit C – Construction Manager Cost of Work  
Exhibit D – Media Policy »

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

\_\_\_\_\_  
**OWNER** *(Signature)*

« »

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

« »

\_\_\_\_\_  
*(Printed name and title)*



# AGENDA ITEM MEMORANDUM

## City of Port Washington

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

**FROM:** Roger Strohm, City Engineer

**DATE:** June 4, 2024

**SUBJECT:** Ordinance 2024-7: An Ordinance Repealing and Recreating Chapter 450 of the City Code Relating to Floodplain Zoning- 1<sup>st</sup> Reading

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**ISSUE:** Should the City update Ordinance 450 “Flood Plain Zoning”?

**STAFF RECOMMENDATION:** Staff recommends adopting Ordinance 2024-5 to repeal and replace Ordinance 450 “Flood Plain Zoning”.

**RECOMMENDED MOTION:** First Reading – No Motion.

**BACKGROUND/DISCUSSION:** This ordinance was promulgated in 1984 and updated in 2005.

On January 31, 2024, the Federal Emergency Management Agency (FEMA) sent the City a notice that FEMA issued the final flood hazard determination for Ozaukee County (flood plain maps) which go in effect on July 31, 2024. For the City to remain covered by the National Flood Insurance Program (NFIP), it must

- Adopt the current effective Flood Insurance Study (FIS) report and Flood Insurance Rate Map (FIRM). In layman’s terms these documents are known as the flood study and flood plain maps.
- Either amend existing regulations or adopt the standards of 44 CFR Par 60.3(d) and (e) into one new, comprehensive set of regulations.

On February 2, 2024, the Department of Natural Resources (DNR) provided the City with a model ordinance that accomplishes the two bullet points above. The attached ordinance follows the DNR model ordinance except to number the sections consistent with our ordinances.

The NFIP provides affordable flood insurance to residents of the City for flood damage. One notable change based on 2019 Act 175 is that there are instances where the repair/modification of an existing structure in the flood plain can exceed 50% of the value of the structure.

### STRATEGIC PLAN:

1. **Strategic Direction:** Creating Accountability Through Policies & Procedures
2. **Impact on Strategic Direction:** We are helping the residents of Port Washington obtain affordable insurance and encouraging smart, environmentally conscious development.

### LEGAL:

1. **City Attorney Review:** yes
2. **Legal Comments & Conclusions:**

**3. Statutory References:**

**FISCAL IMPACT:**

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

Initial Project Cost Estimate: \$0

Approved Budget Project Cost:

Prior Year Expenditures: \$0

Total Project Costs to Date: \$0

**2. Source of Funding: N/A**

**3. Operating and Maintenance Cost: N/A**

**BOARD/COMMITTEE/COMMISSION RECOMMENDATION:** Plan Commission recommends approval.

**PUBLIC OUTREACH:** None

**IF APPROVED, NEXT STEPS:** 2nd Reading at next Council Meeting.

**ATTACHMENTS:**

Ordinance 2024-7

**CITY OF PORT WASHINGTON, WISCONSIN**  
**Ordinance No. 2024-7**

**An Ordinance Repealing and Recreating Chapter 450  
of the City Code Relating to Floodplain Zoning**

WHEREAS, 2019 Wisconsin Act 175 (the “Act”) was enacted in March 2020 and created § 87.30 (1d) (d), Wis. Stats., which modifies how Ch. NR 116, Wis. Admin. Code may require local governments to regulate nonconforming structures in the floodplain; and

WHEREAS, to participate in the National Flood Insurance Program (“NFIP”) cities must still adopt and enforce regulations that meet the NFIP’s minimum standards, which are unchanged by the Act; and

WHEREAS, the NFIP minimum standards require a participating city to regulate all development, including all improvements to all structures in special flood hazard areas, and the minimum standards must be applied to substantial improvements, modifications, additions, and repair or other improvement of substantially damaged buildings, without regard for whether such buildings are “nonconforming” under ordinances adopted to meet Ch. NR 116, Wis. Admin. Code regulations or other state or local zoning regulations; and

WHEREAS, § 87.30 (1d) (d) creates an exception to the state’s “50% rule” for structures in a floodplain. The “50% rule” provides that no modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of the local floodplain ordinance; and

WHEREAS, in a floodplain zoning ordinance that has incorporated the Act, if a nonconforming structure is altered to meet federal minimum standards applicable to new construction and substantial improvements, and the living quarters in the nonconforming building are elevated to be at or above the flood protection elevation, then the state Department of Natural Resources (“DNR”) is prohibited from imposing cost-based regulation or restrictions to the structure (i.e., “50% Rule”); however, structures modified to meet the requirements of § 87.30 (1d) (d) would still be considered nonconforming structures, subject to all other non-cost-based regulations and restrictions applicable to nonconforming structures; and

WHEREAS, the DNR has promulgated a floodplain model ordinance that includes the regulatory standards required in Ch. NR 116, Wis. Admin. Code with supplemental provisions intended to ensure that the minimum requirements for participation in the NFIP (44 C.F.R. §§59-72) are met or exceeded in all circumstances, and said model ordinance includes language for communities choosing to adopt changes consistent with the Act; and

WHEREAS, the Common Council has decided to incorporate the provisions of the Act into the Floodplain Zoning Ordinance, Ch. 450, City Code, by adopting the DNR’s floodplain model ordinance,

NOW, THEREFORE, the Common Council of the City of Port Washington do ordain as follows:

**Section 1.** Chapter 450 of the City Code of the City of Port Washington, entitled “Floodplain Zoning,” is hereby repealed and recreated to read as follows:

**ARTICLE I**  
**STATUTORY AUTHORIZATION, FINDING OF FACT,**  
**STATEMENT OF PURPOSE, TITLE, AND GENERAL PROVISIONS**

**450-1 STATUTORY AUTHORIZATION**

This ordinance is adopted pursuant to the authorization in §§ 61.35 and 62.23 and the requirements in § 87.30, Wis. Stats.

**450-2 FINDING OF FACT**

Uncontrolled development and use of the floodplains and rivers of the City would impair the public health, safety, convenience, general welfare, and tax base.

**450-3 STATEMENT OF PURPOSE**

This ordinance is intended to regulate floodplain development to:

- (1) Protect life, health and property;
- (2) Minimize expenditures of public funds for flood control projects;
- (3) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- (4) Minimize business interruptions and other economic disruptions;
- (5) Minimize damage to public facilities in the floodplain;
- (6) Minimize the occurrence of future flood blight areas in the floodplain;
- (7) Discourage the victimization of unwary land and homebuyers;
- (8) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- (9) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

**450-4 TITLE**

This ordinance shall be known as the Floodplain Zoning Ordinance of the City of Port Washington, Wisconsin.

**450-5 GENERAL PROVISIONS**

(1) **AREAS TO BE REGULATED**

This ordinance regulates all areas of special flood hazard identified as zones A, AO, AH, A1-30, AE, VE, V1-30, or V on the Flood Insurance Rate Map. Additional areas identified on maps approved by the Department of Natural Resources (DNR) and the City may also be regulated under the provisions of this ordinance, where applicable.

(2) **OFFICIAL MAPS & REVISIONS**

Special Flood Hazard Areas (SFHA) are designated as zones A, A1-30, AE, AH, AO, VE, V1-30, or V on the Flood Insurance Rate Maps (FIRMs) based on flood hazard analyses summarized in the Flood Insurance Study (FIS) listed in subd. (a) below. Additional flood hazard areas subject to regulation under this ordinance are identified on maps based on studies approved by the DNR and listed in subd. (b) below. These maps and revisions are on file in the City of Port Washington Planning Department.



(a) OFFICIAL MAPS: Based on the Flood Insurance Study (FIS):

1. Flood Insurance Rate Map (FIRM), panel numbers 55089C0117G, 55089C0118G, 55089C0119G, 55089C0136G, 55089C0138G, 55089C0181G, 55089C0182G, and 55089C0205G, dated 7/31/2024.
2. Flood Insurance Study (FIS) for Ozaukee County, Volumes 55089CV001B, 55089CV002B, and 55089CV003B, dated 7/31/2024.

Approved by: The DNR and FEMA

(3) ESTABLISHMENT OF FLOODPLAIN ZONING DISTRICTS

The flood hazard areas regulated by this ordinance are divided into districts as follows:

- (a) The Floodway District (FW), is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters, within AE Zones as shown on the FIRM, or within A Zones shown on the FIRM when determined according to § 450-18(5).
- (b) The Floodfringe District (FF) is that portion of a riverine special flood hazard area outside the floodway within AE Zones on the FIRM, or, when floodway limits have been determined according to § 450-18(5), within A Zones shown on the FIRM.
- (c) The General Floodplain District (GFP) is those riverine areas that may be covered by floodwater during the regional flood in which a floodway boundary has not been delineated on the FIRM and also includes shallow flooding areas identified as AH and AO zones on the FIRM.
- (d) The Coastal Floodplain District (CFP) is an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast, and any other area subject to high velocity wave action from storms, including areas identified as zone V, V1-30, or VE on the FIRM. Where a riverine AE floodway extends into the CFP district, development within the floodway must comply with the regulations for both the FW and CFP districts. Where a riverine A zone or AE zone with no floodway determination abuts the CFP district, the riverine study's floodway limit must be determined based on standard floodway expansion principles within the CFP district and development within the floodway must comply with the standards for both the FW and CFP districts.

(4) LOCATING FLOODPLAIN BOUNDARIES

Discrepancies between the exterior boundaries of zones A1-30, AE, AH, or A on the official floodplain zoning map and actual field conditions may be resolved using the criteria in subd (a) or (b) below. If a significant difference exists, the map shall be amended according to § 450-30 *Amendments*. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to § 450-26(3) and the criteria in (a) and (b) below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must approve any map amendment or revision pursuant to § 450-30 *Amendments*.

- (a) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- (b) Where flood profiles do not exist for projects, including any boundary of zone A, AO, V1-30, VE, or V, the location of the boundary shall be determined by the map scale.

(5) REMOVAL OF LANDS FROM FLOODPLAIN

- (a) Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to Article VIII *Amendments* and § 450-30.
- (b) The delineation of any of the Floodplain Districts may be revised by the City where natural or man-made changes have occurred and/or where more detailed studies have been conducted. However, prior to any such change, approval must be obtained from the Wisconsin Department of Natural Resources and Federal Emergency Management Agency. A completed Letter of Map Revision is a record of this approval. The floodplain administrator shall not sign a City acknowledgement form unless all criteria set forth in the following paragraphs are met:
  - 1. The land and/or land around the structure must be filled at least two feet above the regional or base flood elevation;
  - 2. The fill must be contiguous to land outside the floodplain; Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F;
- (c) Removal of lands from the floodplain may also occur by operation of § 87.30(1)(e), Wis. Stats. if a property owner has obtained a letter of map amendment from the federal emergency management agency under 44 C.F.R. 70.

(6) COMPLIANCE

- (a) No structure or use within areas regulated by this ordinance shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged, or altered without full compliance with the terms of these regulations and all other applicable regulations that apply to uses within the jurisdiction of these regulations.
- (b) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with § 450-31.
- (c) Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications, or amendments thereto if approved by the Floodplain Administrator. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with § 450-33.

(7) MUNICIPALITIES AND STATE AGENCIES REGULATED

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if § 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of

state highways and bridges by the Wisconsin Department of Transportation is exempt when § 30.2022, Wis. Stats., applies. Although exempt from a local zoning permit and permit fees, DOT must provide sufficient project documentation and analysis to ensure that the City is in compliance with Federal, State, and local floodplain standards. If a local transportation project is located within a Zone A floodplain and is not a WisDOT project under § 30.2022, Wis. Stats., then the road project design documents (including appropriate detailed plans and profiles) may be sufficient to meet the requirements for issuance of a local floodplain permit if the following apply: The applicant provides documentation to the Floodplain Administrator that the proposed project is a culvert replacement or bridge replacement under 20' span at the same location, the project is exempt from a DNR permit under § 30.123(6)(d), Wis. Stats., the capacity is not decreased, the top road grade is not raised, and no floodway data is available from a federal, state, or other source. If floodway data is available in the impacted area from a federal, state, or other source that existing data must be utilized by the applicant in the analysis of the project site.

(8) ABROGATION AND GREATER RESTRICTIONS

- (a) This ordinance supersedes all the provisions of any City zoning ordinance enacted under §§ 62.23 or 87.30, Wis. Stats., which relate to floodplains. A more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (b) This ordinance is not intended to repeal, abrogate, or impair any existing deed restrictions, covenants, or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(9) INTERPRETATION

In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by Ch. NR 116, Wis. Admin. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(10) WARNING AND DISCLAIMER OF LIABILITY

The flood protection standards in this ordinance are based on engineering experience and research. Larger floods may occur, or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. This ordinance does not create liability on the part of, or a cause of action against, the City or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(11) SEVERABILITY

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

(12) ANNEXED AREAS FOR CITIES AND VILLAGES

The Ozaukee County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the City for all annexed areas until the City adopts and enforces an ordinance which meets the requirements of Ch. NR 116, Wis. Admin. Code and 44 CFR 59-72, *National Flood Insurance Program* (NFIP). These annexed lands are described on the City's official zoning map. County floodplain zoning provisions are incorporated by reference for the

purpose of administering this section and are on file in the office of the City zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the floodway location.

**ARTICLE II**  
**GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS**

**450-6 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS**  
**STATUTORY AUTHORIZATION**

The City shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding and assure that all necessary permits have been received from those governmental agencies whose approval is required by federal or state law.

- (1) If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall:
  - (a) be designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (b) be constructed with flood-resistant materials;
  - (c) be constructed by methods and practices that minimize flood damages; and
  - (d) mechanical and utility equipment must be elevated to or above the flood protection elevation.
- (2) If a subdivision or other proposed new development is in a flood-prone area, the City shall assure that:
  - (a) such proposed subdivision or other proposed new development is consistent with the need to minimize flood damage within the flood-prone area;
  - (b) public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
  - (c) adequate drainage is provided to reduce exposure to flood hazards.

All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance and all other requirements in § 450-24(2).

**450-7 HYDRAULIC AND HYDROLOGIC ANALYSES**

- (1) No floodplain development shall:
  - (a) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or
  - (b) Cause any increase in the regional flood height due to floodplain storage area lost.
- (2) The City Zoning Administrator shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of § 450-30 *Amendments* are met.



#### **450-8 WATERCOURSE ALTERATIONS**

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the City official has notified in writing all adjacent municipalities, the Department and FEMA regional offices, and required the applicant to secure all necessary state and federal permits. The standards of § 450-7 must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained.

As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to § 450-30 *Amendments*, the City shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

#### **450-9 CHAPTERS 30, 31, WIS. STATS., DEVELOPMENT**

Development which requires a permit from the Department under Chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams, and navigational aids, may be allowed if the necessary permits are obtained and amendments to the Floodplain Zoning Ordinance are made according to § 450-30 *Amendments*.

#### **450-10 PUBLIC OR PRIVATE CAMPGROUNDS**

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

- (1) The campground is approved by the Department of Agriculture, Trade and Consumer Protection;
- (2) A land use permit for the campground is issued by the City Zoning Administrator;
- (3) The character of the river system and the campground elevation are such that a 72-hour warning of an impending flood can be given to all campground occupants;
- (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the floodplain zoning agency or Zoning Administrator, the local emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;
- (5) The above-referenced agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated by the officials identified in § 450-10 (4) to remain in compliance with all applicable regulations, including those of the state Department of Agriculture, Trade and Consumer Protection and all other applicable regulations;
- (6) All mobile recreational vehicles placed on site must meet one of the following:
  - (a) Be fully licensed, if required, and ready for highway use; or
  - (b) Not occupy any site in the campground for more than 180 consecutive days, at which time the recreational vehicle must be removed from the floodplain for a minimum of 24 hours; or
  - (c) Meet the requirements in either Article III, Article IV, § 450-18 or § 450-19 for the floodplain district in which the structure is located;

A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

- (7) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit consistent with § 450-10 (6) and shall ensure compliance with all the provisions of this section;
- (8) The City shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;
- (9) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued; and
- (10) All service facilities, including, but not limited to, refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation; and
- (11) Standards for structures in a campground:
  - (a) All structures must comply with § 450-10 or meet the applicable requirements in Article III, Article IV, § 450-18 or § 450-19 for the floodplain district in which the structure is located;
  - (b) Deck/landing- a portable landing may be allowed for a camping unit for each entry provided that the landing is not permanently attached to the ground or camping unit, is no more than 200 square feet in size, shall be portable, contain no walls or roof, and can be removed from the campground by a truck and/or trailer. Sections of such portable landings may be placed together to form a single deck not greater than 200 square feet at one entry point. Provisions for the removal of these temporary landings during flood events must be addressed within the written agreement with the City compliant with § 450-10 (4). Any such deck/landing structure may be constructed at elevations lower than the flood protection elevation but must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.
  - (c) Decks/patios that are constructed completely at grade may be allowed but must also comply with applicable shoreland zoning standards.
  - (d) Camping equipment and appurtenant equipment in the campground may be allowed provided that the equipment is not permanently attached to the ground or camping unit, is not used as a habitable structure, and must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood. Provisions for the removal of this equipment during flooding events shall be addressed within the written agreement with the City compliant with § 450-10 (4).
  - (e) Once a flood warning in the written agreement has been issued for the campground, the campground owner or the designated operator shall ensure that all persons, camping units, decks, camping equipment and appurtenant equipment in the campground shall be evacuated within the timelines specified within the written agreement with the City compliant with § 450-10 (4).

- (12) A land use permit shall be obtained as provided under **7.1(2)** before any development; repair, modification, or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated.

**ARTICLE III**  
**FLOODWAY DISTRICT (FW)**

**450-11 APPLICABILITY**

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to § 450-18(5).

**450-12 PERMITTED USES**

The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District, if:

- they are not prohibited by any other ordinance;
  - they meet the standards in § 450-13 and § 450-14; and
  - all permits or certificates have been issued according to § 450-24.
- (1) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture, and wild crop harvesting.
  - (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
  - (3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap, and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of § 450-13(4).
  - (4) Uses or structures accessory to open space uses or classified as historic structures that comply with § 450-13 and § 450-14.
  - (5) Extraction of sand, gravel or other materials that comply with § 450-13(4).
  - (6) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with Chs. 30 and 31, Wis. Stats.
  - (7) Public utilities, streets and bridges that comply with § 450-13(3).
  - (8) Portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of City ordinances and Ch. SPS 383, Wis. Admin. Code.
  - (9) Public or private wells used to obtain potable water for recreational areas that meet the requirements of City ordinances and Chs. NR 811 and NR 812, Wis. Admin. Code.
  - (10) Wastewater treatment ponds or facilities permitted under § NR 110.15(3)(b), Wis. Admin. Code.
  - (11) Sanitary sewer or water supply lines to service existing or proposed development located outside the floodway that complies with the regulations for the floodplain area occupied.

## **450-13 STANDARDS FOR DEVELOPMENT IN THE FLOODWAY**

### **(1) GENERAL**

- (a) Any development in the floodway shall comply with § 450-6 and have a low flood damage potential.
- (b) Applicants shall provide an analysis calculating the effects of this proposal on the regional flood height to determine the effects of the proposal according to § 450-7 and § 450-24(2)(c). The analysis must be completed by a registered professional engineer in the state of Wisconsin.
- (c) Any encroachment in the regulatory floodway is prohibited unless the data submitted for § 450-13(1)(b) above demonstrates that the encroachment will cause no increase in flood elevations in flood events up to the base flood at any location or removes the encroached area from the regulatory floodway as provided in § 450-5(5).

### **(2) STRUCTURES**

Structures accessory to permanent open space uses, including utility and sanitary facilities, or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

- (a) Not designed for human habitation, does not have a high flood damage potential and is constructed to minimize flood damage;
- (b) Shall either have the lowest floor elevated to or above the flood protection elevation or shall meet all the following standards:
  - 1. Have the lowest floor elevated to or above the regional flood elevation and be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and completely dry to the flood protection elevation without human intervention during flooding;
  - 2. Have structural components capable of meeting all provisions of **Section 3.3(2)(g)** and;
  - 3. Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with **Section 3.3(2)(g)**.
- (c) Must be anchored to resist flotation, collapse, and lateral movement;
- (d) Mechanical and utility equipment must be elevated to or above the flood protection elevation; and
- (e) Must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.
- (f) For a structure designed to allow the automatic entry of floodwaters below the Regional Flood Elevation, the applicant shall submit a plan that meets § 450-13(2)(a) through § 450-13(2)(e) and meets or exceeds the following standards:

1. The lowest floor must be elevated to or above the regional flood elevation;
  2. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  3. the bottom of all openings shall be no higher than one foot above the lowest adjacent grade; openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters, otherwise must remain open.
  4. The use must be limited to parking, building access or limited storage.
- (g) Certification: Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:
1. Reinforcement of floors and walls to resist rupture, collapse, or lateral movement caused by water pressures or debris buildup;
  2. Construction of wells, water supply systems and waste treatment systems so as to prevent the entrance of flood waters in such systems and must be in accordance with provisions in § 450-14(4) and § 450-14(5);
  3. Subsurface drainage systems to relieve external pressures on foundation walls and basement floors;
  4. Cutoff valves on sewer lines or the elimination of gravity flow basement drains; and
  5. Placement of utilities to or above the flood protection elevation.
- (3) PUBLIC UTILITIES, STREETS AND BRIDGES  
Public utilities, streets and bridges may be allowed by permit, if:
- (a) Adequate floodproofing measures are provided to the flood protection elevation; and
  - (b) Construction meets the development standards of § 450-7.
- (4) FILLS OR DEPOSITION OF MATERIALS  
Fills or deposition of materials may be allowed by permit, if:
- (a) The requirements of § 450-7 are met;
  - (b) No material is deposited in navigable waters unless a permit is issued by the Department pursuant to Ch. 30, Wis. Stats., and a permit pursuant to § 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and all other requirements have been met;
  - (c) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and



(d) The fill is not classified as a solid or hazardous material.

**405-14 PROHIBITED USES**

All uses not listed as permitted uses in § 450-12 are prohibited, including the following uses:

- (1) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;
- (2) Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- (3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- (4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of City ordinances and Ch. SPS 383, Wis. Admin. Code;
- (5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of City ordinances and Chs. NR 811 and NR 812, Wis. Admin. Code;
- (6) Any solid or hazardous waste disposal sites;
- (7) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Admin. Code; and
- (8) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

**ARTICLE IV  
FLOODFRINGE DISTRICT (FF)**

**405-15 APPLICABILITY**

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to § 450-18(5).

**405-16 PERMITTED USES**

Any structure, land use, or development is allowed in the Floodfringe District if the standards in § 450-17 are met, the use is not prohibited by this, or any other ordinance or regulation and all permits or certificates specified in § 450-24 have been issued.

**450-17 STANDARDS FOR DEVELOPMENT IN THE FLOODFRINGE**

Article II shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of Article VI *Nonconforming Uses*;

(1) **RESIDENTIAL USES**

Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe, shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of Article VI *Nonconforming Uses*;

- (a) All new construction, including placement of manufactured homes, and substantial improvement of residential structures, shall have the lowest floor elevated to or above the flood protection elevation on fill. The fill around the structure shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. No area may be removed from the floodfringe district unless it can be shown to meet § 450-5(5).
- (b) Notwithstanding § 450-17(1)(a), a basement or crawlspace floor may be placed one (1) foot above the regional flood elevation if the basement or crawlspace is designed to make all portions of the structure below the flood protection elevation watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. No floor of any kind is allowed below the regional flood elevation;
- (c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in subd. (d).
- (d) In developments where existing street or sewer line elevations make compliance with **subd. (c)** impractical, the City may permit new development and substantial improvements where roads are below the regional flood elevation, if:
  - 1. The City has written assurance from police, fire, ambulance and emergency services that rescue, and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
  - 2. The City has a DNR-approved emergency evacuation plan that follows acceptable hazard mitigation planning guidelines.

(2) ACCESSORY STRUCTURES OR USES

In addition to § 450-6, new construction and substantial improvements of Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

(3) COMMERCIAL USES

In addition to § 450-6, any commercial structure which is erected, altered, or moved into the floodfringe shall meet the requirements of § 450-17(1). Subject to the requirements of § 450-17(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(4) MANUFACTURING AND INDUSTRIAL USES

In addition to § 450-6, any manufacturing or industrial structure which is erected, altered, or moved into the floodfringe shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in § 450-28. Subject to the requirements of § 450-17(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(5) STORAGE OF MATERIALS

Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish, or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with § 450-28. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

(6) PUBLIC UTILITIES, STREETS AND BRIDGES

All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and

- a) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with § 450-28.
- b) Minor roads or non-essential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

(7) SEWAGE SYSTEMS

All sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to § 450-28(3), to the flood protection elevation and meet the provisions of all City ordinances and Ch. SPS 383, Wis. Admin. Code.

(8) WELLS

All wells shall be designed to minimize or eliminate infiltration of flood waters into the system, pursuant to § 450-28(3), to the flood protection elevation and shall meet the provisions of Chs. NR 811 and NR 812, Wis. Admin. Code.

(9) SOLID WASTE DISPOSAL SITES

Disposal of solid or hazardous waste is prohibited in floodfringe areas.

(10) DEPOSITION OF MATERIALS

Any deposited material must meet all the provisions of this ordinance.

(11) MANUFACTURED HOMES

(a) Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval, and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.

(b) In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:

- 1. have the lowest floor elevated to the flood protection elevation; and
- 2. be anchored so they do not float, collapse, or move laterally during a flood.

(c) Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in § 450-17(1).

(12) MOBILE RECREATIONAL VEHICLES

All mobile recreational vehicles must be on site for less than 180 consecutive days and be either:

- (a) fully licensed and ready for highway use; or
- (b) shall meet the elevation and anchoring requirements in § 450-17(11)(b) and (c).

A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

**ARTICLE V**  
**OTHER FLOODPLAIN DISTRICTS**

**450-18 GENERAL FLOODPLAIN DISTRICT (GFP)**

(1) **APPLICABILITY**

The provisions for the General Floodplain District shall apply to development in all floodplains mapped as A, AO, AH, and in AE zones within which a floodway is not delineated on the Flood Insurance Rate Maps identified in § 450-5(2)(a).

(2) **FLOODWAY BOUNDARIES**

For proposed development in zone A, or in zone AE within which a floodway is not delineated on the Flood Insurance Rate Map identified in § 450-5(2)(a), the boundaries of the regulatory floodway shall be determined pursuant to § 450-18(5). If the development is proposed to encroach upon the regulatory floodway, the development is subject to the standards of Article III. If the development is located entirely within the floodfringe, the development is subject to the standards of Article IV.

(3) **PERMITTED USES**

Pursuant to § 450-18(5) it shall be determined whether the proposed use is located within the floodway or floodfringe. Those uses permitted in the Floodway (§ 450-12) and Floodfringe (§ 450-16) Districts are allowed within the General Floodplain District, according to the standards of § 450-18(4) provided that all permits or certificates required under § 450-24 have been issued.

(4) **STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT**

Section 3.0 applies to floodway areas, determined pursuant to 5.1(5); Section 4.0 applies to floodfringe areas, determined pursuant to 5.1(5).

(a) New construction and substantial improvement of structures in zone AO shall have the lowest floor, including basement, elevated:

1. To or above the depth, in feet, as shown on the FIRM above the highest adjacent natural grade plus one additional foot of freeboard; or
2. If the depth is not specified on the FIRM, three (3) feet above the highest adjacent natural grade or higher.

(b) New Construction and substantial improvement of structures in zone AH shall have the lowest floor, including basement, elevated to or above the flood protection elevation.

(c) In AO/AH zones, provide adequate drainage paths to guide floodwaters around structures.

(d) All development in zones AO and zone AH shall meet the requirements of Article IV applicable to flood fringe areas.

(5) DETERMINING FLOODWAY AND FLOODFRINGE LIMITS

Upon receiving an application for development within zone A, or within zone AE where a floodway has not been delineated on the Flood Insurance Rate Maps, the zoning administrator shall:

- (a) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures and the flood zone as shown on the FIRM.
- (b) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries.
  - 1. A Hydrologic and Hydraulic Study as specified in § 450-24(2)(c).
  - 2. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location, and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information.
  - 3. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

**450-19 COASTAL FLOODPLAIN DISTRICT (CFD)**

(1) APPLICABILITY

The provisions of this section apply to all Coastal Floodplain Districts (CFD) shown on the floodplain zoning maps, which includes zones V, V1-30, and VE. Where a floodway shown on the floodplain zoning maps, or a floodway determined as explained in § 450-5(3)(d) or a regulatory floodway identified pursuant to § 450-18(5), extends into a Coastal Floodplain District, development shall comply with the standards of Article III and § 450-19.

(2) STANDARDS FOR DEVELOPMENT IN THE COASTAL FLOODPLAIN DISTRICT

Development in the CFD district shall meet the requirements of § 450-6, as well as the following:

- (a) New construction shall be located landward of the Ordinary High-Water Mark.
- (b) Bulkheads, seawalls, revetments, and other erosion control measures shall not be connected to the foundation or superstructure of a building and shall be designed and constructed so as not to direct floodwaters or increase flood forces or erosion impacts on the foundation or superstructure of any building.
- (c) Man-made alterations of sand dunes are prohibited unless an engineering report documents that the alterations will not increase potential flood damage by reducing the wave and flow dissipation characteristics of the sand dunes.
- (d) The use of fill for structural support of buildings is prohibited.
  - 1. Non-structural fill shall be permitted only if an engineering report demonstrates that the fill will not cause runoff, ramping, or deflection of floodwaters that cause damage to buildings.



- (e) New construction and substantial improvement of buildings shall be elevated, consistent with SPS 321.34, on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the FPE.
  - 1. The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values shall be those associated with the base flood. Wind loading values shall be those defined according to American Society of Civil Engineers 7-16 *Minimum design loads and associated criteria for buildings and other structures*, or other equivalent standard.
  - 2. A registered professional engineer or architect shall develop or review the structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of § 450-19(2)(e).
- (f) New construction and substantial improvement of buildings shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood latticework, or insect screening intended to collapse without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
  - 1. For the purpose of § 450-19(2)(f), a breakaway wall shall have a design safe loading resistance of not less than 10 and not more than 20 pounds per square foot.
  - 2. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or where so required by City or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet all of the following conditions:
    - a) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
    - b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Water loading values shall be those associated with the base flood. Wind loading values shall be those defined according to American Society of Civil Engineers 7-16 *Minimum design loads and associated criteria for buildings and other structures*, or equivalent standard.
  - 3. All space enclosed by breakaway walls, open wood latticework, or insect screening below the lowest floor shall be used solely for parking, building access, or storage.
- (g) Require within flood-prone areas:
  - 1. New and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and
  - 2. New and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the

systems into flood waters and onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

- (h) All mobile recreation vehicles must be on site for less than 180 consecutive days and be either:
  - 1. fully licensed and ready for highway use; or
  - 2. shall meet the standards of § 450-19(2)(a) through § 450-19(2)(g), inclusive.

A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices and has no permanently attached additions.

- (i) Manufactured homes placed or substantially improved within the Coastal Floodplain District shall meet the standards of § 450-19(2)(a) through § 450-19(2)(g), inclusive.

## **ARTICLE VI**

### **NONCONFORMING USES**

#### **450-20 GENERAL**

##### **(1) APPLICABILITY**

- (a) The standards in this section shall apply to all uses and buildings that do not conform to the provisions contained within a floodplain zoning ordinance or with § 87.30, Wis. Stats. and §§ NR 116.12-14, Wis. Admin. Code and 44 CFR 59-72, these standards shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto. A party asserting existence of a lawfully established nonconforming use or structure has the burden of proving that the use or structure was compliant with the floodplain zoning ordinance in effect at the time the use or structure was created.
  - (b) As permit applications are received for additions, modifications, or substantial improvements to nonconforming buildings in the floodplain, the City shall develop a list of those nonconforming buildings, their present equalized assessed value, and a list of the costs of those activities associated with changes to those buildings.
- (2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:
- (a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification, or addition. The roof of

the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

- (b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
- (c) The City shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
- (d) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with § 450-17(1). The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;
- (e) No maintenance on a per event basis to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with § 450-17(1). Maintenance to any nonconforming structure, which does not exceed 50% of its present equalized assessed value on a per event basis, does not count against the cumulative calculations over the life of the structure for substantial improvement calculations.
- (f) If on a per event basis the total value of the work being done under (d) and (e) equals or exceeds 50% of the present equalized assessed value, the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with § 450-17(1).
- (g) Except as provided in subd. (h), if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed, or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.
- (h) For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the following minimum requirements are met, and all required permits have been granted prior to the start of construction:

## 1. Residential Structures

- a. Shall have the lowest floor, including basement, elevated to or above the base flood elevation using fill, pilings, columns, posts, or perimeter walls. Perimeter walls must meet the requirements of § 450-28(2).
- b. Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, and shall be constructed with methods and materials resistant to flood damage.
- c. Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- d. In A Zones, obtain, review, and utilize any flood data available from a federal, state or other source.
- e. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in § 450-18(4).
- f. in AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.

## 2. Nonresidential Structures

- a. Shall meet the requirements of §§ 450-20(2)(h)1.a. through 1.f., inclusive.
- b. Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in § 450-28(1) or (2).
- c. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in § 450-18(4).

- (3) A nonconforming historic structure may be altered if the alteration will not preclude the structure's continued designation as a historic structure, the alteration will comply with § 450-13(1), flood resistant materials are used, and construction practices and floodproofing methods that comply with § 450-28 are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of § 450-20(2)(h)1. if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.
- (4) Notwithstanding anything in this chapter to the contrary, modifications, additions, maintenance, and repairs to a nonconforming building shall not be prohibited based on cost and the building's nonconforming use shall be permitted to continue if:
  - (a) Any living quarters in the nonconforming building are elevated to be at or above the flood protection elevation;

- (b) The lowest floor of the nonconforming building, including the basement, is elevated one foot above the regional flood elevation;
- (c) The nonconforming building is permanently changed to conform to the applicable requirements of § 450-6;
- (d) If the nonconforming building is in the floodway, the building is permanently changed to conform to the applicable requirements of 3.3(1), 3.3(2)(b) through (e), 3.3(3), 3.3(4), and 6.2. Any development that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's 3-D building envelope must determine the floodway in accordance with section 5.1(5). If the encroachment is in the floodway, it must meet the standards in section 3.3(4);
- (e) If the nonconforming building is in the floodfringe, the building is permanently changed to conform to the applicable requirements of 4.3 and 6.3;
- (f) Repair or reconstruction of nonconforming structures and substantial improvements of residential buildings in zones A1-30, AE, and AH must have the lowest floor (including basement) elevated one foot above the base flood elevation;
- (g) Repair or reconstruction of nonconforming structures and substantial improvements of non-residential buildings in zones A1-30, AE, and AH must have the lowest floor (including basement) elevated to or above the base flood elevation, or (together with attendant utility and sanitary facilities) be designed so that below the base flood elevation the building is watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:
  1. Where a non-residential structure is intended to be made watertight below the base flood elevation, a registered professional engineer or architect must develop and/or review structural design, specifications, and plans for the construction, and must certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of § 450-20(4)(g), above.
  2. The City must maintain a record of such certification including the specific elevation to which each such structure is floodproofed;
- (h) Fully enclosed areas below the lowest floor of repair or reconstruction of nonconforming structures and substantial improvements in zones A1-30, AE, and AH that are usable solely for parking of vehicles, building access, or storage, must be designed to adequately equalize hydrostatic forces on exterior walls by allowing for the entry and exit of floodwaters. Subsequent improvements to repaired or reconstructed nonconforming structures must not increase the degree of their nonconformity. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet the following criteria:
  1. A minimum of two openings into each enclosed area must be located below the base flood elevation and provide a total net area of not less than one square inch for every square foot of enclosed area.
  2. The bottom of all openings must be no higher than one foot above the adjacent grade.



3. Openings may be equipped with screens, louvers, valves, or other coverings if they permit the automatic entry and exit of floodwaters;
  - (i) Manufactured homes that are placed or substantially improved within zones A1-30, AE, and AH outside of a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot above the base flood elevation, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement;
  - (j) Manufactured homes that are placed or substantially improved within zones A1-30, AE, and AH on existing sites in an existing manufactured home park that is not undergoing expansion and on which a manufactured home has not incurred substantial damage as a result of flood must be elevated so that either the lowest floor of the manufactured home is one foot above the base flood elevation, or the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement;
  - (k) Recreational vehicles placed on sites within zones A1-30, AH, and AE must either:
    1. Be on site for fewer than 180 consecutive days; or
    2. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
    3. Meet the elevation and anchoring requirements for manufactured homes in § 450-20(4)(i), above;
  - (l) In a regulatory floodway that has been delineated on the FIRM in zone A1-30 or AE, encroachments, including repair or reconstruction of nonconforming structures, substantial improvement, or other development (including fill) must be prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the City during the occurrence of the base flood discharge. Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity;
  - (m) In zone A, the City must obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source as criteria for requiring repair or reconstruction of nonconforming structures, substantial improvement, and other development to meet §§ 450-20(4)(f) through (l), inclusive, above. Any development that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's 3-D building envelope must determine the floodway in accordance with section 5.1(5). If the encroachment is in the floodway, it must meet the standards in section 3.3(4). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity;

- (n) In zones A1-30 or AE where a regulatory floodway has not been delineated on the FIRM, repair or reconstruction of nonconforming structures, substantial improvement, or any development that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's 3-D building envelope must determine the floodway in accordance with section 5.1(5). If the encroachment is in the floodway, it must meet the standards in section 3.3(4). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity;
- (o) In zone AO, repair or reconstruction of nonconforming structures and substantial improvements of residential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least one foot more than the depth number specified in feet on the FIRM (at least three feet if no depth number is specified). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity; or
- (p) In zone AO, repair or reconstruction of nonconforming structures and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet if no depth number is specified), or (together with attendant utility and sanitary facilities) be structurally dry-floodproofed to that level according to the standard specified in § 450-20(4)(g), above. Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity.

**450-21 FLOODWAY DISTRICT**

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the Floodway District, unless such modification or addition:
  - (a) Has been granted a permit or variance which meets all ordinance requirements;
  - (b) Meets the requirements of § 450-20;
  - (c) Shall not increase the obstruction to flood flows or regional flood height;
  - (d) Any addition to the existing structure shall be floodproofed, pursuant to § 450-28, by means other than the use of fill, to the flood protection elevation; and,
  - (e) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    - 1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
    - 2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
    - 3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and

4. The use must be limited to parking, building access or limited storage.
- (2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all City ordinances, § 450-28(3) and Ch. SPS 383, Wis. Admin. Code.
- (3) No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair, or maintenance of an existing well in the Floodway District shall meet the applicable requirements of all City ordinances, § 450-28(3) and Chs. NR 811 and NR 812, Wis. Admin. Code.

#### **450-22 FLOODFRINGE DISTRICT**

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the City and meets the requirements of § 450-17, except where § 450-22(2) is applicable.
- (2) Where compliance with the provisions of subd. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Appeals, using the procedures established in § 450-26, may grant a variance from those provisions of subd. (1) for modifications or additions using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
  - (a) No floor is allowed below the regional flood elevation for residential or commercial structures;
  - (b) Human lives are not endangered;
  - (c) Public facilities, such as water or sewer, shall not be installed;
  - (d) Flood depths shall not exceed two feet;
  - (e) Flood velocities shall not exceed two feet per second; and
  - (f) The structure shall not be used for storage of materials as described in § 450-17(5).
- (3) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all City ordinances, § 450-28(3) and Ch. SPS 383, Wis. Admin. Code.
- (4) All new wells, or addition to, replacement, repair, or maintenance of a well shall meet the applicable provisions of this ordinance, § 450-28(3) and Chs. NR 811 and NR 812, Wis. Admin. Code.

#### **450-23 COASTAL FLOODPLAIN DISTRICT (CFD)**

- (1) New construction and substantial improvement shall meet the standards of § 450-19.

- (2) No structural repairs, modifications or additions to an existing building, the cost of which exceeds, over the life of the existing building, 50% of its present equalized assessed value, may be allowed in a coastal floodplain area unless the entire building is permanently changed to conform with the standards prescribed in § 450-19.

**ARTICLE VII**  
**ADMINISTRATION**

The Zoning Administrator appointed to administer the City Zoning Ordinance adopted under § 62.23(7), Wis. Stats. shall administer this ordinance.

**450-24 ZONING ADMINISTRATOR**

(1) **DUTIES AND POWERS**

The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:

- (a) Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
- (b) Issue permits and inspect properties for compliance with provisions of this ordinance and issue certificates of compliance where appropriate.
- (c) Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred.
- (d) Keep records of all official actions such as:
  - 1. All permits issued, inspections made, and work approved;
  - 2. Documentation of certified lowest floor and regional flood elevations;
  - 3. Floodproofing certificates.
  - 4. Water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
  - 5. All substantial damage assessment reports for floodplain structures.
  - 6. List of nonconforming structures and uses.
  - 7. In the Coastal Floodplain District, documentation of the certified elevation of the bottom of the lowest horizontal structural member of new construction and substantial improvements.
  - 8. In the Coastal Floodplain District, certification by a licensed professional engineer or architect where required for new construction and substantial improvement under § 450-19.
- (e) Submit copies of the following items to the Department Regional office:
  - 1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
  - 2. Copies of case-by-case analyses and other required information.
  - 3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.

(f) Investigate, prepare reports, and report violations of this ordinance to the City zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.

(g) Submit copies of amendments to the FEMA Regional office.

(2) LAND USE PERMIT

A land use permit shall be obtained before any development; repair, modification, or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated. Application to the zoning administrator shall include:

(a) GENERAL INFORMATION

1. Name and address of the applicant, property owner and contractor;
2. Legal description, proposed use, and whether it is new construction or a modification;

(b) SITE DEVELOPMENT PLAN

A site plan drawn to scale shall be submitted with the permit application form and shall contain:

1. Location, dimensions, area and elevation of the lot;
2. Location of the ordinary highwater mark of any abutting navigable waterways;
3. Location of any structures with distances measured from the lot lines and street center lines;
4. Location of any existing or proposed on-site sewage systems or private water supply systems;
5. Location and elevation of existing or future access roads;
6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
7. The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
8. Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of Article III or Article IV are met; and
9. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to § 450-7. This may include any of the information noted in § 450-13(1).

(c) HYDRAULIC AND HYDROLOGIC STUDIES TO ANALYZE DEVELOPMENT

All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State. The study contractor shall be responsible for



the technical adequacy of the study. All studies shall be reviewed and approved by the Department.

1. Zone A floodplains and in AE zones within which a floodway is not delineated:

a. Hydrology

- i. The appropriate method shall be based on the standards in § NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.

b. Hydraulic modeling

The regional flood elevation shall be based on the standards in § NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

- i. determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.
- ii. channel sections must be surveyed.
- iii. minimum four-foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.
- iv. a maximum distance of 500 feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
- v. the most current version of HEC-RAS shall be used.
- vi. a survey of bridge and culvert openings and the top of road is required at each structure.
- vii. additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.
- viii. standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction coefficients or effective flow limits. The base model shall be calibrated to past flooding data such as high-water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.
- ix. the model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.

c. Mapping

A work map of the reach studied shall be provided, showing all cross-section locations, floodway/floodplain limits based on best available topographic data, geographic limits

of the proposed development and whether the proposed development is located in the floodway.

- i. If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
- ii. If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

## 2. Zone AE Floodplains

### a. Hydrology

If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on § NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.

### b. Hydraulic model

The regional flood elevation shall be based on the standards in § NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

#### i. Duplicate Effective Model

The effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.

#### ii. Corrected Effective Model.

The Corrected Effective Model shall not include any man-made physical changes since the effective model date but shall import the model into the most current version of HEC-RAS for Department review.

#### iii. Existing (Pre-Project Conditions) Model.

The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.

#### iv. Revised (Post-Project Conditions) Model.

The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.

#### v. All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.

- vi. Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the effective model and result in water surface elevations and top widths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.
- c. Mapping
- Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:
- i. Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.
  - ii. Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.
  - iii. Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.
  - iv. If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used, then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.
  - v. The revised floodplain boundaries shall tie into the effective floodplain boundaries.
  - vi. All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.
  - vii. Both the current and proposed floodways shall be shown on the map.
  - viii. The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

(d) EXPIRATION

All permits issued under the authority of this ordinance shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause. If the permitted work has not started within 180 days of the permit date, the development must comply with any regulation, including any revision to the FIRM or FIS, that took effect after the permit date.

(3) CERTIFICATE OF COMPLIANCE

No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt, or replaced shall be occupied until a certificate of compliance is

issued by the zoning administrator, except where no permit is required, subject to the following provisions:

- (a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;
- (b) Application for such certificate shall be concurrent with the application for a permit;
- (c) If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- (d) The applicant shall submit a certification signed by a registered professional engineer, architect, or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of § 450-28 are met.
- (e) Where applicable pursuant to § 450-18(4), the applicant must submit a certification by a registered professional engineer or surveyor of the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor (excluding pilings or columns), and an indication of whether the structure contains a basement.
- (f) Where applicable pursuant to § 450-18(4), the applicant must submit certifications by a registered professional engineer or architect that the structural design and methods of construction meet accepted standards of practice as required by § 450-18(4).

(4) **OTHER PERMITS**

Prior to obtaining a floodplain development permit the applicant must secure all necessary permits from federal, state, and local agencies, including but not limited to those required by the U.S. Army Corps of Engineers under § 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

**450-25 ZONING AGENCY**

(1) The City Building Inspector shall:

- (a) oversee the functions of the office of the zoning administrator; and
- (b) review and advise the governing body on all proposed amendments to this ordinance, maps, and text.
- (c) publish adequate notice pursuant to Ch. 985, Wis. Stats., specifying the date, time, place, and subject of the public hearing.

(2) The City Building Inspector shall not:

- (a) grant variances to the terms of the ordinance in place of action by the Board of Appeals; or
- (b) amend the text or zoning maps in place of official action by the governing body.

**450-26 BOARD OF APPEALS**

The Board of Appeals created under § 62.23(7)(e), Wis. Stats., is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin

Statutes and adopt rules for the conduct of business. The zoning administrator shall not be the secretary of the Board.

(1) POWERS AND DUTIES

The Board of Appeals shall:

- (a) Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance;
- (b) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map; and
- (c) Variances - Hear and decide, upon appeal, variances from the ordinance standards.

(2) APPEALS TO THE BOARD

- (a) Appeals to the board may be taken by any person aggrieved, or by any officer or department of the City affected by any decision of the Zoning Administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.

(b) NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES

1. Notice - The board shall:

- a. Fix a reasonable time for the hearing;
- b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place, and subject of the hearing; and
- c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.

2. Hearing - Any party may appear in person or by agent. The board shall:

- a. Resolve boundary disputes according to § 450-26(3);
- b. Decide variance applications according to § 450-26(4); and
- c. Decide appeals of permit denials according to § 450-27.

(c) DECISION: The final decision regarding the appeal or variance application shall:

- 1. Be made within a reasonable time;
- 2. Be sent to the Department Regional office within 10 days of the decision;
- 3. Be a written determination signed by the chairperson or secretary of the Board;
- 4. State the specific facts which are the basis for the Board's decision;
- 5. Either affirm, reverse, vary or modify the order, requirement, decision, or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application; and



6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(3) BOUNDARY DISPUTES

The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:

- (a) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary.
- (b) The person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board; and
- (c) If the boundary is incorrectly mapped, the Board should inform the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to § 450-30 *Amendments*.

(4) VARIANCE

(a) The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:

- 1. Literal enforcement of the ordinance will cause unnecessary hardship;
- 2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
- 3. The variance is not contrary to the public interest; and
- 4. The variance is consistent with the purpose of this ordinance in § 450-3.

(b) In addition to the criteria in subd. (a), to qualify for a variance under FEMA regulations, the Board must find that the following criteria have been met:

- 1. The variance shall not cause any increase in the regional flood elevation;
- 2. The applicant has shown good and sufficient cause for issuance of the variance;
- 3. Failure to grant the variance would result in exceptional hardship;
- 4. Granting the variance will not result in additional threats to public safety, extraordinary expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing City laws or ordinances;
- 5. The variance granted is the minimum necessary, considering the flood hazard, to afford relief.

(c) A variance shall not:

- 1. Grant, extend or increase any use prohibited in the zoning district;

2. Be granted for a hardship based solely on an economic gain or loss;
3. Be granted for a hardship which is self-created.
4. Damage the rights or property values of other persons in the area;
5. Allow actions without the amendments to this ordinance or map(s) required in § 450-30 *Amendments*; and
6. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

(d) When a floodplain variance is granted, the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 of coverage. A copy shall be maintained with the variance record.

**450-27 TO REVIEW APPEALS OF PERMIT DENIALS**

- (1) The Zoning Agency (§ 450-25) or Board shall review all data related to the appeal. This may include:
  - (a) Permit application data listed in § 450-24(2);
  - (b) Floodway/floodfringe determination data in § 450-18(5);
  - (c) Data listed in § 450-13(1)(b) where the applicant has not submitted this information to the zoning administrator; and
  - (d) Other data submitted with the application or submitted to the Board with the appeal.
- (2) For appeals of all denied permits the Board shall:
  - (a) Follow the procedures of § 450-26;
  - (b) Consider zoning agency recommendations; and
  - (c) Either uphold the denial or grant the appeal.
- (3) For appeals concerning increases in regional flood elevation the Board shall:
  - (a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of § 450-30 *Amendments*; and
  - (b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase provided no other reasons for denial exist.

**450-28 FLOODPROOFING STANDARDS**

- (1) No permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to or above the flood protection elevation and submits a FEMA Floodproofing Certificate. Floodproofing is not an alternative to the development standards in §§ 450-6, Article III, Article IV, § 450-18 or § 450-19.
- (2) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:
  - (a) certified by a registered professional engineer or architect; or
  - (b) meeting or exceeding the following standards:
    1. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    2. the bottom of all openings shall be no higher than one foot above grade; and
    3. openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (3) Floodproofing measures shall be designed, as appropriate, to:
  - (a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
  - (b) Protect structures to the flood protection elevation;
  - (c) Anchor structures to foundations to resist flotation and lateral movement;
  - (d) Minimize or eliminate infiltration of flood waters;
  - (e) Minimize or eliminate discharges into flood waters;
  - (f) Placement of essential utilities to or above the flood protection elevation; and
  - (g) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
    2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
    3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and

4. The use must be limited to parking, building access or limited storage.

**450-29 PUBLIC INFORMATION**

- (1) Place marks on structures to show the depth of inundation during the regional flood.
- (2) All maps, engineering data and regulations shall be available and widely distributed.
- (3) Real estate transfers should show what floodplain district any real property is in.

**ARTICLE VIII**  
**AMENDMENTS**

**450-30 AMENDMENTS**

Obstructions or increases may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with § 450-31.

- (1) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with § 450-31. Any such alterations must be reviewed and approved by FEMA and the DNR.
- (2) In A Zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain maps, floodway lines, and water surface profiles, in accordance with § 450-31.

**450-31 GENERAL**

The governing body shall change or supplement the floodplain zoning district boundaries and this ordinance in the manner outlined in § 450-32, below. Actions which require an amendment to the ordinance and/or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:

- (1) Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;
- (2) Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;
- (3) Any changes to any other officially adopted floodplain maps listed in § 450-5(2)(b);
- (4) Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
- (5) Correction of discrepancies between the water surface profiles and floodplain maps;
- (6) Any upgrade to a floodplain zoning ordinance text required by § NR 116.05, Wis. Admin. Code, or otherwise required by law, or for changes by the City; and
- (7) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

**450-32 PROCEDURES**

Ordinance amendments may be made upon petition of any party according to the provisions of § 62.23, Wis. Stats. The petitions shall include all data required by § 450-18(5) and § 450-24(2). The Land Use Permit shall not be issued until a Letter of Map Revision is issued by FEMA for the proposed changes.

- (1) The proposed amendment shall be referred to the zoning agency for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of § 62.23, Wis. Stats.
- (2) No amendments shall become effective until reviewed and approved by the Department.
- (3) All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.

**ARTICLE IX  
ENFORCEMENT AND PENALTIES**

**450-33 ENFORCEMENT AND PENALTIES**

Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the City attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the City a penalty of not more than \$50.00, together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance, and the creation may be enjoined, and the maintenance may be abated by action at suit of the City, the state, or any citizen thereof pursuant to § 87.30, Wis. Stats

**ARTICLE X  
DEFINITIONS**

**450-34 DEFINITIONS**

Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.

- (1) A ZONES – Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
- (2) AH ZONE – See “AREA OF SHALLOW FLOODING”.
- (3) AO ZONE – See “AREA OF SHALLOW FLOODING”.
- (4) ACCESSORY STRUCTURE OR USE – A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. An accessory structure shall not be used for human habitation.



- (5) ALTERATION – An enhancement, upgrade or substantial change or modification other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.
- (6) AREA OF SHALLOW FLOODING – A designated AO, AH, AR/AO, AR/AH, or VO zone on the City’s Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.
- (7) BASE FLOOD – Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
- (8) BASEMENT – Any enclosed area of a building having its floor sub-grade on all sides.
- (9) BREAKAWAY WALL – A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.
- (10) BUILDING – See STRUCTURE.
- (11) BULKHEAD LINE – A geographic line along a reach of navigable water that has been adopted by a City ordinance and approved by the Department pursuant to § 30.11, Wis. Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.
- (12) CAMPGROUND – Any parcel of land which is designed, maintained, intended, or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
- (13) CAMPING UNIT – Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.
- (14) CERTIFICATE OF COMPLIANCE – A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
- (15) CHANNEL – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
- (16) COASTAL FLOODPLAIN – An area along the coast of Lake Michigan or Lake Superior which is inundated by the regional flood, and which is also subject to additional hazard due to wave runup.
- (17) COASTAL HIGH HAZARD AREA – An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast, and any other area subject to high velocity wave action from storms.

- (18) **CRAWLWAYS** or **CRAWL SPACE** – An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
- (19) **DECK** – An unenclosed exterior structure that has no roof or sides and has a permeable floor which allows the infiltration of precipitation.
- (20) **DEPARTMENT** – The Wisconsin Department of Natural Resources.
- (21) **DEVELOPMENT** – Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.
- (22) **DRYLAND ACCESS** – A vehicular access route which is above the regional flood elevation, and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
- (23) **ENCROACHMENT** – Any fill, structure, equipment, use or development in the floodway.
- (24) **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)** – The federal agency that administers the National Flood Insurance Program.
- (25) **FLOOD INSURANCE RATE MAP (FIRM)** – A map of the City on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the City. This map can only be amended by the Federal Emergency Management Agency.
- (26) **FLOOD** or **FLOODING** – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
- The overflow or rise of inland waters;
  - The rapid accumulation or runoff of surface waters from any source;
  - The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
  - The sudden increase caused by an unusually high-water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- (27) **FLOOD FREQUENCY** – The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.
- (28) **FLOODFRINGE** – That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.

- (29) **FLOOD HAZARD BOUNDARY MAP** – A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
- (30) **FLOOD INSURANCE STUDY** – A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, which accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
- (31) **FLOODPLAIN** – Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.
- (32) **FLOODPLAIN ISLAND** – A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
- (33) **FLOODPLAIN MANAGEMENT** – Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.
- (34) **FLOOD PROFILE** – A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
- (35) **FLOODPROOFING** – Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.
- (36) **FLOOD PROTECTION ELEVATION** – An elevation of two feet of freeboard above the Regional Flood Elevation. (Also see: FREEBOARD.)
- (37) **FLOOD STORAGE** – Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
- (38) **FLOODWAY** – The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (39) **FREEBOARD** – A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.
- (40) **HABITABLE STRUCTURE** – Any structure or portion thereof used or designed for human habitation.

- (41) **HEARING NOTICE** – Publication or posting meeting the requirements of Ch. 985, Wis. Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. City ordinances or bylaws may require additional notice, exceeding these minimums.
- (42) **HIGH FLOOD DAMAGE POTENTIAL** – Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.
- (43) **HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- (44) **HISTORIC STRUCTURE** – Any structure that is either:
- Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.
- (45) **INCREASE IN REGIONAL FLOOD HEIGHT** – A calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
- (46) **LAND USE** – Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
- (47) **LOWEST ADJACENT GRADE** – Elevation of the lowest ground surface that touches any of the exterior walls of a building.
- (48) **LOWEST FLOOR** – The lowest floor of the lowest enclosed area (including basement). An enclosed space as provided in § 450-19(2)(f), is not considered the building's lowest floor.
- (49) **MAINTENANCE** – The act or process of ordinary upkeep and repairs, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems, or structures.
- (50) **MANUFACTURED HOME** – A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."

- (51) MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION – A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.
- (52) MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING – A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.
- (53) MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.
- (54) MOBILE RECREATIONAL VEHICLE – A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."
- (55) MODEL, CORRECTED EFFECTIVE – A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.
- (56) MODEL, DUPLICATE EFFECTIVE – A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.
- (57) MODEL, EFFECTIVE – The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.
- (58) MODEL, EXISTING (PRE-PROJECT) – A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man-made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested.
- (59) MODEL, REVISED (POST-PROJECT) – A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.
- (60) MODERATE WAVE ACTION AREA (MoWA) – A special flood hazard area subject to the potential for breaking wave heights of greater than or equal to 1.5 feet, but less than 3 feet, where the primary source of flooding is astronomical tides, storm surges, seiches, and/or tsunamis. A MoWA is an area within zone AE on a FIRM that is between the inland limit of zone VE and a Limit of Moderate Wave Action, where identified. (Also known as "coastal A zone").
- (61) MUNICIPALITY or MUNICIPAL – The county, city or village governmental units enacting, administering, and enforcing this zoning ordinance.

- (62) NAVD or NORTH AMERICAN VERTICAL DATUM – Elevations referenced to mean sea level datum, 1988 adjustment.
- (63) NGVD or NATIONAL GEODETIC VERTICAL DATUM – Elevations referenced to mean sea level datum, 1929 adjustment.
- (64) NEW CONSTRUCTION – Structures for which the start of construction commenced on or after the effective date of a floodplain zoning regulation adopted by the City and includes any subsequent improvements to such structures.
- (65) NON-FLOOD DISASTER – A fire or an ice storm, tornado, windstorm, mudslide, or other destructive act of nature, but excludes a flood.
- (66) NONCONFORMING STRUCTURE – An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
- (67) NONCONFORMING USE – An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
- (68) OBSTRUCTION TO FLOW – Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
- (69) OFFICIAL FLOODPLAIN ZONING MAP – That map, adopted and made part of this ordinance, as described in § 450-5(2), which has been approved by the Department and FEMA.
- (70) OPEN SPACE USE – Those uses having a relatively low flood damage potential and not involving structures.
- (71) ORDINARY HIGHWATER MARK – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
- (72) PERSON – An individual, or group of individuals, corporation, partnership, association, municipality, or state agency.
- (73) PRIMARY FRONTAL DUNE – A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.
- (74) PRIVATE SEWAGE SYSTEM – A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional



Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure, or a system located on a different parcel than the structure.

- (75) **PUBLIC UTILITIES** – Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer, and storm sewer.
- (76) **REASONABLY SAFE FROM FLOODING** – Means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
- (77) **REGIONAL FLOOD** – A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
- (78) **SAND DUNES** – Naturally occurring accumulations of sand in ridges or mounds landward of the beach.
- (79) **START OF CONSTRUCTION** – The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (80) **STRUCTURE** – Any man-made object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lakebed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
- (81) **SUBDIVISION** – Has the meaning given in § 236.02(12), Wis. Stats.
- (82) **SUBSTANTIAL DAMAGE** – Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
- (83) **SUBSTANTIAL IMPROVEMENT** – Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living

conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

- (84) **UNNECESSARY HARDSHIP** – Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height, or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.
- (85) **VARIANCE** – An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
- (86) **VIOLATION** – The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
- (87) **WATERSHED** – The entire region contributing runoff or surface water to a watercourse or body of water.
- (88) **WATER SURFACE PROFILE** – A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.
- (89) **WELL** – means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

**Section 2.** This ordinance shall take effect upon adoption and publication as provided by law.

Adopted and dated this \_\_\_\_\_ day of June, 2024.

**ATTEST:**

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Susan L. Westerbeke, City Clerk

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Theodore Neitzke IV, Mayo