

WB-44 COUNTER-OFFER

Counter-Offer No. 5 by (Buyer/Seller) **STRIKE ONE**

NOTE: Number this Counter-Offer sequentially, e.g. Counter-Offer No. 1 by Seller, Counter-Offer No. 2 by Buyer, etc.

1 The Offer to Purchase dated 10/31/2022 and signed by Buyer City of West Allis
2 _____ for purchase of real estate at 52** W Burnham Tx Key 474-0002-001, West
3 Allis, WI is rejected and the following Counter-Offer is hereby made.

4 **CAUTION: This Counter-Offer does not include the terms or conditions in any other counter-offer or multiple**
5 **counter-proposal unless incorporated by reference.**

6 All terms and conditions remain the same as stated in the Offer to Purchase except the following: _____

7 Purchase Price shall be \$1,600,000.00.

8 Lines 466-487 are reinstated.

9 Lines 655-658 of the Offer are deleted. Buyer shall be responsible for all commissions
10 for any Buyer real estate agent, including David Glazer, David Glazer Real Estate LLC.

11 Seller shall convey title to the Property without warranty of title, via a Quit Claim
12 Deed.

13 Buyer represents and warrants that it has satisfied itself as to all conditions of the
14 Property, including any conditions affecting the Property, prior to submission of the
15 Offer. Seller makes no representations and disclaims all representations or warranties
16 regarding the condition of the Property. Property is sold AS IS.

18 Buyer shall execute the Development Agreement attached hereto and Seller may record a
19 fully executed copy of the Development Agreement.

21 This Offer is contingent upon Buyer obtaining unconditional approval to purchase this
22 Property from the City of West Allis Common Council within thirty (30) days of acceptance
23 hereof or this Offer shall become null and void.

28 The attached Development Agreement, Exhibits A & B is/are made part of this Counter-Offer.

29 Any warranties, covenants and representations made in this Counter-Offer survive the closing of this transaction.

30 This Counter-Offer is binding upon Seller and Buyer only if a copy of the accepted Counter-Offer is delivered to the Party
31 making the Counter-Offer on or before February 28, 2023 (Time is of
32 the Essence). Delivery of the accepted Counter-Offer may be made in any manner specified in the Offer to Purchase,
33 unless otherwise provided in this Counter-Offer.

34 **NOTE: The Party making this Counter-Offer may withdraw the Counter-Offer prior to acceptance and delivery as**
35 **provided at lines 30-32.**

36 This Counter-Offer was drafted by Brian R. Zimmerman, Esq. on 02/23/2023

37 _____ Licensee and Firm ▲ _____ Date ▲

38 (x) [Signature] 2/28/23-2/17/23- (x) [Signature] 3/16/2023
39 Buyer's Signature ▲ Date ▲ Seller's Signature ▲ Date ▲

40 Print name ► City of West Allis Print name ► Emily Streff, Associate Project Manager Milwaukee County
By Kail Decker, City Attorney

41 (x) _____ (x) _____
42 Buyer's Signature ▲ Date ▲ Seller's Signature ▲ Date ▲

43 Print name ► _____ Print name ► _____

44 This Counter-Offer was presented by _____ on _____
45 _____ Licensee and Firm ▲ _____ Date ▲

46 This Counter-Offer is (rejected) (countered) **STRIKE ONE** (Party's Initials) _____

47 **NOTE: Provisions from a previous Counter-Offer may be included by reproduction of the entire provision or**
48 **incorporation by reference. Provisions incorporated by reference may be indicated in the subsequent Counter-**
49 **Offer by specifying the number of the provision or the lines containing the provision. In transactions involving**
50 **more than one Counter-Offer, the Counter-Offer referred to should be clearly specified.**

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), is entered into between the Milwaukee County, Wisconsin a municipal body corporate, (the “County”) and the City of West Allis, Wisconsin, a municipal body corporate (the “City”). The County and City may be referred to herein individually as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, the County and the City entered into a WB-13 Vacant Land Offer to Purchase dated October 31, 2022 (the “Offer”) and accepted via Counter Offer ____ dated _____, for the purchase of property identified by tax identification number 474-0002-001 and located on or about 52** West Burnham Street, West Allis, Milwaukee County, Wisconsin, and legally described on **Exhibit A** attached to this Agreement (the “Acquisition Property”);

WHEREAS, the County and the City wish to develop a City-owned property identified by tax identification number 564-9997-000 and located on or about 3601 South 116th Street, West Allis, Milwaukee County, Wisconsin, and legally described on **Exhibit B** attached to this Agreement (the “Development Property”);

WHEREAS, the City wishes to purchase the Acquisition Property to build a public works facility on that land for city use;

WHEREAS, the City wishes to sell the Development Property to a future end user not exempt from real estate taxes;

WHEREAS, this Agreement is intended to provide for certain rights and obligations of the City with respect to its use and future transfer of the Development Property;

WHEREAS, the City and County believe the fulfillment of this Agreement are vital and in the best interests of the City and County and its residents and in accordance with the public purposes and conditions of the applicable State and local laws and requirements; and

NOW, THEREFORE, in addition to the foregoing recitals and the mutual promises hereinafter set forth, the Parties, intending to be legally bound agree to the following Terms and Conditions:

TERMS AND CONDITIONS

1. **Effective Date and Term**. The Agreement is effective as of the date the signed by the last of the Parties (the “Effective Date”). The term of this Agreement (the “Term”) shall commence upon the Effective Date and extend for a period of fifteen (15) years thereafter, unless such Term is terminated, modified, or extended by the mutual consent of the Parties (“Term”).

2. **Description of Project**. The County requires and the City agrees that prior to expiration of the Term, the City shall transfer or convey title of the Development Property to an entity not exempt from real estate taxes (pursuant to Wis. Stat. §70.11 or otherwise), such that the Development Property shall be taxable for property tax purposes commencing no later than the first tax year following the end of the Term.

3. PILOT Payment. In the event that the City fails during the Term to transfer or convey title of the Development Property to an entity not exempt from real estate taxes (pursuant to Wis. Stat. §70.11 or otherwise), such that the Development Property shall have not become taxable for property tax purposes commencing no later than the first tax year following the end of the Term, the City shall pay to the County a one-time payment in lieu of taxes in the amount of Four Hundred Thousand Dollars (\$400,000.00).

4. Recording/Amendments. This Agreement or a memorandum hereof may be recorded with the Milwaukee County Register of Deeds by any Party and their respective successors and assigns as a covenant running with and binding upon the Development Property. This Agreement may only be amended in writing signed by both Parties.

5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin, without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Wisconsin. The prevailing party in any formal dispute resolution proceeding, including appeal, shall be entitled to recover all of its costs and attorney's fees.

6. Interpretation and Construction. Any captions or headings used in this Agreement are for convenience only and do not define or limit the scope of this Agreement.

7. Complete Agreement. This Agreement and the exhibits constitute the complete agreement between the Parties and there have been no other representations, warranties, or oral agreements, which are not contained herein.

8. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

9. Persons Bound. This Agreement shall be binding on the Parties and their respective heirs, executors, administrators, successors, and assigns. This Agreement is supplementary to and in conjunction with all those documents, agreements, conditions, and covenants affecting and relating to the Project, which are made part hereof and incorporated herein as part of this Agreement.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic communication shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have executed and delivered this Development Agreement effective as of the Effective Date.

Milwaukee County, Wisconsin
a municipal body corporate,

BY: _____

Name/Title: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this ___ day of _____, 2023, the above-named _____ to me known to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that he executed the same.

_____,
Notary Public, State of Wisconsin
My Commission expires/is _____.

City of West Allis, Wisconsin,
a municipal body corporate

BY: _____

Name/Title: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this ____ day of _____, 2023, the above-named _____ to me known to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that he executed the same.

_____,
Notary Public, State of Wisconsin
My Commission expires/is _____.

This instrument drafted by:
Attorney Brian R. Zimmerman
Hurtado Zimmerman SC
1011 N. Mayfair Road, Suite 204
Wauwatosa, WI 53226
bzimmerman@hzattys.com

Exhibit A
Acquisition Property

Lot One (1), except the South 25 feet of the East 280 feet thereof, and the North 475 feet of Lot Two (2), Block Two (2), in Assessor's Plat No. 272, being a Subdivision in part of the Southwest $\frac{1}{4}$ of Section Two (2), Township Six (6) North, Range Twenty-one (21) East, in the City of West Allis, County of Milwaukee, State of Wisconsin.

Exhibit B
Development Property

The North 800 feet of the South 2,120 feet of the East 825 feet of the Southwest $\frac{1}{4}$ of Section Eighteen (18), Township Six (6) North, Range Twenty-one (21) East, in the City of West Allis, County of Milwaukee, State of Wisconsin.