

Attachment O - Model Option to Purchase

OPTION TO PURCHASE
[PROPERTY ADDRESS]
Milwaukee, Wisconsin

For and in consideration of the sum of **Fifty Thousand Dollars (\$50,000.00)** (“Option Fee”) tendered herewith, Milwaukee County (“County”) does hereby grant unto **[DEVELOPER NAME]** (“Developer”) an exclusive Option to Purchase (“Option”) the property at **[PROPERTY ADDRESS], Milwaukee, WI** (“Property”) and more particularly described in **Exhibit A** attached hereto, on the following terms and conditions:

1. **Purpose.** This Option is granted to Developer for the sole purpose of acquiring the Property and constructing a building according to the plans attached as **Exhibit B**, for use as [Project Use] and installing site improvements in accordance with plans approved by the County. Developer shall be responsible for all site development costs, including, but not limited to, extension of water and sewer laterals to the property line and the provision or replacement of sidewalks and curb cuts.
2. **Purchase Price.** The purchase price shall be [Purchase Price] (\$ _____) (“Purchase Price”) payable by certified check or wire transfer at time of closing, subject to the customary deductions and prorations.
3. **Term.** The Option shall be in effect for a period of twelve (12) months (“Option Period”), commencing with the date the County executes this Option. The Option Period may be extended at the option of the Economic Development Director for Milwaukee County for up to two (2) additional six (6) month periods. Developer must request the extension in writing and submit a check for \$25,000 for each renewal (“Renewal Fee”) and a progress report on efforts to prepare final construction plans and obtain firm financing. Each six-month extension will result in an increase in the Purchase Price by \$12,500, in accordance with County Board Resolution 08-30(a)(d). In the event the Economic Development Director refuses to extend the Option, Developer may petition the County Board and County Executive for such extension.
4. **Manner of Exercise.** If Developer decides to exercise this Option, Developer shall exercise by delivering to the County three copies of a signed Development Agreement (“Agreement”), the final version of which shall be negotiated by County and Developer, but that shall be substantially similar to the sample attached as **Exhibit D**. The Agreement shall define Developer’s development obligations (“Project”). This Agreement shall require that Developer shall:
 - a. Close on the Property (“Closing”) on or before expiration of the Option Period as extended;
 - b. Submit final construction plans, including detailed landscape plans (“Final Plans”) and evidence of firm financing without contingencies. Final Plans must be consistent with the Preliminary Plans, including aesthetic design, quality of building materials and use, except as otherwise agreed by the parties. Any Material Alteration, as defined in the Agreement, must be approved by the Economic Development Director. All of the foregoing must be satisfactory to the County in form and substance prior to Closing;
 - c. Commence construction of the Project within sixty (60) days following Closing and be complete within eighteen (18) months (or other time period dictated by the development) following commencement. All construction must be according to approved Final Plans.
 - e. Execute a PERC Compliance Plan (“PERC Compliance Plan”) with the Department of Administrative Services – Economic Development Division and the Community Business Development Partners (CBDP) department of Milwaukee County prior to Closing. The PERC Compliance Plan includes goals and minimum good faith efforts for Disadvantaged Business Enterprise (DBE) participation, residential hiring, workforce development (apprenticeship/job training) and the payment of prevailing

wage. Developer's goal for DBE participation is at least 17% of professional services Project costs and 25% of construction Project costs. Developer shall meet with CDBP prior to closing and shall consult the CDBP website for County certified DBE contractors. Developer's goal for residential hiring is _____ percent of the hours worked on the Project being performed by Milwaukee County residents. Developer's goal for workforce development is _____ percent of the hours worked utilizing job training and apprenticeship programs.

- f. Submit at Closing a Performance Deposit in the amount of **fifty thousand and No/100ths Dollars (\$50,000.00)** ("Deposit"). The Deposit shall not be applied against the purchase price, but shall be held by the County to guarantee completion of the project. The Deposit shall be returned to the Developer without interest upon successful completion of the Project in accordance with terms of the Agreement and the conditions expressed herein, as certified by the Economic Development Director on behalf of County. All or part of the Deposit may be retained if Developer fails to complete the Project as agreed in the Agreement.

After execution, a memorandum of the Agreement ("Memorandum of Agreement") will be recorded with the Register of Deeds and the Property title encumbered until successful completion of the Project and submittal of required DBE, Residential Hiring and Workforce Development reports as certified by the Economic Development Director on behalf of County at which time the parties shall execute and record a termination of the Agreement.

5. **Additional Closing Terms.**

- a. **Option and Renewal Fee Credit.** The Option and Renewal Fees shall be credited toward the Purchase Price only if Developer closes on the Property. The Option and Renewal Fees are non-refundable except if the County is unable to deliver marketable title.
- b. **Restrictions on Assignment.** This Option shall not be assigned by Developer without the written consent of the County. Any assignment of the Option by the Developer in violation of the terms of this Option shall result in termination of the Option by the County and retention of the Option and Renewal Fees as liquidated damages.
- c. **Adjustments and Prorations.** At Closing, County and Developer will make the following adjustments and apportionments of expenses with respect to the Property:
- (i) **Prorations.** General real estate taxes for the current tax year, if any, will be pro-rated at Closing. Special assessments of record, if any, shall be paid by the Developer.
 - (ii) **Title Insurance.** County shall pay for the cost of a standard form of owner's title insurance policy ("Title Policy"). Developer will pay for the cost of extended coverage and any endorsements to the Title Policy which Developer obtains from the Title Company (as hereinafter defined) and for the costs of any lender's title insurance policy.
 - (iii) **Transfer and Recording Taxes.** County is exempt from paying real estate transfer taxes, per s. 77.25(2), Wis. Stats., but shall pay the costs of recording the Deed (as hereinafter defined) and 1/2 of any escrow closing costs charged by the Title Company for escrows requested by the County. Developer shall pay 1/2 of the escrow closing costs charged by the Title Company.
 - (iv) **Other Costs.** All other costs will be allocated in accordance with the customs prevailing in similar transactions in the greater metropolitan area in which the Property is located.
- d. **Title and Survey.**
- (i) During the Option Period, Developer shall obtain: (1) a title commitment on the Property ("Title Report") from a title company chosen by Developer ("Title Company") together with such endorsements thereto as Developer may reasonably require; and (2) an ALTA/ACSM survey of the Property ("Survey"). Developer shall review the Title Report and Survey and satisfy itself as to all title and survey matters affecting the Property during the Option Period.

- (ii) At Closing, County shall convey to Developer, by general warranty deed, fee simple title to the Property, subject, however, to the Permitted Exceptions (as defined herein). The “Permitted Exceptions” shall consist of: (1) the lien of current general real estate taxes, which are not yet due and payable as of the Closing; (2) zoning and all other applicable laws and governmental regulations which affect the Property; (3) any matters shown on the Survey; (4) acts done or suffered by, through or under, or judgments against, Developer; (5) any recorded easements, restrictions or other documents or matters (including matters which relate to the Survey) shown on the final form of pro forma title policy issued by the Title Company at Closing; and (6) the Development Agreement.
 - (iii) Notwithstanding the foregoing, no mortgages, other loan security instruments, construction liens, judgment liens or other financial encumbrances encumbering all or part of the Property (“Financing Liens”) shall be deemed to be Permitted Exceptions. At or before the Closing, County shall cause the Property to be released from all Financing Liens created by County and shall cause any such Financing Liens not created by Developer but which encumber the Property to be bonded and insured over to the reasonable satisfaction of Developer and the Title Company. Developer may use proceeds from the Purchase Price to obtain such release.
 - (iv) At Closing, County shall (1) execute Title Company’s customary form of owner’s title affidavit(s) and indemnities as needed to delete any pre-printed exceptions from the Title Policy, but in any event acceptable to County in its reasonable discretion, and (2) execute such other instruments as are customarily and reasonably required by the Title Company for compliance with tax reporting or disclosure requirements and which are acceptable to County in its reasonable discretion.
- e. **Closing.** Closing shall be held at the office of the Title Company or such other place mutually acceptable to the parties on the earlier of: (i) the date which is thirty (30) days after the date Developer exercises the Option; or (ii) at such other time as the parties may mutually agree (“Closing” or “Closing Date”). If the date determined for Closing as provided above falls on a day other than a business day, the Closing Date shall be postponed to the next following day which is a business day. As used herein, the term “business day” shall mean any day other than Saturday, Sunday or a holiday for the State of Wisconsin or national banks. The parties shall cooperate and use reasonable efforts to affect an escrow style closing or in such other fashion as may be reasonably acceptable to the parties and settlement agent that will not require personal attendance at Closing.
- f. **Closing Deliveries.**
- (i) **County’s Closing Documents.** On the Closing Date, County will execute and/or deliver to the Title Company or cause to be executed and/or delivered the following documents in form and content acceptable to Developer (collectively, “County Closing Documents”):
 - (1) **Deed.** A General Warranty Deed conveying the Property to Developer subject to only the Permitted Exceptions (“Deed”).
 - (2) **Title Documents.** Such other documents in form and substance reasonably acceptable to County and as may be reasonably required by Title Company in order to issue the Title Policy required by this Option, including, without limitation, any seller’s affidavit and “gap” undertaking.
 - (3) **Closing Statement.** A closing statement in form and substance acceptable to both County and Developer, and consistent with the terms, provisions and conditions of this Option (“Closing Statement”).
 - (4) **Transfer Tax Declarations.** Such transfer tax and similar declarations, affidavits or certificate as may be required by applicable law, completed in a manner reasonably acceptable to Developer.

- (5) **Miscellaneous.** Such other documents, instruments and affidavits in form and substance reasonably acceptable to County as will be reasonably necessary to consummate the transaction contemplated by this Option, including, without limitation, affidavits identifying any registered brokers involved as the only persons entitled to a brokerage or similar commission in connection with consummation of the transaction contemplated herein.
- (ii) **Developer's Closing Documents.** On the Closing Date, Developer will execute and/or deliver or cause to be executed and/or delivered to the Title Company the following (collectively, "Developer's Closing Documents"):
 - (1) **Purchase Price.** The Purchase Price, plus or minus prorations and other adjustments, if any, by certified check or wire transfer of immediately available funds.
 - (2) **Closing Statement.** The Closing Statement.
 - (3) **Miscellaneous.** Such other documents, instruments and affidavits in form and substance reasonably acceptable to County as will be reasonably necessary to consummate the transaction contemplated by this Option, including, without limitation, affidavits identifying any registered brokers involved as the only persons entitled to a brokerage or similar commission in connection with consummation of the transaction contemplated herein.
- (iii) **Escrow Closing.** This transaction will be closed through an escrow with the escrow department of the Title Company, in accordance with the terms and conditions of this Option. Payment of the Purchase Price and delivery of the Closing Documents will be made through the escrow.
- (iv) **Possession.** Possession of the Property shall be delivered to Developer on the Closing Date.

6. Property Condition.

- a. County shall convey the Property in its "as is" condition with all faults and defects, known or unknown, physical or otherwise, including but not limited to environmental defects, whether disclosed or not disclosed, known or not known, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims, including any action based on non-disclosure, excepted as provided herein.
- b. County discloses that the Property may contain old building foundations, building materials and other debris. Without changing the "AS-IS/WHERE IS" nature of this transaction, Developer is aware that the Property is or may be affected by adverse geotechnical conditions due to the presence of these materials or due to the bearing capacity of the soil. County has conducted no geotechnical investigation of the Property and assumes no liability for any subsurface conditions. Developer shall include in the construction budget an allowance for extraordinary site excavation, disposal of materials unsuitable for construction and/or additional fill to allow construction. Developer is encouraged to undertake a geotechnical investigation and other due diligence reviews that it deems necessary upon execution of this Option by both parties.
- c. County shall not provide a survey of the Property.
- d. Developer may conduct a geotechnical investigation and/or site survey of the Property prior to Closing upon written approval of the County. To obtain County permission, Redevelopment must submit to County scopes of work for the proposed activity, timing for the work and evidence of insurance according to the limits in **Exhibit C**. Upon submittal of the required information, County shall provide a written right-of-entry to Developer, its contractor and agents.
- e. Developer is responsible for maintenance of the Property during the Option Period, including, but not limited to, snow removal service for sidewalks, litter removal and mowing services, as applicable.

7. Economic Development Department Buyer Policy. County shall not sell the Property to any Developer

who as in individual or as a member of a company, shareholder of a corporation, or partner in a partnership, any of the following conditions apply:

- a. Delinquent real estate or personal property taxes due the any municipality in Milwaukee County.
- b. Building or health code violations that are not being actively abated.
- c. Convicted of violating an order of the Department of Neighborhood Services or Health Department of any municipality within Milwaukee County within 12 months preceding Closing.
- d. Convicted of a felony crime that affects property or neighborhood stability or safety.
- e. Outstanding judgment to Milwaukee County or any municipality within Milwaukee County.

((a)-(e) inclusive, "Economic Development Department Buyer Policy")

If Developer is found to violate any condition of the Economic Development Department Buyer Policy, the County shall give Developer notice to correct this condition prior to expiration of the Option, as extended or other such period as determined by the Economic Development Director. If the violation is not corrected within the specified period, this Agreement may be canceled at the option of the County and all Option Fees, Renewal Fees and Deposit shall be retained by the County as liquidated damages.

8. Environmental Matters.

- a. County shall not provide a Phase I Environmental Site Assessment ("Phase I").
- b. If Developer desires to obtain its own Phase I, the cost for such investigation shall be at Developer's sole expense.
- c. If an authorized Phase I recommends soil and groundwater testing, analyses and reports ("Phase II"), the Phase II cost shall be at Developer's sole expense. Developer may only conduct a Phase II after receiving the express written consent of County.
- d. If the Phase II reveals environmental impacts subject to regulation by federal, state or local law or regulations, Developer agrees to remediate the Property, obtain regulatory closure and be solely responsible for all remediation expenses.
- e. Developer may elect to purchase the Property in its current environmental condition without obtaining the Phase II investigation. Developer shall be required to sign at Closing a "Purchaser's Acknowledgment, Waiver and Indemnification Respecting Environmental Conditions Affecting the Property."
- f. If the cost for the Phase II or any required remediation renders the Project economically infeasible, this Option may be canceled at the option of either party.

9. ADA Compliance. Developer agrees to comply with all requirements of the Americans with Disabilities Act of 1990, U.S.C. #12101, et. seq.

10. Time is of the Essence. It is understood that time is of the essence as to the provisions of this Option.

11. Miscellaneous.

- a. **Consent.** The parties agree that whenever the consent or approval of a party is required hereunder, that such consent or approval shall not be unreasonably withheld, delayed or encumbered. With respect to consents or approvals by or from Developer, _____ shall be the authorized person to grant such consents or approvals on behalf of Developer. With respect to consents or approvals by or from County, Teig Whaley-Smith, or his successor, as Economic Development Director, shall be the authorized person to grant such consents or approvals on behalf of County.
- b. **Default.**
 - (i) **County Default.** If County shall (1) fail to consummate the purchase and sale contemplated herein when required to do so pursuant to the provisions hereof, time being of the essence, and Developer is ready, willing and able to perform, or (2) otherwise breach or default under any of the provisions of this Option and County does not cure such failure, beach or default within thirty (30) days after receipt of written notice from Developer specifying the breach or default, then Developer shall be entitled to exercise any and all remedies available to it at law or in equity,

including, without limitation, specific performance of the terms, provisions and conditions of this Option.

- (ii) **Developer Default.** If, prior to Closing, Developer shall (1) fail to consummate the purchase and sale contemplated herein when required to do so pursuant to the provisions hereof, time being of the essence, and County is ready, willing and able to perform, or (2) otherwise breach or default under any of the provisions of this Option and Developer does not cure sure failure, breach or default within thirty (30) days after receipt of written notice from County specifying the breach or default, then County shall have the right, as its sole remedy for default by Developer, to terminate this Option and retain the Option and Renewal Fees as liquidated damages, and Developer and County shall thereafter be relieved of any further obligations under this Option, at law or in equity. Rights and remedies post-Closing shall be as specified in the executed Agreement.
- c. **Broker’s Commission.** Developer represents and warrants to County that it is represented solely by the broker whose information was submitted as Attachment R in the RFP, and who will be subject to receive a fee of \$50,000 per acre, prorated on a hundredth of an acre basis at Closing, provided the conditions of the brokerage registration form, attached as **Exhibit E**, have been satisfied. Developer acknowledges that County will pay only one brokerage fee per development, and that if multiple brokers have registered with Developer’s consent they will have to split the fee proceeds amongst themselves.
- d. **Notice.** Any and all notices, demands, requests, submissions, approvals, consents or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and conditions of this Option or otherwise, shall be in writing and delivered to the parties at their respective addresses below by: (1) personal/hand delivery, which shall be deemed to have been delivered on the date received by the recipient; (2) registered or certified U.S. Mail with return-receipt requested, which shall be deemed to have been delivered on the earlier of (i) the date of delivery to recipient set forth on the return-receipt or (ii) the date that is three (3) business days after being deposited with the U.S. Mail by sender; (3) overnight delivery service (such as Federal Express or other reputable service) with confirmation receipt requested, which shall be deemed to have been delivered on the earlier of (i) the date of delivery set forth on the confirmation receipt of (ii) one (1) business day after being deposited with such service by sender; (4) electronic mail with a hard copy sent by any of the foregoing manners, which shall be deemed to have been delivered on the date sent; provided that, in all cases, postage or delivery charges shall be prepaid.

If to County: Milwaukee County Economic Development
 2711 W. Wells Street, 3rd Floor
 Milwaukee, WI 53208
 Attention: Teig Whaley-Smith
Teig.whaley-smith@milwaukeecountywi.gov

If to Developer: _____

Any party may changes its address for the service of notice by giving written notice of such change to the other party, in an manner above specified.

- e. **Captions.** The section headings or captions appearing in this Option are for convenience only, are not a part of this Option, and are not to be considered in interpreting this Option.
- f. **Entire Agreement; Modification.** This Option, including its exhibits, constitutes the entire agreement between the parties with respect to the subject matter herein contained, and all prior negotiations, discussions, writings and agreements between the parties with respect to the subject

matter herein contained are superseded and of no further force and effect. No covenant, term or condition of this Option will be deemed to have been waived by either party, unless such waiver is in writing signed by the party charged with such waiver.

- g. **Binding Effect.** This Option will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- h. **Controlling Law.** This Option will be governed by and construed in accordance with the laws of the State of Wisconsin, without application of the choice of law rules of such State.
- i. **Severability.** The unenforceability or invalidity of any provisions hereof will not render any other provision herein contained unenforceable or invalid.
- j. **Counterparts.** This Option may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Either party may rely upon an electronic copy (pdf) of an executed counterpart of this Option and this Option shall be enforceable against the party executing such counterpart.

12. **Special Conditions**

- a. **Taxable Use.** Conveyance may be subject to a deed restriction requiring the Property shall be taxable for property-tax purposes. The restriction shall require that no owner or occupant of the Property shall apply for, or see, or accept, property-tax exemption (whether under Wis. Stat. §70.11 or otherwise) for the Property, or any part thereof. This restriction shall be a permanent covenant that runs with the land, and may only be released by resolution passed by the County Board and approved by the County Executive.

The Option is executed in two (2) counterparts, each of which shall constitute one and the same instrument.

Exhibit A
Legal Description

All that certain parcel or parcels of land located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

[TO BE INSERTED]

Address: [TO BE INSERTED]
Tax Key Number: [TO BE INSERTED]

Exhibit B
Plans

Exhibit C
Insurance Requirements - Right of Entry

Insurance certificates must be sent for inspection and approval prior to commencement of the proposed activity to Teig Whaley-Smith, Economic Development Director, Milwaukee County by email to teig.whaley-smith@milwaukeecountywi.gov

TYPE OF INSURANCE

LIMITS

Workers' Compensation

Statutory limits

Employers Liability

Bodily Injury by Accident
Bodily Injury by Disease

Each Accident \$100,000
Each Employee \$100,000
Policy Limit \$500,000

Public Liability

A Comprehensive General or Commercial General Insuring Agreement that provides:

Occurrence Coverage

Premises/Operations Protection
Products Completed Operations Protection
Independent Contractors (owners, contractors protective coverage)
Contractual Liability for Risks Assumed to this agreement

NOTE: If claims made coverage is provided, the policy must be amended so all protected occurrences are covered regardless of when the claim is made.

Bodily Injury/Property Damage

Each occurrence \$1,000,000

General occurrence \$1,000,000
Products/completed operation aggregate \$2,000,000

Automobile

Business Auto Policy that provides:

Liability coverage for all owned, non-owned and hired vehicles
Sudden and Accidental Pollution Coverage
Provide MCS-90 Endorsement when applicable in accordance with the Motor Carrier Act of 1980

Bodily Injury/Property Damage

Each accident \$1,000,000

MILWAUKEE COUNTY MUST BE NAMED AS ADDITIONAL INSURED PARTY ON THE POLICY.

Indemnification

To the fullest extent permitted by law, contractor agrees to defend, indemnify, and hold harmless Milwaukee County, its officers, agents and employees from and against all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever which may come against the County on account of injury or death of any person or persons or damage to any property occurring directly or indirectly from the performance or lack of performance or work hereunder, or negligence or carelessness, by contractor or its employees, agents or servants, including, without limitation, claims related to hazardous substances or environmental liability. The term "hazardous substance" shall include all substances identified as hazardous by Federal, State, County or Municipal Law, Statute, Ordinance, Order or Regulation related to the protection of the environment (including, without limitation, any regulations promulgated by the Federal Environmental Protection Agency or the Wisconsin Department of Natural Resources). The indemnifications contained herein shall survive the completion of the work.

Exhibit D
Development Agreement

[SEE ATTACHED]

Exhibit E

Brokerage Registration Form – RFP Attachment R