

## Exhibit B

### OPTION TO PURCHASE AGREEMENT

This OPTION TO PURCHASE AGREEMENT (this “Option Agreement” or the “Option”) is entered into as of the last signature date below (“Effective Date”) by and between Whitewater Fire Department, Inc. (“Fire Department”) and the City of Whitewater, Wisconsin (“City”). Fire Department and the City are referred to collectively as the “Parties” and individually as a “Party”.

#### RECITALS

- A. The parties have entered into an agreement to convey property to the Fire Department and for the Fire Department to develop that property (“Development Agreement”), incorporated into this Agreement as Exhibit A;
- B. The property to be developed, more particularly described in Exhibit B (“Property”), was formally owned by the City, but was conveyed to the Fire Department as part of the Development Agreement;
- C. As a condition of the Development Agreement Fire Department agreed to provide the City an option to repurchase the Property in the event Fire Department does not proceed with development;
- D. The parties wish to enter into this Option Agreement to fulfill the terms of the Development Agreement and allow development of the Property to proceed;

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual agreements and covenants contained in this Option Agreement and the Development Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. **Purchase and Sale of Real Estate.**

a. Exercise of Option. Subject to the terms and conditions of this Option Agreement, upon the occurrence of a Triggering Event as defined in the following paragraph, the City may, but is not required to, exercise the Option to accept conveyance of the Property. To exercise this Option, the City must sign and deliver written notice to Fire Department which states that the City exercises the Option (“Notice of Exercise of Option”).

b. Triggering Event. For purposes of this Agreement, “Triggering Event” means either of the following:

- i. The Fire Department has not commenced construction of the Training Facility, as defined in the Development Agreement, within five years of

recording the warranty deed that conveyed the Property from the City to the Fire Department.

ii. The Fire Department breaching the Development Agreement and not curing the breach within 30 days of receiving written notice of the breach.

Upon the occurrence of a Triggering Event, the City may, but is not required to, give Fire Department written notice which states that the City exercises the Option as set forth in this Option Agreement.

c. Conveyance and Title. At the Closing (as defined below), Fire Department shall convey by special warranty deed and the City shall accept good and marketable title to the Property, free and clear of all liens, claims, encumbrances and defects whatsoever in accordance with the terms of this Agreement, excepting and subject to any matters waived or accepted by the City in accordance with the terms of this Option Agreement, and any other matters expressly permitted pursuant to this Option Agreement, including any Permitted Exceptions, defined below.

2. **Purchase Price.** The monetary consideration (“Purchase Price”) to be paid on the Closing Date for the Property shall be One Dollar (\$1.00).

3. **Examination of Title; Contingencies.**

a. Examination of Title. Within ten (10) days after the City gives Notice of Exercise of Option, Fire Department shall 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 City and Fire Department, and is licensed to write title insurance in Wisconsin (“Title Company”). Said Title Commitment shall commit the Title Company to insure title to the Property by an owners’ standard form ALTA policy in the amount of the fair market value of the Property. The City shall have until five (5) business days prior to the expiration of the Due Diligence Period to deliver to Fire Department written notice of any objections to the condition of title. If the City fails to deliver such notice five (5) business days prior to the expiration of the Due Diligence Period, then the City shall be deemed to have approved of the condition of title as shown by such commitment. Exceptions to title approved by the City hereunder shall be deemed to be “Permitted Exceptions.” If Fire Department, through the exercise of commercially reasonable efforts, is unable to cure such objections to the condition of title prior to Closing, or cause the Title Company to commit to insure over such objections to the condition of title at the time of Closing to the satisfaction of the City, the City shall have the option, exercisable by written notice to Fire Department on or before the Closing Date, either to: (i) terminate this Option Agreement, in which case this Agreement shall be null and void; or (ii) waive any uncured objections to the condition of title and perform pursuant to the terms of this Option Agreement, notwithstanding any uncured objections to the condition of title.

If the City does not give timely notice to terminate this Option Agreement, then the uncured objections to the condition of title shall become Permitted Exceptions and the City shall be deemed to have waived its right to terminate this Option Agreement pursuant to this Section 3.a. Notwithstanding anything to the contrary set forth in this Option Agreement, Fire Department shall have an absolute obligation to satisfy or discharge any mortgages, money judgments, or other liens disclosed in the commitment capable of discharge upon payment of an ascertainable amount. All costs of providing such title commitment (including the GAP endorsement), and of issuing the title policy pursuant to such commitment, shall be borne equally by the Parties and shall be paid at or before the Closing. After the effective date of this Option Agreement, Fire Department shall not (without first obtaining the written consent of the City): (i) permit any additional liens or encumbrances to be recorded against the Property, (ii) enter into or modify any agreement with respect to the Property, or (iii) initiate or consent to the change in any zoning and/or any other governmental law, permit, license, ordinance or regulation applicable to the use, occupation or operation of the Property, unless approved by the City. The City shall have the right to order a gap endorsement at Fire Department's expense. The City shall be responsible for the costs of any other endorsements requested by the City. Fire Department agrees to execute any affidavit reasonably required by the title insurer to provide gap coverage and to remove any standard exceptions to title.

b. The City's Contingencies. The City's obligation to accept conveyance of the Property is contingent upon the satisfaction by the appropriate party or waiver by the City, in the exercise of the City's sole discretion, of the following contingencies within sixty (60) days of the Notice to Exercise Option ("Due Diligence Period"). If any of these contingencies are not satisfied or waived by the City on or before the expiration of the Due Diligence Period, the City shall have the option of terminating this Option Agreement or extending the Due Diligence Period by an additional sixty (60) day period ("Due Diligence Extension Period") by delivering written notice of termination or extension to Fire Department on or before the expiration of the Due Diligence Period. If the City timely gives notice of termination, this Option Agreement shall be deemed terminated and of no further force and effect. In the event that the City does not elect to terminate this Option Agreement prior to the expiration of the Due Diligence Period, or Due Diligence Extension Period as may be applicable, any remaining unsatisfied contingencies shall be deemed satisfied and waived.

i. The City conducting, at the City's sole discretion and expense, a Phase I environmental assessment and/or a Phase II environmental assessment of the Property, which has results that are satisfactory to the City in the City's sole discretion. By entering into this Option Agreement, Fire Department agrees to allow the City access to the Property, including but not limited to the purpose of taking physical samples and testing of site materials to conduct these environmental assessments.

ii. The Property having no unacceptable liens or encumbrances as determined by the City.

4. **Closing.**

a. Closing Date. Except as otherwise set forth in this Option Agreement, the closing of the conveyance and acceptance of the Property (“**Closing Date**” or “**Closing**”) shall take place on or about a date selected by the City that is on or before thirty (30) days after the expiration of the Due Diligence Period (or Due Diligence Extension Period, if applicable), at the office of the Title Company, or at a mutually agreed location and by means mutually agreed to by the Parties. The Closing Date may be amended by mutual agreement of the Parties.

b. Closing Documents. On or prior to the Closing Date, the Parties shall execute the following Documents:

i. Fire Department will execute and deliver to the City a Special Warranty Deed conveying the Property to the City subject only to the Permitted Exceptions (the “**Deed**”);

ii. Both Parties will execute any real estate transfer forms that may be required by state law in order to record the Deed;

iii. Both Parties 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 will execute and deliver standard closing affidavits including but not limited to a standard Seller’s Affidavit with respect to known judgments, bankruptcies, tax liens, mechanics liens, parties in possession, unrecorded interests, encroachment or boundary line questions, and related matters, properly executed on behalf of Fire Department, and a gap endorsement affidavit.

v. If applicable, Fire Department will execute and deliver to the City a Non-Foreign Person Affidavit confirming that Fire Department is not a foreign person subject to federal withholding requirements; and

vi. Both Parties will execute and deliver any other documents that are necessary to consummate the transaction contemplated by this Option Agreement, including such documents as are necessary to cause title to be conveyed to the City in the form approved by the City pursuant to the terms of this Agreement.

c. Property Taxes. Fire Department shall pay all real estate taxes for all years prior to the year of the Closing Date. Real estate taxes assessed for the year of the Closing Date shall be prorated on a daily basis to the Closing Date based on the real estate taxes assessed on the Property for the year of the Closing Date, or if not available, for the year prior to the year of the Closing Date. The proration shall be calculated on the basis of the number days of the calendar year of the Closing Date that have elapsed up to and including the Closing Date.

d. Costs and Expenses. Fire Department shall be responsible for paying the real estate transfer tax or similar fee, if any, required to transfer the Property and any recording fees related to satisfying any existing mortgages or other liens against the Property. The City will pay any fees to record the Deed, and any endorsements specifically requested by the City. The parties shall evenly share any cost of the Title Company to act

as the closing agent. Each party will be solely responsible for paying its respective attorney's fees.

e. Special Assessments. Fire Department shall pay all special and area assessments, if any, for work actually commenced, completed, or levied prior to the date of the Closing relating to the Property.

f. Possession. Fire Department shall deliver occupancy and possession of the Property to the City on the Closing Date. At the time of the City's occupancy, the Property shall be free of debris and personal property, except for personal property required to remain with the property under the Development Agreement or that is left with the City's consent.

g. Prior to closing Fire Department shall remove any and all equipment, fixtures, and any other personal property that may be present on the Property, including any and all Hazardous Substances.

h. Fire Department must warrant that there is no litigation, threat, investigation, or other proceeding challenging or affecting the legality of the transactions contemplated under this Option Agreement, or seeking any restraint, prohibition, or other relief in connection with the Property.

## 5. **Representations and Warranties of Fire Department.**

In order to induce the City to enter into this Option Agreement, Fire Department makes the following representations and warranties to the City, each of which shall be deemed to be independently material with the intention that the City shall rely upon the same and acknowledge that the same shall be true on the date of this Option Agreement and shall survive the Closing of this transaction.

a. Power and Authority. The person(s) signing this Option Agreement have all necessary power and authority to enter into and perform the transactions contemplated in this Option Agreement in accordance with the terms and conditions contained herein.

b. Enforceability. This Option Agreement and all other agreements contemplated by this Option Agreement are, or upon the execution and delivery thereof will be, the valid and binding obligations and enforceable.

c. Good Title. Fire Department has, and will have, as of the Closing Date, good and marketable title to the Property. The Property is, and shall be, on the Closing Date, subject to no easements, security interests, defects of title, mortgages, pledges, leases, rights of way, liens or other encumbrances of any nature whatsoever excepting municipal and zoning ordinances approved by the City, utility easements, and general taxes for the year of Closing, and excepting those specific matters accepted by the City as Permitted Exceptions.

d. Litigation; Orders. There are no legal actions, condemnation proceedings, suits or other legal administrative proceedings, pending, or to the best of Fire Department's knowledge, 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, except as may be specifically provided in the Development Agreement.

e. Change of Representations and Warranties. Fire Department shall, until the earlier of the termination of this Option Agreement or the Closing Date, promptly notify the City in writing if it acquires any knowledge which changes any representation or warranty set forth above or elsewhere in this Option Agreement. The notice shall describe in detail the nature of the change and the basis of the change. If there is a material adverse change in any of the foregoing representations prior to Closing, the Fire Department shall use all reasonable efforts to cure the material adverse change. The City will have the right to terminate this Option Agreement by giving written notice to Fire Department if such material adverse change is not cured. If the City so terminates this Option Agreement, neither Party shall have further rights or obligations under this Option Agreement.

**6. Representations and Warranties of the City.**

In order to induce the Fire Department to enter into this Option Agreement, the City makes the following representations and warranties to the Fire Department, each of which shall be deemed to be independently material with the intention that Fire Department shall rely upon the same and acknowledge that the same shall be true on the date hereof and shall survive the Closing of this transaction.

a. Organization; Authorization. The City is a municipal corporation duly organized and validly existing under the laws of the State of Wisconsin. The City has all necessary power and authority to enter into and perform the transactions contemplated in this Option Agreement in accordance with the terms and conditions hereof. The execution and delivery of this Agreement, and the performance by the City of its obligations contained in this Option Agreement, have been duly authorized.

b. Enforceability. This Option Agreement and all other agreements of the City contemplated by this Option Agreement are or, upon the execution of this Option Agreement, will be the valid and binding obligations of the City enforceable against it in accordance with their terms.

**7. Miscellaneous.**

a. 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 Option 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.

b. Casualty Loss and Condemnation. Prior to the Closing Date, the risk of loss shall remain with Fire Department. If, prior to the Closing Date, the Property or any part thereof shall be condemned, or destroyed or damaged, Fire Department shall promptly so notify the City. If the Property or any part thereof shall be condemned or if the Property or any part thereof shall be damaged in a way that would prevent the City's use of the Property, and the repair thereof would cost in excess of Fifty Thousand Dollars (\$50,000.00) (as reasonably determined by the insurance adjuster designated by Fire Department's insurance company), then, at the option of the City this Option Agreement may be terminated, which option shall be exercisable, if at all, by written notice thereof to Fire Department within ten (10) business days after the City receives written notice of such condemnation or damage and written notice of the insurance adjuster's determination of resulting damages. At the City's sole option, the Closing Date shall be extended to permit the foregoing periods to run. If the City elects to terminate this Option Agreement, this Option Agreement shall, without further action of the Parties, become null and void, and neither party shall have any rights or obligations under this Agreement, except those which expressly survive termination. In the event that the City does not exercise its option to terminate this Agreement set forth above, or if the casualty is below the Fifty Thousand Dollars (\$50,000.00) threshold described above, then the Closing shall proceed and the City shall be entitled to receive: (a) with respect to a condemnation, an assignment of all of Fire Department's right, title, and interest in and to the condemnation proceeds to be awarded to Fire Department as a result of such condemnation, or (b) with respect to a casualty, an amount equal to all insurance proceeds received by Fire Department with respect to the damage to the Property caused by such casualty, plus a credit in the amount of Fire Department's deductible relating thereto, less any and all reasonable sums expended by Fire Department in connection with any repairs or replacements to the Property. In addition, in the event of the foregoing, the City and Fire Department shall mutually execute and deliver at Closing an agreement and release in mutually reasonably satisfactory form whereby Fire Department agrees to cooperate with the City after Closing (at the City's sole cost) in connection therewith.

c. The City's Remedies. If Fire Department fails to perform in accordance with the terms of this Option Agreement, and such failure continues for ten (10) days following the City's written notice thereof to Fire Department, the City may, in addition to all remedies contained elsewhere in this Option Agreement: (i) terminate this Option Agreement, without further liability on the City's part; or (ii) enforce specific performance of this Option Agreement to obtain a deed to the Property; and/or (iii) demand damages incurred due to Fire Department's default.

d. Fire Department's Remedies. If the City fails to perform in accordance with the terms of this Option Agreement, and such failure continues for ten (10) days following Fire Department's written notice thereof to the City, Fire Department may, in addition to all remedies contained elsewhere in this Option Agreement: (i) terminate this Option

Agreement without further liability on the Fire Department's part; or (ii) demand damages incurred due to the City's default.

e. Benefit and Assumption. This Option Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, successors, assignees, and beneficiaries in interest. Fire Department shall have the right to assign this Option Agreement to a third party directly or indirectly controlled by Fire Department upon receiving the written consent of the City, which written consent shall not be unreasonably withheld.

f. Governing Law. This Option Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin (regardless of such State's conflict of laws principles), and without reference to any rules of construction regarding the party responsible for the drafting hereof.

g. Expenses. Except as otherwise herein provided or in the Development Agreement, all expenses incurred in connection with this Option Agreement or the transactions herein provided for shall be paid by the Party incurring such expenses and costs.

h. Notices. Any and all notices, demands, and communications provided for in, or made under this Option Agreement shall be given in writing and shall be deemed given to a Party at the earlier of: (i) when actually delivered to such Party, or (ii) when mailed to such Party by registered or certified U.S. Mail (return receipt requested) or sent by overnight courier, confirmed by receipt, and addressed to such Party at the address designated below for such Party (or to such other address for such Party as such party may have substituted by notice pursuant to this Section).

i. If to the City: Taylor Zeinert, Economic Development Director  
312 Whitewater Street  
Whitewater, WI 53190

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

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

i. Counterparts. This Option Agreement may be executed simultaneously in two or more counterparts, including by scanned image (e.g., .pdf) or by facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all parties hereto.



j. Headings. All section headings herein are inserted for convenience only and shall not modify or affect the construction or interpretation of any provision of this Agreement.

k. Amendment, Modification and Waiver. This Option Agreement may not be modified, amended or supplemented except by mutual written agreement of all the Parties. Any Party may waive in writing any term or condition contained in this Option Agreement and intended to be for its benefit; provided, however, that no waiver by any Party, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term or condition, unless otherwise specified herein. Each amendment, modification, supplement or waiver shall be in writing signed by the Party or the Parties to be charged.

l. Entire Agreement. This Option Agreement and the Development Agreement represent the full and complete agreement of the Parties with respect to the subject matter hereof and supersedes and replaces any prior understandings and agreements among the Parties with respect to the subject matter hereof and no provision or document of any kind shall be included in or form a part of such agreement unless signed and delivered to the other Party by the Parties to be charged.

m. Severability. A determination that any provision of this Option Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision hereof and any determination that the application of any provision of this Option Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

n. Third-Party Beneficiaries. No third-party beneficiary rights shall be implied from anything contained in this Option Agreement.

o. Time of the Essence. Time is of the essence with respect to all dates and deadlines contemplated by this Option Agreement.

p. Legal Representation. Each Party hereto and its counsel has had an opportunity to review and suggest revisions to the language of this Option Agreement. Accordingly, no provision of this Option Agreement shall be construed for or against or interpreted to the benefit or disadvantage of any party by reason of any party having or being deemed to have structured or drafted such provision.

q. Recording. Following the Effective Date of this Option Agreement, the City, at the City's expense, shall cause this Option Agreement or a separate instrument evidencing this Option Agreement to be recorded with the Walworth County Register of Deeds Office and this Option Agreement shall be an encumbrance on the Property until this Option Agreement is exercised or terminated.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have duly executed this Option Agreement, as of their own free will and act and deed, on the dates indicated below.

**CITY OF WHITEWATER**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2024

STATE OF WISCONSIN

COUNTY OF WALWORTH

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024 the above named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
Notary Public, State of Wisconsin  
Print Name: \_\_\_\_\_  
My Commission: \_\_\_\_\_

**WHITEWATER FIRE DEPARTMENT, INC.**

By \_\_\_\_\_  
Ryan Dion, Assistant Chief  
Date: \_\_\_\_\_, 2024

STATE OF WISCONSIN

COUNTY OF WALWORTH

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024 the above named Assistant Chief Ryan Dion, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
Notary Public, State of Wisconsin  
Print Name: \_\_\_\_\_  
My Commission: \_\_\_\_\_