

## PURCHASE, SALE, AND DEVELOPMENT AGREEMENT

This purchase, sale, and development agreement (“Agreement”) is entered into between the City of Whitewater, a Wisconsin municipal corporation (“City”), and Whitewater Fire Department, Inc., a Wisconsin corporation (“Fire Department”) on this \_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”).

### Recitals

- A. The City currently owns certain real property more particularly described in Exhibit A (“Property”).
- B. The Fire Department desires to acquire the Property to construct a new training facility for purposes of training its firefighters.
- C. The City is willing to convey the Property to the Fire Department subject to certain conditions.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises, obligations, and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, the Fire Department and the City agree as follows:

- 1. In accordance with the terms of this Agreement, the City shall convey the Property to the Fire Department via warranty deed within 90 days of the effective date of this Agreement. The warranty deed may have exceptions typical of a vacant land conveyance in Walworth County.
- 2. The purchase price for the Property shall be one dollar.
- 3. The Fire Department shall have a sixty-day due diligence period commencing on the effective date of this Agreement. Within ten (10) days after the effective date of this Agreement, the Fire Department may obtain and provide to the City for examination an ALTA commitment for title insurance for the Property (“**Title Commitment**”) issued by a title company that is agreeable to the parties and is licensed to write title insurance in Wisconsin (“**Title Company**”). The Fire Department shall have until five (5) business days prior to the expiration of the due diligence period to deliver to the City written notice of any objections to the condition of title. If the Fire Department fails to deliver such notice five (5) business days prior to the expiration of the due diligence period, then the Fire Department shall be deemed to have approved of the condition of title as shown by such commitment.

4. Closing.

- A. *Closing Date.* Following the satisfaction of all Contingencies and any other conditions precedent set forth herein, the “Closing” shall occur at the offices of a title company mutually acceptable to the parties on a date mutually acceptable to the parties no later than 90 days from the Effective Date of this Agreement (“Closing Date”).
- B. *Closing Documents.* On or prior to the Closing Date, the parties shall execute the following documents:
- i. City will execute and deliver to Fire Department a general warranty deed (the “Deed”) conveying the Property to Fire Department subject only to the Permitted Exceptions;
  - ii. Fire Department and City will complete a Wisconsin Real Estate Transfer Return in the form that is required by state statute in order to record the Deed;
  - iii. Fire Department and City will execute and deliver a closing statement setting forth the Purchase Price and any adjustments thereto as provided for in this Agreement;
  - iv. Fire Department and City will execute and deliver any other documents that are necessary to consummate the transaction contemplated by this Agreement, including such documents as are necessary to cause title to be conveyed to Fire Department in the form approved by Fire Department pursuant to the terms of this Agreement.
- C. *Costs and Expenses.* Fire Department shall be responsible for paying all closing costs, including the Wisconsin real estate transfer fee, the cost of providing title insurance, and any recording fees.
- D. *Prorations and Adjustments.* The following items shall be prorated and adjusted between Fire Department and City as of 12:01 a.m. on the date of Closing as follows:
- i. All utility charges, including, but not limited to, electricity, gas, water, sewer, steam and telephone shall be determined by actual meter readings, if available; otherwise they shall be estimated on the basis of the last billing available from the respective utilities. Any utility deposits, standby charges or other prepayments, if assignable, shall be assigned to Fire Department, who shall reimburse City therefor.

- ii. General real estate taxes levied against the Property. The proration shall be based on the net general real estate taxes for the year of Closing, if known, otherwise on the net general real estate taxes for the year prior to Closing.
- iii. All assessments shall be paid by Fire Department.
- iv. City shall be responsible for all operating expenses for the Property allocable to the period prior to the date of Closing and shall pay all such expenses when due. Fire Department shall be responsible for all operating expenses for the Property allocable to the period on and after the date of Closing.
- v. Such other items as are required to be prorated pursuant to the terms hereof, or as are customarily prorated upon the transfer of ownership and possession of vacant land real estate in Walworth County.

The parties shall make such post-closing adjustments and readjustments as may be required due to errors and omissions in the closing adjustments. If information is not available or if the parties agree that it is impracticable to make a particular adjustment on the date of Closing, that adjustment shall be made as soon as practicable after such information is available.

5. City's Representations and Warranties.

In order to induce Fire Department to enter into this Agreement, City hereby makes the following representations and warranties to Fire Department, each of which shall be deemed to be independently material and relied upon by Fire Department, regardless of any investigation made by, or information known to, Fire Department, and upon which Fire Department has relied and without which Fire Department would not have submitted this Agreement. City covenants that each of the representations are true and correct on the date hereof and, as a condition precedent to Fire Department's obligation to close, City shall affirm that each of these representations continue to be true and correct on the date of Closing, and that such representations and warranties shall survive Closing:

- A. *Authority.* The sale of the Property pursuant to this Agreement is not in violation of any provision of any agreement to which City is bound. City has complete power and authority to enter into and perform the transaction contemplated by this Agreement according to its terms, and the execution and delivery of this Agreement and the consummation thereof have been duly authorized by all required action.
- B. *Litigation, Court Orders.* There are no legal actions, condemnation proceedings, suits or other legal administrative proceedings, pending, or to

the knowledge of City, threatened, against the Property, and there are no governmental agency or court orders requiring repairs, alterations or corrections of any existing conditions on the Property.

6. City's Covenants.

A. *Access.* Following the Effective Date and up to and including the date of Closing, City shall grant Fire Department access to the Property at reasonable times and upon reasonable notice for the purpose of making such investigations, studies, assessments and the like that Fire Department deems necessary or desirable, consistent with good practice.

B. *Continued Operation.* Following the Effective Date and up to and including the date of Closing, City shall maintain the Property in good condition and repair, reasonable wear and tear excepted and shall continue to operate the Property in its ordinary and normal course of business.

7. Fire Department's Representations and Warranties.

Fire Department covenants that the Fire Department is a Wisconsin corporation duly organized, validly existing and in current status under the laws of the State of Wisconsin. The purchase of the Property pursuant to this Agreement is not in violation of any provision of Fire Department's articles of organization, operating agreement, or any other agreement to which Fire Department is bound. Fire Department has complete power and authority to enter into and perform the transaction contemplated by this Agreement according to its terms, and the execution and delivery of this Agreement and the consummation thereof have been duly authorized by all required company action. The person (or those persons) signing below on behalf of Fire Department personally warrant that they have the authority to act as Fire Department's agent or agents in the purchase, transfer and conveyance of the Property from City.

8. Following the conveyance of the Property to the Fire Department, the Fire Department shall use good faith efforts to construct an NFPA 1402 certified fire protection services training facility ("Training Facility") on the Property. The Fire Department shall commence construction of the Training Facility within five years of the recording date of the warranty deed conveying the Property to the Fire Department. If the Fire Department has not commenced construction within that time period, the City may exercise an option to repurchase the Property for one dollar, as more particularly described in Exhibit B, which is hereby incorporated into this Agreement.

9. As a condition of closing and conveying the Property, the City and Fire Department shall execute an option agreement in favor of the City in a form substantially similar to Exhibit B on the Closing Date. The parties may either

record the option agreement against the Property or a memorandum of an option agreement.

10. If construction of the Training Facility requires the construction or installation of public improvements, such as sidewalks, water mains, sewer mains, or streets, the City and Fire Department shall enter into a separate public improvement agreement requiring the Fire Department, at its sole cost, to construct and install all public improvements needed to serve the Property, guarantee them for one year, and to have in effect a level of insurance deemed necessary by the City.

11. The Fire Department shall host two events each calendar year at the City's Innovation Center. Each event must be at least one hour in duration. The Fire Department shall coordinate with the Whitewater Community Development Authority Executive Director regarding the scheduling of the events and subject matters.

12. Brokers.

The City and Fire Department represent and warrant that neither the City nor Fire Department have retained the services of any real estate broker or agent in connection with the purchase and sale under this Agreement, and each agrees to indemnify and hold the other harmless from and against any and all liability or damages, including costs and attorney's fees, resulting from any claim brought by any real estate broker or agent for any real estate commission or finder's fee due, or alleged to be due, as the result of the actions of such person.

13. The Fire Department shall at all times observe and comply with all federal, state, and local laws, regulations, and ordinances which are in effect or which may be placed in effect which may affect the Training Facility. All applicable provisions of the City's Code of Ordinances, and any other applicable laws shall be adhered to with respect to the design, construction, and installation of the Training Facility and the Public Improvements except as variances to or waivers of those requirements have been granted. Fire Department shall pay all charges and fees and give all notices necessary and incident to the lawful construction of the Public Improvements to be completed under this Agreement.

14. Personal Liability of Public Officials.

In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the City's officers, agents, or employees, it being understood and agreed that in such matters they act as agents and representatives of the City.

15. No Vested Rights Granted.

Except as provided by law, or as expressly provided in this Agreement, no vested rights to develop the Training Facility shall inure to Fire Department by virtue of this Agreement. Nor does the City warrant that Fire Department is entitled to any other approvals required for the Training Facility as a result of this Agreement. This Agreement is intended only to address those special concerns related to conveying the Property and developing the Training Facility. Nothing in this Agreement relieves Fire Department from any obligations to obtain all necessary approvals and to follow all applicable local, state, and federal requirements in order to proceed with the Training Facility.

16. Binding Effect / Assignment.

The obligations of Fire Department and the City under this Agreement shall be binding on their respective successors and assigns. Fire Department may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, and any unapproved assignment is void. No assignment of Fire Department's benefits consented to by the City in this subsection shall constitute a release of Fire Department from the obligations and liabilities under this Agreement. Fire Department may, in its discretion, require by contract that any subsequent owner of all or part of the Property assume all or part of Fire Department's obligations. No such assumption, however, and no act of the City, shall release Fire Department from any obligation or liability under this Agreement, unless and to the extent that the City expressly agrees in writing to release Fire Department. The City shall have the sole discretion to release or not release Fire Department from the obligations and liabilities under this Agreement.

17. No Waiver.

No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and Fire Department, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party hereto.

18. Amendment/Modification.

This Agreement may be amended or modified only by a written amendment approved and executed by the City and Fire Department.

19. Remedies upon Default.

A default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies. City remedies include, but are not limited to, the City exercising the option agreement in Exhibit B.

20. Entire Agreement/Attachments Incorporated.

This written Agreement and all attachments hereto, shall constitute the entire Agreement between Fire Department and the City as of the date hereof.

21. Severability.

If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term, or provision was never part of the Agreement.

22. Immunity.

Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.

23. Notice.

Any notice required or permitted by this Agreement shall be deemed effective given in writing and personally delivered or mailed by U.S. Mail, return receipt requested, as follows (except that copy to addresses shall be sent by e-mail):

To Fire Department:                      Assistant Chief Ryan Dion  
312 W. Whitewater Street  
Whitewater, WI 53190

To the City:

City Clerk  
312 W. Whitewater Street  
Whitewater, WI 53190

24. Recordation.

The City may record a copy of this Agreement, or a memorandum thereof, in the office of the Walworth County Register of Deeds. Fire Department will pay the costs of any such recording.

25. Personal Jurisdiction and Venue.

Personal jurisdiction and venue for any civil action commenced by either party arising out of this Agreement shall be deemed to be proper only if such action is commenced in Circuit Court for Walworth County unless it is determined that such Court lacks jurisdiction. Fire Department hereby consents to personal jurisdiction in Walworth County. Fire Department also expressly waives the right to bring such action in, or to remove such action to, any other court whether state or federal, unless it is determined that the Circuit Court for Walworth County lacks jurisdiction.

26. Ratification.

Fire Department hereby approves and ratifies all actions taken to date by the City, its officers, employees and agents in connection with the zoning and other approvals relating to the Property and the Training Facility.

27. No Partnership.

Under this Agreement, the City does not, in any way or for any purpose, become a partner, employer, principal, agent, or joint venturer of or with Fire Department.

28. Good Faith.

All parties to this Agreement shall exercise good faith in performing any obligation that party has assumed under the terms of this Agreement including, but not limited to, the performance of obligations that require the exercise of discretion and judgment.

29. Applicable Law.

This Agreement shall be construed under the laws of the state of Wisconsin.



30. No Private Right or Cause of Action.

Nothing in this Agreement shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

31. Term.

This Agreement shall continue in full force and effect until such time as Fire Department's obligations under this Agreement have been fully satisfied, at which point this Agreement shall terminate and be of no further force or effect. At that time, if this Agreement has been recorded the parties may jointly execute and record a release of the Agreement.

32. Construction of Agreement.

Each party participated fully in the drafting of each and every part of this Agreement. This Agreement shall not be construed in favor of or against either party. It shall be construed simply and fairly to each party.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2024.

FIRE DEPARTMENT:  
**Whitewater Fire and EMS Department**  
Walworth County, Wisconsin

By: \_\_\_\_\_  
Ryan Dion, Assistant Chief

CITY:  
**Community Development Authority  
of the City of Whitewater**  
Walworth County, Wisconsin

\_\_\_\_\_  
By Taylor Zeinert, Economic Development Director