

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “Second Amendment”) is made and entered into as of the 8TH day of May 2020 by and between West Quarter West, LLC (“WQW”) and West Quarter East, LLC (“WQE”, and collectively with WQW, the “Developer”), and the City of West Allis, a Wisconsin municipal corporation (the “City”).

RECITALS

City and Developer acknowledge the following:

- A. City and Developer entered into that certain Development Agreement dated as of March 22, 2019 (the “Development Agreement”) for development of the Project within the District.
- B. City and Developer desire to amend the Development Agreement as set forth herein.
- C. City, pursuant to Common Council action dated April 29, 2020, has approved this Second Amendment and authorized its execution by the proper City officials on the City's behalf.
- D. Developer has approved this Second Amendment and authorized its execution by the appropriate representatives on its behalf.

AGREEMENTS

In consideration of the Recitals and the promises and undertakings set forth herein, the parties do hereby amend the Development Agreement effective as of the date hereof as follows:

1. Definitions. Capitalized terms used herein, to the extent not otherwise defined herein, shall have the meaning ascribed to each such term in the Development Agreement.

2. Recitals/Exhibits.

(a) The Preliminary Development Plan attached to the Development Agreement as Exhibit B is hereby deleted in its entirety and Exhibit B attached hereto shall be inserted in its place.

(b) In Recital D, “\$81,000,000” is hereby deleted and “\$135,000,000” shall be inserted in its place. The Property Valuations attached to the Development Agreement as Exhibit C is hereby deleted in its entirety and Exhibit C attached hereto shall be inserted in its place.

(c) The Base Value Allocation schedule attached to the Development Agreement as Exhibit I is hereby deleted in its entirety and Exhibit I attached hereto shall be inserted in its place.

(d) **Exhibit J-1** attached hereto, describing an acceptable Replacement Park Parcel, is hereby added to the Development Agreement.

(e) **Exhibit K** attached hereto, describing and itemizing the Additional Environmental Remediation Costs (as hereinafter defined), is hereby added to the Development Agreement.

3. Park Area and Park Parcels.

(a) Article I, Paragraph C(3) is hereby amended by deleting such paragraph in its entirety and inserting in its place the following:

“3. The City finds that an acceptable Replacement Park Parcel shall consist of the area (comprising approximately 3 acres) generally as depicted as such on **Exhibit J-1** and acquired at a Purchase Price (as defined herein) mutually agreed upon by WQE and the City. In the event WQE elects to relocate the Park Area in accordance with the terms hereof, the City and WQE shall enter into an amendment to the Park Lease to relocate the Park Area to the Replacement Park Parcel in form reasonably satisfactory to the City and WQE, each acting in good faith. WQE shall be responsible for the cost of developing the Replacement Park Parcel and shall utilize Park Improvement Increment (as defined in Article II, Paragraph C) for such development (“Replacement Park Improvements”). WQE shall complete the Replacement Park Improvements no later than eighteen (18) months after the later of (a) City’s approval of plans and specifications for the Replacement Park Improvements and (b) WQE’s commencement of vertical development on the Park Parcels.

(b) Article II, Paragraph C is hereby amended by deleting such paragraph in its entirety and inserting in its place the following:

“C. Any tax increment payments received by the City for the total assessed valuation of the Property between the Base Value and \$27,300,000 (or such other amount as shall be mutually agreed upon by the City and WQE to fund reimbursement of all costs incurred by WQE to implement the Replacement Park Improvements) in a calendar year during the unextended statutory term of the District (“Park Improvement Increment”) shall be applied to the cost of the Replacement Park Parcel and Replacement Park Improvements incurred by WQE together with interest on such amounts at a commercially reasonable rate agreed upon by City and WQE in the form of a forgivable loan.”

(c) Article II, Paragraph G is hereby deleted in its entirety.

4. Additional Increment Obligations.

(a) There is hereby added to a new Article I, Paragraph B(6) to read as follows:

“6. On or before June 30, 2021, commence construction of components of the Preliminary Development Plan (excluding the Phase I Work) having an aggregate cost of not less than \$20,000,000, in accordance with City-approved development and landscaping plans and specifications (the “Additional Development”). Subject to a Force Majeure Event, failure of

WQE to commence construction of the Additional Development on or before June 30, 2021 shall constitute a Default (as hereinafter defined) under this Agreement.”

5. Increased TIF Collateral and Project Loan.

(a) There is hereby added to a new Article II, Paragraph H to read as follows:

“H. The City shall make an additional advance to WQE or, at, at the option of Cobalt Partners, LLC, an affiliate of WQE (“Cobalt”), to Cobalt, under the Project Loan in the aggregate amount of \$2,650,000.00 (the “Additional Advance”) to fund additional environmental remediation costs incurred by WQE as set forth on Exhibit K attached hereto (the “Additional Environmental Remediation Costs”). The Additional Advance shall be disbursed to fund or reimburse the Additional Environmental Remediation Costs as the same become due and payable, but at least \$1,325,000 of such Additional Advance shall be made available on or before May 29, 2020 and the remaining balance shall be made available on or before June 15, 2020. The Additional Advance shall be structured and documented as a forgivable loan and otherwise consistent with the existing Project Loan and shall be deemed to be part of the Project Loan.”

(b) There is hereby added a new Article II, Paragraph I to read as follows:

“I. The City shall withhold from the Additional Advance the amount of \$362,026, which amount shall be deemed an Additional Cash Payment (constituting additional TIF Guaranty Collateral) pursuant to Article II, Paragraph B(4).”

6. Increased Assessed Valuation Guaranty.

(a) Article IV, Paragraph A is hereby modified by deleting the first reference therein to “\$21,100,000” and inserting in its place “\$25,100,000” and by deleting the last sentence in its entirety and inserting in its place the following:

“In such instance, Developer would owe an Assessed Value Shortfall Payment to the City equal to \$193,200 ($\$25,100,000 - \$18,200,000 = \$6,900,000 \times 2.8\%$) payable on or before fifteen (15) days following the issuance of the 2021 property tax bill for the Property.”

7. Additional Brownfield Grant.

(a) There is hereby added a new Article I, Paragraph G to read as follows:

“G. WQE shall use good faith efforts to seek additional brownfield grant assistance in the amount of \$500,000.00 from the Wisconsin Economic Development Corporation to help fund the Additional Environmental Remediation Costs.”

8. Potential Repayment of Additional Advance; Profit Sharing.

(a) Article VI, Paragraph B is hereby amended by deleting the first three sentences in such paragraph in its entirety and inserting in its place the following:

“Prior to each land sale to a third-party, unaffiliated developer, Developer shall provide to the City and its financial consultant a copy of the purchase and sale agreement between the parties and a third-party valuation that estimates the “as-is” value of such parcel. Prior to each land sale (or transfer) to an affiliate of Developer, Developer shall provide to the City and its financial consultant a proforma for the vertical development proposed on such parcel for its confirmation that the budget, financing, and operating assumptions, and the associated return to Developer (on the vertical development) based on the sale price of such parcel, are within market-appropriate ranges. If the Developer's IRR (as defined below) on the land sales revenue for the Project exceeds 16% (with Developer’s costs taking into account any Project cost overruns, the approved Developer fee set forth in the Development Budget, and any amounts paid by Developer or Guarantors under the TIF Guaranty), then the City shall be entitled to a payment from the Developer equal to the amount of revenue that drove Developer's IRR above 16% (i.e., the excess above the specified IRR, not the total, shall be paid to City) up to the amount of the Additional Advance, and, to the extent of any additional excess IRR (i.e., above both (i) Developer’s permitted IRR of 16% and (ii) the amount of the Additional Advance), 40% of such additional excess IRR shall also be paid to the City.”

(b) Article VI, Paragraph B is hereby amended by deleting the last sentence in such paragraph in its entirety and inserting in its place the following:

“For purposes hereof, “IRR” shall mean the compounded return, calculated annually on a cumulative basis, accounting for (i) the contribution of equity to the payment of Project costs by Developer or its equity investors (net of costs financed through debt and grants and excluding any promote or carried interest) and any amounts required to be deposited to collateralize such debt or grants; (ii) any annual cash flow from operations (e.g., parking revenues and rental fees) during the land development phase of the Project; and (iii) the receipt of net cash proceeds from the land sales for the Project. Net cash proceeds mean the gross sale proceeds, less (i) the costs of the sale and customary costs of closing, such as title insurance, closing fees, brokers’ fees, taxes, recording fees, transfer fees, real estate tax proration, and attorney’s fees; and (ii) amounts due to lender(s) under the financing agreements. Such return will be calculated using standard industry practices and account for the period between the initial contribution of equity to the payment of Project costs and the final land sale for the Project. On or before the first land sale following execution of this Second Amendment, Developer shall provide to the City a “baseline” proforma that will be used as the basis for the IRR calculation and that shall define equity investment, development costs, debt amounts and projected land sales and debt repayment.”

9. Successors and Assigns. The terms and conditions of the Development Agreement as amended by this Second Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10. Ratification. Except as expressly amended herein, the Development Agreement shall remain in full force and effect and is hereby ratified by the parties hereto.

11. Counterparts. This Second Amendment may be executed in any number of counterparts with the same force and effect as if all signatures were appended to one document, each of which shall be deemed an original.

12. Digital Images. The parties agree to accept a digital image of this Second Amendment, as executed, as a true and correct original and admissible as best evidence for the purposes of state law, Federal Rule of Evidence 1002, and the like statutes and regulations. Execution and delivery of this Second Amendment by portable document format ("PDF") copy bearing the PDF signature of any of the parties hereto shall constitute a valid and binding execution and delivery of this Second Amendment by such party. Such PDF copies shall constitute enforceable original documents.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Second Amendment is executed as of the date first above written.

WEST QUARTER WEST, LLC

By: Cobalt Partners, LLC, Manager

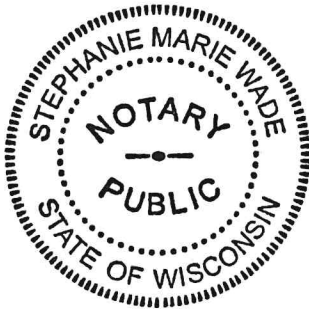
By: [Signature]
Scott J. Yauck, Sole Member and
Manager

STATE OF WISCONSIN)

) ss.

Milwaukee COUNTY)

Personally appeared before me this 5TH day of May, 2020, the above-named Scott J. Yauck, as the Sole Member and Manager of Cobalt Partners, LLC, the Manager of West Quarter West, LLC, and, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority and acknowledged the same.



[Signature]
Name: STEPHANIE MARIE WADE
Notary Public, State of Wisconsin
My commission expires: May 6, 2023

[Signatures Continue on Following Page]

WEST QUARTER EAST, LLC

By: Cobalt Partners, LLC, Manager

By: [Signature]
Scott J. Yauck, Sole Member and
Manager

STATE OF WISCONSIN)

) ss.

Milwaukee COUNTY)

Personally appeared before me this 5TH day of May, 2020, the above-named Scott J. Yauck, as the Sole Member and Manager of Cobalt Partners, LLC, the Manager of West Quarter East, LLC, and, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority and acknowledged the same.



[Signature]
Name: STEPHANIE MARIE WADE
Notary Public, State of Wisconsin
My commission expires: May 6, 2023

[Signatures Continue on Following Page]

CITY OF WEST ALLIS

By: *Dan Devine*
Dan Devine, Mayor

By: *Rebecca N. Grill*
Rebecca Grill, City Clerk

STATE OF WISCONSIN)
) ss.
Milwaukee COUNTY)

Personally appeared before me this 8th day of May, 2020, the above-named Dan Devine and Rebecca Grill, the Mayor and City Clerk of the City of West Allis, and to me known to be the persons who executed the foregoing amendment on behalf of the City and by its authority and acknowledged the same.

Kail Decker
Name: Kail Decker
Notary Public, State of Wisconsin
My commission expires: is permanent

This instrument was drafted by and upon recording return to:

Kail Decker, City Attorney
City of West Allis
7525 West Greenfield Avenue, Room 232
West Allis, WI 53214


JOINDER

The undersigned, WQE, Cobalt, and Scott J. Yauck, collectively as the Guarantors, hereby join in the execution of the foregoing Second Amendment to evidence, acknowledge and confirm that the TIF Guaranty previously executed by the Guarantors and delivered to the City of West Allis remains in full force and effect and guarantees the obligations of the Developer with respect to all Debt Service Shortfall Payments and all Assessed Value Shortfall Payments under the Development Agreement as modified by the Second Amendment.

Dated as of the 5TH day of May, 2020.

WEST QUARTER EAST, LLC

By: Cobalt Partners, LLC, Manager

By: 

Scott J. Yauck, Sole Member and
Manager

COBALT PARTNERS, LLC

By: 

Scott J. Yauck, Sole Member and Manager



Scott J. Yauck

EXHIBIT B

Preliminary Development Plan (East Side)

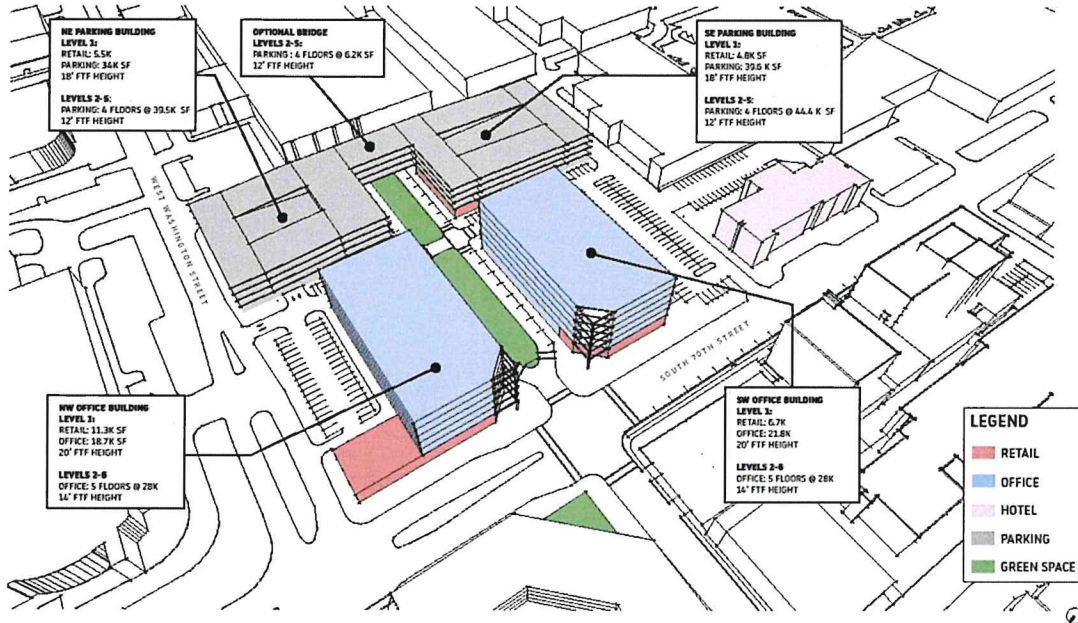


EXHIBIT B

Preliminary Development Plan (West Side)

[TO BE INSERTED]

EXHIBIT C

Property Valuations



ALLIS YARDS / MIXED-USE DEVELOPMENT (VALUATION YEAR)													
Ref.	Development Component	Est. SF for Units)	Value/SF (or Unit)	Total Value	Notes	2020	2021	2022	2023	2024	2025	2026	TOTALS
	1126 S. 70th Street			\$ 2,994,400	Existing/Reazed	\$ 2,994,400	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,994,400
	1135 S. 70th Street	45,713	\$ 65	\$ 2,971,345	Existing/Renovated	\$ 2,971,345	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,971,345
	1205 S. 70th Street	94,028	\$ 65	\$ 6,111,820	Existing/Renovated	\$ 6,111,820	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,111,820
	East Side - Hospitality	128	\$ 90,000	\$ 11,520,000	Home2Suites	\$ -	\$ 7,680,000	\$ 3,840,000	\$ -	\$ -	\$ -	\$ -	\$ 11,520,000
	East Side - Office 01	158,700	\$ 175	\$ 27,772,500	Mass Timber Office	\$ -	\$ -	\$ 13,886,250	\$ 13,886,250	\$ -	\$ -	\$ -	\$ 27,772,500
	East Side - Office 02	161,800	\$ 185	\$ 29,933,000	Mass Timber Office	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,966,500	\$ 14,966,500	\$ 29,933,000
	East Side - Retail 01	11,300	\$ 225	\$ 2,542,500	Ground Floor	\$ -	\$ -	\$ 1,779,750	\$ 762,750	\$ -	\$ -	\$ -	\$ 2,542,500
	East Side - Retail 02	6,700	\$ 235	\$ 1,574,500	Ground Floor	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 787,250	\$ 787,250	\$ 1,574,500
	East Side - Parking 01	641	\$ 6,000	\$ 3,846,000	Ground Floor	\$ -	\$ -	\$ -	\$ 3,846,000	\$ -	\$ -	\$ -	\$ 3,846,000
	East Side - Parking 01	641	\$ 6,000	\$ 3,846,000	Ground Floor	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,846,000	\$ 3,846,000
	West Side - Mixed-Use Retail	25,000	\$ 175	\$ 4,375,000	Townhomes & Apartments	\$ -	\$ -	\$ 2,187,500	\$ 2,187,500	\$ -	\$ -	\$ -	\$ 4,375,000
	West Side - Housing	270	\$ 120,000	\$ 32,400,000	Townhomes & Apartments	\$ -	\$ -	\$ 8,100,000	\$ 16,200,000	\$ 8,100,000	\$ -	\$ -	\$ 32,400,000
	West Side - Retail/MOB			\$ 4,000,000	Townhomes & Apartments	\$ -	\$ -	\$ -	\$ 4,000,000	\$ -	\$ -	\$ -	\$ 4,000,000
	West Side Parking	650	\$ 6,000	\$ 3,900,000	Current Welding Building	\$ -	\$ -	\$ 3,900,000	\$ -	\$ -	\$ -	\$ -	\$ 3,900,000
	West Side Retail	4,500	\$ 225	\$ 1,012,500	Integrated with Parking	\$ -	\$ -	\$ 1,012,500	\$ -	\$ -	\$ -	\$ -	\$ 1,012,500
	District Base Value			\$ (2,994,400)		\$ (2,994,400)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (2,994,400)
	Total Value Increment:			\$135,805,165	Expected Annual TID Value:	\$ 9,083,165	\$ 7,680,000	\$ 34,706,000	\$ 40,882,500	\$ 8,100,000	\$ 15,763,750	\$ 19,599,750	\$135,805,165
	Total Development Value:			\$138,799,565	Cumulative TID Value:	\$ 9,083,165	\$ 16,763,165	\$ 51,469,165	\$ 92,351,665	\$ 100,451,665	\$ 116,205,415	\$ 135,805,165	\$138,799,565

EXHIBIT I

Base Value Allocation

Base Value Allocation
(see aerial map next page for Parcel References)

<u>Parcel Reference</u>	<u>Parcel Size</u>	<u>Total</u>	<u>Notes</u>
1	0.78	\$ 6,112,000	WQW
2	0.37	\$ 2,970,000	WQW
3	0.30	\$ 100,000	WQW
4	1.53	\$ 730,000	No WQW Requirement
5	1.05	\$ 503,000	No WQW Requirement
6	0.99	\$ 332,000	No WQW Requirement
7	2.41	\$ 807,000	No WQW Requirement
8	1.72	\$ 576,000	No WQW Requirement
9a	2.03	\$ 10,240,000	Hotel Parcel; No WQW Requirement
9b	7.03	\$ 2,730,000	Balance of East Side Parcel(s); No WQW Requirement
	18.21	\$ 25,100,000	

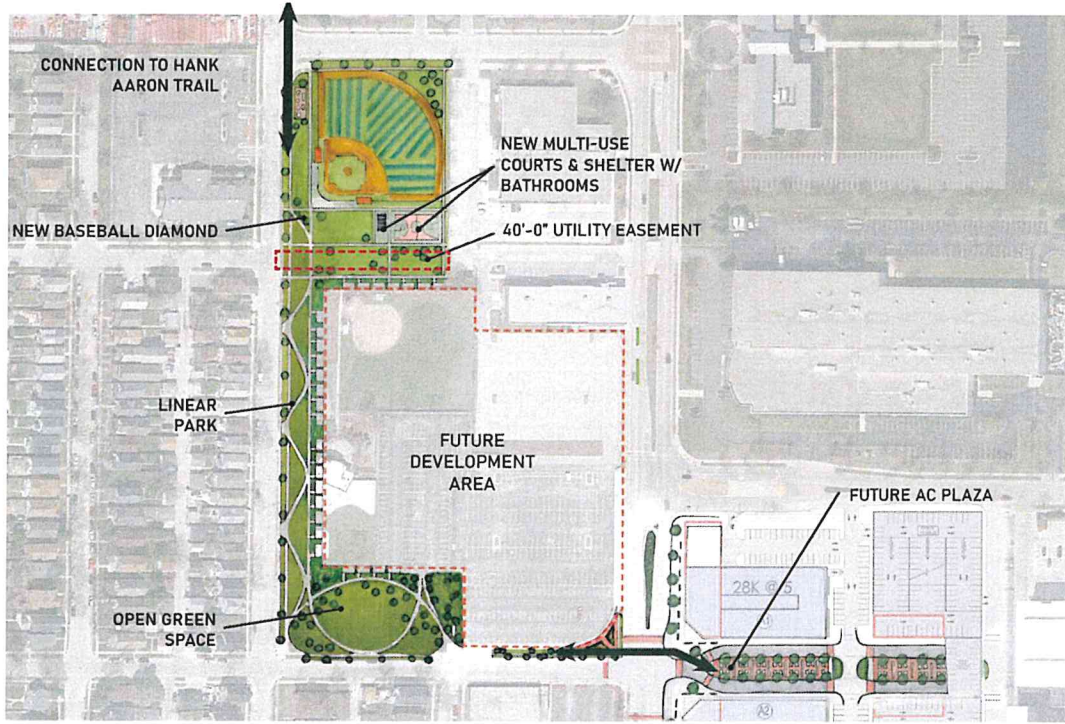
EXHIBIT I

Base Value Allocation



EXHIBIT J-1

Acceptable Replacement Park Parcel



CONCEPTUAL DESIGN INTENT

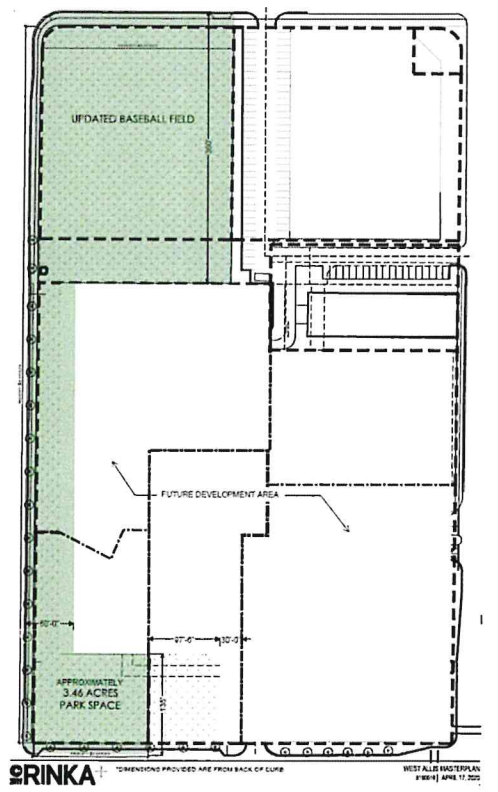


EXHIBIT K

Additional Environmental Remediation Costs

West Quarter East Budget Overages
2/13/20

Hazardous Material Abatement	Actual	Budget	Variance
Dirty Ducts			
Original Contract based on KPH detailed building survey	582,075.00		
CO #1 01/30/19 Galbestos panels	27,000.00		
CO #2 03/06/19 Negotiated discount	(10,645.00)		
CO #3 03/12/19 Lead paint removal	98,450.00		
CO #4 04/23/19 Removal of duct wrap	14,965.00		
CO #5 04/29/19 ACM Wall lining	5,875.00		
CO #6 08/15/19 Added asbestos - PSI destructive testing	27,555.00		
CO #7 10/01/19 Lead paint - PSI destructive testing	239,890.00		
CO #8 10/17/19 Added asbestos & lead paint - PSI destructive testing	317,153.00		
CO #9 11/12/19 Added asbestos - PSI destructive testing	58,937.00		
CO #10 12/02/19 Added asbestos - PSI destructive testing	81,766.00		
CO #11 12/05/19 Additional lead paint - PSI destructive testing	79,780.00		
CO #12 12/11/19 Additional stored OHM removal	7,787.00		
CO #13 01/08/20 Estimated additional asbestos & lead paint abatement	697,595.00		
CO #14 01/07/20 Added abatement per DNR testing	9,775.00		
	2,237,958.00		
KPH Survey & PSI Destructive Testing			
Amounts billed to date (2/13/20)	122,879.00		
Projected billings to complete	6,365.00		
	129,244.00		
Temporary Heat			
Temp heat costs to date (2/12/20)	90,234.45		
Projected Temp heat to finish	28,300.00		
	118,534.45		
Total Hazardous Material Abatement	2,485,736.45	612,000.00	(1,873,736.45)
Demolition			
Veit			
Original Contract	1,946,043.00		
Other			
Kapur Demo Plans	2,500.00		
Visu Sewer 11/25/19 Video sanitary & storm lines	9,425.00		
GPRS 12/17/19 Scan & map all underground utilities	6,100.00		
Securitas January Fire Watch to Date (1/23/20)	5,994.00		
Securitas Projected Fire Watch	3,000.00		
Pieper Power Service for parking lot lighting & temp service	11,910.00		
WE Energies Utility disconnections	1,995.39		
WE Energies Service for parking lot lighting	14,869.81		
	53,294.20		
Total Demolition Costs	1,999,337.20	1,950,000.00	(49,337.20)
Contaminated Soil Remediation			
Kapur & Sigma Environmental Services as of 1/31/20	30,123.25		
Projected Kapur Consulting & Testing Fees through project completion	70,000.00		
Ground Monitoring Wells, Testing and Reporting	75,000.00		
Soil Haul off and Tipping Fees - VOCs	805,000.00		
Soil Haul off and Tipping Fees - Arsenic (Hotel Site)	280,500.00		
	1,230,500.00	100,000.00	(1,130,500.00)
Total Abatement/Demolition/C-Soil Remediation	5,715,573.65	2,662,000.00	(3,053,573.65)
Less Grant Reimbursements			
SAG Grant			
Dirty Ducts Cleaning & Environmental - Asbestos Abatement	(126,500.00)		
Kapur - Site Investigation	(23,500.00)		
	(150,000.00)		150,000.00
BEBR Grant			
	(500,000.00)	(250,000.00)	250,000.00
Total Grants	(650,000.00)	(250,000.00)	400,000.00
Projected Costs Net of Grants	5,065,573.65	2,412,000.00	(2,653,573.65)