



AGENDA
COMMITTEE OF THE WHOLE
Tuesday, September 5, 2017
Common Council Chambers, 224 East Jefferson Street

Mayor Jeannie Hefty
Susan Kott, Alderman, 1st District
Edward Johnson, Alderman, 1st District
Bob Grandi, Alderman, 2nd District
Ruth Dawidziak, Alderman, 2nd District
Tom Vos, Alderman, 3rd District
Jon Schultz, Council President, Alderman, 3rd District
Thomas Preusker, Alderman, 4th District
Todd Bauman, Alderman, 4th District

1. **Call to Order - Roll Call**
2. **Citizen Comments**
3. **Approval of Minutes** *(R. Dawidziak)*
 - A. August 15, 2017 Committee of the Whole Meeting Minutes
4. **RESOLUTIONS:**
 - A. **Resolution 4862(20)** - authorizing an amendment to the Wisconsin Economic Development Corporation Community Development Investment Grant between the City of Burlington and WIN Properties, LLC. *(Due to the timeliness, this item is scheduled for final consideration at tonight's Common Council meeting).*
 - B. **Resolution 4863(21)** - Approval of Amendment Number One with Ayres Associates, Inc. for Professional Services for the Burlington Community Pool Project.
5. **ORDINANCES:** There are none.
6. **MOTIONS:** There are none.
7. **ADJOURNMENT** *(T. Vos)*

Note: If you are disabled and have accessibility needs or need information interpreted for you, please call the City Clerk's Office at 262-342-1161 at least 24 hours prior to the meeting.



COMMITTEE OF THE WHOLE

ITEM NUMBER 3A

DATE: September 5, 2017

SUBJECT: Committee of the Whole Minutes for August 15, 2017

SUBMITTED BY: Diahnn Halbach, City Clerk

BACKGROUND/HISTORY:

The attached minutes are from the August 15, 2017 Committee of the Whole meeting.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of the attached minutes from the August 15, 2017 Committee of the Whole meeting.

TIMING/IMPLEMENTATION:

This item is scheduled for final consideration at the September 5, 2017 Common Council meeting.

Attachments

COW Minutes



City Clerk
300 N. Pine Street, Burlington, WI, 53105
(262) 342-1161 - (262) 763-3474 fax
www.burlington-wi.gov

CITY OF BURLINGTON
Committee of the Whole Minutes
Jeannie Hefty, Mayor
Diahnn Halbach, City Clerk
Tuesday, August 15, 2017

1. **Call to Order - Roll Call**

Mayor Jeannie Hefty called the meeting to order at 6:30 p.m. starting with roll call. Aldermen present: Susan Kott, Ed Johnson, Bob Grandi, Ruth Dawidziak, Jon Schultz, Tom Preusker, and Todd Bauman. Excused: Tom Vos.

Also present: City Administrator Carina Walters, City Attorney John Bjelajac, Finance Director Steve DeQuaker, Lt Brian Zmudzinski, Fire Chief Alan Babe, Building Inspector Gregory Guidry.

2. **Citizen Comments**

Kim Lunderskov, 377 Travellers Run, voiced his concerns about moving dispatch to the County and encouraged Council to keep City dispatch in Burlington.

Nancy Foster, 377 Travellers Run, stated that she had read in the Standard Press that costs to replace the dispatch equipment could cost the City \$250,000 and wanted to know if that was before or after insurance was paid. Foster also voiced her concerns regarding the County program costs that would be determined through negotiations and other factors. Foster also stated that the City should keep dispatch in Burlington because having a police presence in the community creates a safer environment for residents.

Dan Rueter, 700 Oak Street, stated he has been a Burlington resident for 28 years and is a former City of Burlington Firefighter, but now works in Racine and has had good experiences with both City and County dispatch. Rueter stated that he also had the opportunity to assist with the command vehicle during the flood emergency. Rueter said that his primary concern is that if the City does decide to keep dispatch in Burlington, to have a better plan for where to put the equipment, as well as an additional backup Command Center in the event another disaster were to occur.

3. **Approval of Minutes**

- A. A motion was made by Alderman Grandi with a second by Alderman Bauman to approve the August 1, 2017 Committee of the Whole Meeting Minutes. With all in favor, the motion carried.

4. **PRESENTATIONS:**

There were none.

5. **DISCUSSIONS:**

A. Burlington Flood Update

Walters announced that she had just received the news that the City did not qualify for FEMA; however, Governor Walker has requested the U.S. Small Business Administration (SBA) declare Kenosha, Racine, and Walworth counties a disaster area due to the flood damage, which, if qualified, would provide low-interest loans to eligible individuals and businesses affected by the floods. Walters further stated that she and others recently attended a meeting with the Tri-County Recovery Program that consisted of Racine, Walworth and Kenosha Counties, in which she learned recovery time for a community can be determined by the length of time the Emergency Operations Center (EOC) is open. The City's EOC was in operation for two weeks, which calculates to a potential 2-3 years process before the City is back to normal. Walters also stated that Echo Lake Dam assessment has been completed and was found to be structurally sound, however, she is still waiting for the final report.

Mayor Hefty added that she and Walters have had discussions with Kapur & Associates regarding the dredging of Echo Lake stating that by dredging it, the lake bed could be cleaned up and made deeper for other activities. Alderman Schultz then inquired about the possibility of removing the dam in its entirety since it no longer serves the purpose that it was originally intended for.

B. Discussion regarding the playground equipment at Devor Park

Walters stated that the playground equipment at Devor will need to be removed for the construction of the new pool and that Grace Church has contacted City staff to ask if they would donate the equipment to their church and that they would take care of the removal if agreed upon. Walters asked Council their thoughts on whether or not to put this through the process of reaching out to other churches to see if anybody else would be interested in the equipment, adding that the equipment needs to be removed by September 5, 2017. Alderman Dawidziak suggested the equipment should just be given to Grace Church rather than go through the process, since they took the time to reach out and ask. All were in agreement.

6. **RESOLUTIONS:**

- A. **Resolution 4861(19)** - to consider approval of a Certified Survey Map for property located at 2100 Milwaukee Avenue.

Gregory Guidry stated this resolution was originally presented at the July 18, 2017 Committee of the Whole meeting, however, was discovered that the CSM wasn't correct and needed to be revised. Guidry further stated that the CSM seeks to create three lots within the Lynch Dealership and Menards properties and proposes to subdivide Lynch automotive dealership into Lot 1 with 12.0304 acres, Lot 2 would be 22.4213 acres and contain the Menards building, and Lot 3 would consist of 2.8244 acres and contain the storm water facility. Guidry stated that the revised CSM has been reviewed and recommended for approval by Kapur & Associates.

7. **ORDINANCES:**

There were none.

8. **MOTIONS:**

There were none.

9. **ADJOURNMENT**

A motion was made by Alderman Dawidziak with a second by Alderman Preusker to adjourn the meeting. With all in favor, the meeting adjourned at 6:50 p.m.

Minutes respectfully submitted by:

Diahnn C. Halbach
City Clerk
City of Burlington



COMMITTEE OF THE WHOLE

ITEM NUMBER 4A

DATE: September 5, 2017

SUBJECT: RESOLUTION 4862(20)- authorizing an amendment to the Wisconsin Economic Development Corporation Community Development Investment Grant between the City of Burlington and WIN Properties, LLC.

SUBMITTED BY: Carina Walters, City Administrator

BACKGROUND/HISTORY:

Please see the attached memorandum from Janell Topczewski of the Racine County Economic Development Corporation.

BUDGET/FISCAL IMPACT:

Developer, the City, RCEDC, and the Wisconsin Economic Development Corporation WEDC have arranged for the City to obtain a WEDC CDI Grant in the amount of \$192,883. The CDI Grant consists of funds payable by the WEDC to the City, where as the City then, acting as a financial conduit, reimburses the developer with the CDI Grant funds for eligible costs and expenses incurred by developer in undertaking the Project.

RECOMMENDATION:

RCEDC and City Staff recommend approval of this extension to allow the developer four months (June - October 2017) to complete and finalize the project.

TIMING/IMPLEMENTATION:

This item is scheduled for discussion at the September 5, 2017 Committee of the Whole meeting and due to timing, is scheduled for final consideration at the same night Common Council meeting.

Attachments

- Res 4862(20) WEDC CDI Grant Amendment
 - Memo to Council
 - WEDC CDI Grant Agreement
-

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE WISCONSIN ECONOMIC DEVELOPMENT CORPORATION COMMUNITY DEVELOPMENT INVESTMENT GRANT BETWEEN THE CITY OF BURLINGTON AND WIN PROPERTIES, LLC

WHEREAS, on June 7, 2016, the City of Burlington Common Council pursuant to its Resolution No. 4792(11), authorized the Mayor to execute a Grant Agreement with WIN Properties, LLC (Developer); and,

WHEREAS, the City has obtained a grant award from the Wisconsin Economic Development Corporation (WEDC), Community Development Grant Program ("CDI"); and,

WHEREAS, subject to the benefit set forth herein, the Developer intends to redevelop the Property commercial occupancy (Project); and,

WHEREAS, the City has agreed to administer the grant to assist with the site preparation and project costs attributable to the Project, and further acknowledges that the development of the Project will not occur without the financial assistance to be provided to the Developer; and

WHEREAS, attached hereto is the "First Amendment to the Grant Agreement" that, if approved by the Common Council, will amend the Developer's deadline for the substantial completion of the Project, from the original date of June 30, 2017, to the new date of October 31, 2017.

NOW, BE IT HEREBY RESOLVED that the Common Council of the City of Burlington hereby approves the First Amendment to the Grant Agreement with WIN Properties, LLC extending the substantial completion deadline for the Developer's Project work from the original date of June 30, 2017, to the new date of October 31, 2017, as stated in Article I, Section E of the Grant Agreement.

BE IT FURTHER RESOLVED that the Mayor is authorized to sign the First Amendment to the Grant Agreement with WIN Properties, LLC.

Introduced: September 5, 2017
Adopted:

Jeannie Hefty, Mayor

Attest:

Diahn Halbach, City Clerk

FIRST AMENDMENT

The "Grant Agreement" attached hereto as Exhibit A is hereby amended as follows:

The substantial completion deadline for the Developer's project work, as stated in Article I, Section E of the Grant Agreement (Exhibit A), is changed from the original date of June 30, 2017 to the new date of October 31, 2017.

The remaining terms and provisions of the Grant Agreement shall remain in full force and effect.

Dated: September _____, 2017

WIN Properties, LLC

CITY OF BURLINGTON

By: _____
Shad Branen, Owner

By: _____
Jeannie Hefty, Mayor

Attest: _____
Diahn Halbach, City Clerk

MEMORANDUM

TO: CITY OF BURLINGTON COMMON COUNCIL

FROM: JANELL TOPCZEWSKI, COMPLIANCE/CLOSING SPECIALIST

RE: WEDC CDI GRANT EXTENSION

DATE: AUGUST 21, 2017

REQUEST

The purpose of this memorandum is to request the City of Burlington Common Council grant an extension of the completion deadline for the development at 425 N. Pine Street from June 30, 2017 to October 31, 2017.

HISTORY

On June 29, 2016 the City of Burlington entered into a Community Development Investment (CDI) grant with the Wisconsin Economic Development Corporation (WEDC) for the redevelopment of 425 N. Pine Street; now known as The Mercantile. By nature of the CDI program the City had to apply and receive the funds to provide to the developer, Shad Branen, to be used for the project. Subsequently, the City entered into a grant agreement with Mr. Branen in June 2016 which outlined the project completion requirements to obtain the funds. Both agreements indicate a project completion date of June 30, 2017.

The Mercantile is nearing completion; however, it had unforeseen delays. These delays were primarily related to additional structural support, HVAC, plumbing, and other costs related to renovating older buildings. Because of these unforeseen delays the project is taking longer to complete than anticipated. The first floor, The Mercantile Hall, is complete, received occupancy, and is open for business. The second floor is nearing completion and has partial occupancy. Final occupancy will be granted once the elevator has been installed which is in process. The lower level is the last section of the building to be completed and will be completed by the end of September.

The extension request is through October 31, 2017 in order to allow Mr. Branen sufficient time to complete the project and compile the paperwork needed for WEDC to provide the grant funds.

SUMMARY

RCEDC staff is recommending Council extend the project completion date in the Grant Agreement from June 30, 2017 to October 31, 2017 in order to retain the WEDC CDI grant funds.



MEMORANDUM

TO: City of Burlington Common Council

FROM: Tina Chitwood, Community Development Manager

DATE: October 20, 2015

SUBJECT: Request to Submit a WEDC CDI Grant Application for 425 N. Pine St. (WIN Properties, LLC, Shad Brannen, Principle)

The purpose of this memo is to request approval from the Council to submit a WI Economic Development Corporation (WEDC) Community Development Investment (CDI) grant application for the downtown redevelopment project being undertaken by WIN Properties, LLC at 425 N. Pine St. Since November 2014 RCEDC has been the City's representative on this project coordinating multiple meetings with the building owner and WEDC community development staff regarding this grant program and the importance of historic preservation, as well as coordinating meetings with WI Historical Society staff regarding the Federal and State Historic Tax Credits programs and we have facilitated discussions with City staff and the Mayor to advance the redevelopment project to be applied for by this grant application.

Following is a summary of the CDI grant application deadlines, eligibility requirements, City expectations and project description for your information.

CDI GRANT INFORMATION

1. Grants support community redevelopment efforts by providing a grant up to 25% of the project costs.
2. Funded projects should lead to measureable benefits in job opportunities, property values and/or leveraged investment by public and private partners. Benefits realized may be in the categories of: job creation, tax base growth and strong commercial/downtown districts.
3. Eligible applicants include municipalities.
4. Match requirement: \$3:1 investment in project costs. [25% of the project costs can be covered by the grant.]
5. Eligible activities: construction, renovation, historic preservation and infrastructure investment.

6. Eligible projects: rehabilitation and reuse of landmark buildings, blight elimination in downtown, historic preservation and high impact community space efforts.
7. Maximum award: \$250,000 per project (one application round in FY 2016).
8. Due date: November 13, 2015
9. Awards announced: Late December 2015 to mid-January 2016.
10. Evaluation criteria:
 - a. Direct economic benefits to the community,
 - b. Extent project will lead to additional development in the area,
 - c. Degree to which public and private partnerships have been developed,
 - d. Degree to which both public and private investment is being generated,
 - e. Extent to which the project compliments previous municipal or regional planning efforts,
 - f. Demonstration that grant funding is needed to fill the financial gap that cannot be met with public and/or private sources,
 - g. Demonstration of firm financial commitments for all sources of project funding,
 - h. "Shovel ready" project (able to proceed if grant award is made),
 - i. Degree to which community wide support for the project has been demonstrated, and
 - j. Project support of best downtown redevelopment practices.
11. The City will be expected to submit semi-annual fiscal and narrative reports based off of information compiled by the property owner until the project is completed. The City will handle grant disbursements.

PROJECT DESCRIPTION

1. Rehabilitation of an 18,000 sq. ft. building ravaged by fire in April 2014 and sitting vacant in the heart of the Downtown Historic Central Business District since that time.
2. First floor to be renovated into two retail storefronts of about 3,000 sq. ft. each, second floor to become office suites, and lower level to become a co-working space. Project also consists of an elevator to access all three floors, shared conference room in the lower level, restroom facilities, fire suppression sprinkler system installed in the entire building and new rear access at the back of the building.
3. One retail tenant and one office tenant have been secured and anticipate occupying the building by June 1, 2016.
4. The goal of the co-working space is to create a space that would serves as the stepping stone between a home office or coffee shop and a permanent location for businesses. The co-working space will be an open-concept space including 4-8 moveable work stations, free Wi-Fi, electrical, large screen TV for teleconferencing, and key fob security system for 24-7 access to the space.

5. Users will sign up as members holding them accountable to their use of the space and providing complete access to the amenities of the space at a fraction of the cost of renting an office in the area. An additional membership level will be offered to provide locked office space for people to rent and keep their belongings in a secure locked office, but still have access to the conference room and other amenities.
6. Small business development programming and resources will be offered by Gateway Technical College, Small Business Development Center, WI Women's Business Initiative Corporation and Racine County Economic Development Corporation. Additional partnerships are being forged with the Burlington High School students and staff in the Future Business Leaders of America program and outreach has been made with Catholic Central High School as well.
7. Overall, the co-working space allows entrepreneurs to reduce their operating costs while providing an environment that encourages collaboration, a great place to network, recruit new talent and eliminates the isolation of working from home or other public spaces.

Without Mr. Brannen's vision to rehabilitate the 425 N. Pine St. building the City would have been left with a missing tooth in the award-winning smile of its historic downtown. The overall project advertises to the community the historical and economic importance of the project.

❖ *The Council is requested to consider the request to submit a WEDC CDI Grant application on behalf of WIN Properties, LLC.*

GRANT AGREEMENT

This agreement (“Agreement”) is made and entered into this _____ day of June, 2016, by and between:

- a) WIN PROPERTIES, LLC, being a Wisconsin limited liability company (hereinafter, the “Developer”), with offices located at 1464 Devon Road, Burlington, Wisconsin 53105; and
- b) The CITY OF BURLINGTON, WISCONSIN, being a municipal corporation organized under the laws of the State of Wisconsin (hereinafter, the “City”), with its City Hall located at 300 North Pine Street, Burlington, Wisconsin 53105.

Introduction

Developer owns the following-described parcel of real property (the “Property”):

- a) Street Address: 425 North Pine Street
Burlington, Wisconsin 53105
- b) Tax Parcel No.: 206-03-19-32-400-940

The building located on the Property (the “Building”) is in a state of disrepair, having been damaged in the past by a significant fire. The Building needs to be restored so that it is suitable for commercial occupancy (the “Project”).

Developer, the City, the Racine County Economic Development Corporation (“RCEDC”), and the Wisconsin Economic Development Corporation (“WEDC”) have arranged for the City to obtain a WEDC Community Development Incentive Grant (“CDI Grant”) in the amount of One Hundred Ninety Two Thousand Eight Hundred Eighty Three Dollars

(\$192,883.00). The CDI Grant consists of (i) funds payable by the WEDC to the City, and (ii) the City then, acting as a financial conduit (without the City retaining any of the CDI Grant funds for the City's own use), reimbursing Developer with the CDI Grant funds for eligible costs and expenses incurred by Developer in undertaking the Project.

The City is willing to administer this CDI Grant program, in conformance with the requirements of the WEDC for the same, and both the City and the Developer hereby acknowledge that the Project would not be undertaken by the Developer without the assistance of the CDI Grant being provided by the WEDC to the City for the Project.

The City of Burlington Common Council has authorized the City to enter into this Agreement for the above-stated purposes pursuant to a Resolution, which was adopted by the Common Council on the date of June 7, 2016, at a meeting of the said Common Council duly and lawfully held on that said date.

Agreement

1. "Introduction" is Correct. The above "Introduction" is true and correct, and is hereby incorporated into this Agreement by reference.

2. Duties of the Developer.

A. Developer, at its own cost and expense, and through a contractor(s) preapproved by the City, shall undertake and complete the Project (i) in accordance with the plans and specifications for the Project on file with the City, the RCEDC, and the WEDC, and (ii) in accordance with all applicable governmental statutes, laws, rules, regulations, and ordinances, as well as all directives from the City representatives, including, but not limited to, the City Building Inspector.

B. Developer, at its own cost and expense, shall obtain all licenses, approvals, and permits from the City that may be required by the City for the Project.

C. Developer warrants and represents to the City (and to RCEDC and WEDC) that Developer would not be able to proceed with the Project without the benefit of being eligible for reimbursement of Project costs through the CDI Grant, all as described in this Agreement.

D. For the purposes of this Agreement and Developer's eligibility for reimbursement of Project costs under this CDI Grant program, and notwithstanding that a portion of the Project work has been previously undertaken by Developer, the Project shall be deemed to be commenced on the date of July 1, 2016. Developer is not eligible for reimbursement of any of the Project costs incurred by Developer prior to this commencement date.

E. The Project shall be substantially completed by Developer on or before the date of March 30, 2017, with final completion of the Project on or before the date of June 30, 2017. These deadline dates shall be extended (i) as may be necessary due to any delay(s) experienced beyond the reasonable control of Developer and/or its contractor(s), and/or (ii) as may be otherwise agreed to in writing by the City, with the approval of the City of Burlington Common Council.

F. With respect to any failure of the Developer (and/or its contractor(s) to comply with the provisions of this Agreement, the Developer shall be in default under this Agreement if (i) the City gives to the Developer written notice of such failure of compliance, and (ii) the Developer fails to then cure such failure of compliance within Thirty (30) Days after the date such written notice is actually received by the Developer.

Except for failures of compliance involving the payment of money by the Developer, in the event the failure of compliance is of such a nature that it cannot be reasonably cured within the said 30-day time period, then the Developer shall only be in default if (i) Developer fails to commence a good-faith effort to cure the said failure of compliance within the said 30-day time period, and then (ii) in good faith continues to diligently proceed with the effort to cure the failure of compliance until full compliance is attained. Upon a default by the Developer under this Agreement, and in addition to any other remedies available to the City under the law, Developer shall, upon the request of the City, immediately return to the City all grant monies paid to the Developer by the City under this Agreement.

G. Developer shall, and hereby does, AGREE TO INDEMNIFY AND HOLD HARMLESS the City and its officials, officers, employees, consultants, contractors, and/or agents from and against any and all claims, actions, judgments, damages, costs, and expenses (including, but not limited to, reasonable actual attorney fees), and/or any other liability of any nature whatsoever, that may arise, directly or indirectly, as a result of (i) the City being a party to this Agreement, and/or (ii) Developer and/or its contractor(s) failing to comply with the provisions of this Agreement.

H. During work on the Project, Developer shall submit to the City written invoices pertaining to the Project costs paid by Developer and for which Developer is eligible for reimbursement under this Agreement with the CDI Grant funds described herein. Along with such invoices, Developer shall also contemporaneously submit to the City, as supporting documents, (i) lien waivers from the contractor(s) for the work in question, and (ii) such other information and/or documents requested by the City and/or

the WEDC. The WEDC documents establishing the terms and provisions of the CDI Grant program, that is the subject of this Agreement, are hereby incorporated herein by reference.

I. Developer may submit to the City its written invoices for reimbursement, as described in above Subparagraph H, upon substantial completion of the Project, or on an interim basis, up to three (3) times, during the work on the Project, for the portion of the work completed.

J. Developer shall, at its own cost and expense, prepare and deliver to the City (and/or to the RCEDC and/or the WEDC) such reports, documents, and information that the City and/or RCEDC and/or WEDC may from time to time request of the Developer regarding the Project and/or the CDI Grant monies described in this Agreement.

K. In the event the City is required, under the CDI Grant program, to refund and return to the WEDC any part or all of the CDI Grant funds paid by the City to Developer under this Agreement, then Developer shall immediately return and pay to the City the said Grant funds in question.

3. Duties of the City.

A. The City shall cooperate with the Developer by reviewing and processing, in the due course of the City's ordinances, policies, and procedures, the Developer's submissions and applications to the City regarding the Project.

B. With respect to the request(s) of the Developer for reimbursement monies for eligible Project costs under the terms of this Agreement, the City shall comply with the rules and regulations of WEDC regarding the same, and shall process the Developer's

reimbursement requests in due course with the City's policies and procedures for the review and approval of the same.

C. The City shall not retain, or use for its own purposes, any of the CDI Grant funds that the City receives from the WEDC. All such CDI Grant funds, to the extent received by the City from the WEDC, shall be transferred and paid to Developer, all in accordance with the terms of this Agreement and/or the WEDC CDI Grant program.

D. Under the terms and provisions of this Agreement, the City shall not be required to pay to the Developer any of the City's own monies or funds for the Project, and/or for any other reason or purpose.

4. No Partnership Created. This Agreement does not create any type of partnership, joint venture, or any other business relationship between the City and Developer regarding the Project. The Developer is solely responsible, at the Developer's own cost and expense, to undertake and complete the Project, and to comply with the terms and provisions of this Agreement and/or the CDI Grant program described herein.

5. Conflict of Interest. No official, officer, or employee of the City during his/her tenure, or for one (1) year thereafter, will have and/or shall have any direct or indirect personal interest in this Agreement or any proceeds thereof.

6. Governing Law and Venue. This Agreement shall be governed, controlled, construed, and interpreted by and under the laws of the State of Wisconsin, without giving effect to its conflict of laws provisions. The venue for any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court, in Racine County, Wisconsin.

7. Written Notices. Any written notice required under this Agreement shall be sent to the following individuals:

FOR THE DEVELOPER: Mr. Shad A. Branen
1464 Devon Road
Burlington, Wisconsin 53105

Telephone: (262)763-6397, ext. 11
e-mail: shad@winmediainc.com

FOR THE CITY: City Administrator
City of Burlington City Hall
300 North Pine Street
Burlington, Wisconsin 53105

Telephone: (262)342-1161
e-mail: cwalters@burlington-wi.gov

A written notice shall be deemed given to a party to this Agreement:

- a) On the date of personal delivery to the City Administrator and/or Shad Branen; or
- b) On the next business day (Monday-Friday) following the date of the deposit of a written notice in the U.S. Mail by Certified Mail, with postage prepaid thereon; or
- c) On the date of a transmission of a written notice by e-mail to the e-mail addresses noted above (or as later updated by the parties). Any such e-mail sent after 4:00 p.m. CST on a Monday through Thursday shall be deemed sent the next day, and any e-mail sent after 4:00 p.m. CST on a Friday shall be deemed sent the following Monday.
- d) Any dates that are state and/or federal holidays shall be excluded from the calculations contained in above Subsections (b) and (c).

8. Execution of the Agreement. This Agreement may be executed in counterpart, and may be delivered (in addition to personal delivery or by U.S. Mail) by e-mail transmission.

9. Personal Guarantee. Shad Branen, being a member of the Developer, as an inducement to the City to enter into this Agreement, and in consideration of the City doing so, hereby personally guarantees the full and complete performance by Developer of all of the duties and obligations imposed upon Developer under this Agreement. This shall expressly include, but not be limited to, the duty of Developer to return to the City (and/or WEDC and/or RCEDC) all of the CDI Grant monies paid to Developer by the City, if such return is required under the terms of this Agreement and/or the WEDC CDI Grant program.

IN WITNESS WHEREOF, the above-named parties, along with Personal Guarantor Shad A. Branen, have executed this Agreement as of the day and year first above written.

DEVELOPER:
WIN Properties, LLC

By: 
Shad A. Branen
Member

CITY:
City of Burlington, Wisconsin

By: 
Jeanne Hefty
Mayor

PERSONAL GUARANTOR:


Shad A. Branen,
in his individual capacity as the
personal guarantor of Developer

Attest: 
Diahnn Halbach
City Clerk

**COMMUNITY DEVELOPMENT INVESTMENT GRANT AGREEMENT
BETWEEN
THE WISCONSIN ECONOMIC DEVELOPMENT CORPORATION
AND
CITY OF BURLINGTON**

This Agreement is entered into pursuant to Chapter 238 of the Wisconsin Statutes between the Wisconsin Economic Development Corporation (“WEDC”) and City of Burlington (the “Recipient”).

WITNESSETH

WHEREAS, the Recipient has submitted an Application to WEDC, requesting funds from WEDC’s Community Development Investment grant program (“CDI Funds”);

WHEREAS, the Recipient is a city located in Wisconsin;

WHEREAS, WEDC has determined that the Recipient is an eligible recipient of CDI Funds; and

WHEREAS, in reliance upon the Recipient’s Application, WEDC has approved the Recipient for up to One Hundred Ninety-Two Thousand Eight Hundred Eighty-Three Dollars (\$192,883.00) in CDI Funds.

NOW, THEREFORE, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants in this Agreement, WEDC and the Recipient agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) “Agreement” means this agreement, to include all documents required to be delivered contemporaneously with the execution and delivery of this Agreement, and the attached Exhibits, together with any future amendments executed in compliance with Paragraph 21 of this Agreement.

(b) “Application” means the materials submitted by the Recipient to WEDC relating to this allocation of CDI Funds.

(c) “Approval Date” means the date on which the Recipient may start attributing Eligible Project Costs to the CDI Funds and Matching Funds; specifically, June 8, 2016.

(d) “CDI Funds” means the grant monies the Recipient is eligible to receive from WEDC’s Community Development Investment grant program in accordance with this Agreement.

(e) "Effective Date" means the date on which this Agreement is fully executed by both parties.

(f) "Eligible Project Costs" means costs for which CDI Funds and Matching Funds may be used, as outlined in Paragraph 3(b) of this Agreement, which the Recipient incurs between Approval Date and July 1, 2017.

(g) "Ineligible Costs" means costs for which CDI Funds and Matching Funds may not be used, including costs incurred prior to the Approval Date; in-kind contributions; grant application preparation; professional fees, such as architecture, accounting, or legal fees; financing fees; or debt; permits, performance and payment bonds, or contingencies; acquisition costs; insurance premiums; fees related to compliance with this Agreement; supplies or purchase of moveable equipment; signage or advertising; or developer fees.

(h) "Matching Funds" means non-WEDC funds secured by the Recipient to meet the required 3:1 funding requirement of the CDI Funds under this Agreement. No more than thirty percent (30%) of the Matching Funds may consist of other state and/or federal grants.

(i) "Project" means the Recipient's renovation of the Schuette-Daniels building, in accordance with the Recipient's Application and the terms of this Agreement.

(j) "Project Location" means the site or sites at which the Project will take place, specifically 425 N. Pine Street, Burlington, Wisconsin.

2. **CDI Funds.** Subject to the terms and conditions set forth in this Agreement, and in Wisconsin law, WEDC shall provide to the Recipient a grant of up to One Hundred Ninety-Two Thousand Eight Hundred Eighty-Three and no/100ths Dollars (\$192,883.00) in CDI Funds.

3. **Recipient's Obligations.** The Recipient will:

(a) Complete the Project as contemplated by the Application and in accordance with the terms of this Agreement.

(b) Use the CDI Funds and Matching Funds for Eligible Project Costs incurred between the Approval Date and July 1, 2017, as outlined in the following budget:

Budget Code	Eligible Project Costs	SOURCES					TOTAL
		WEDC CDI FUNDS	Developer Equity	City of Burlington Façade Grant	Bank Loan	City of Burlington TID-RLF Loan	
0385	Building Renovations	\$191,458		\$14,368	\$420,007	\$140,000	\$765,833
	Demolition	\$1,425			\$4,275		\$5,700
	Eligible Project Costs Subtotal	\$192,883		\$14,368	\$424,282	\$140,000	\$771,533
	Other Activities**						
	Property Acquisition	N/A	\$1				\$1
	Other	N/A	\$154,055				\$154,055
	Ineligible Project Costs Subtotal**		\$154,056				\$154,056
	TOTAL	\$192,833	\$154,056	\$14,368	\$424,282	\$140,000	\$925,589

*Costs eligible for grant and matching funds. Matching Funds must equal 578,649.00 in order for the Recipient to obtain the maximum amount of the CDI Funds, and must be documented at a 3:1 rate with requests for disbursement.

** Costs ineligible for CDI or Matching Funds. These costs should be reported as leverage on performance reports.

The amount incurred by the Recipient on each Eligible Project Cost may vary by up to ten percent (10%) of the amount delineated in the table above, provided that the total amount of WEDC CDI Funds will not exceed the amount awarded under this Agreement.

(c) Provide an executed copy of the developer's agreement to WEDC prior to disbursement of any of the CDI Funds.

(d) Secure Matching Funds from non-WEDC sources equal to at least Five Hundred Seventy-Eight Thousand Six Hundred Forty-Nine Dollars (\$578,649.00), to achieve the 3:1 funding requirement of the CDI Funds under this Agreement.

(e) Include acknowledgement of WEDC's financial participation in the Project in any signage at the Project Location.

(f) Provide acknowledgement of WEDC's participation in the Project in any and all planning and feasibility documents related to the Project.

(g) Provide reports to WEDC as further described in Paragraph 5 of this Agreement, in such form as required by WEDC, a sample of which is attached to this Agreement as Exhibit B.

4. Release of Funds. WEDC will release the CDI Funds contemplated by this Agreement to the Recipient on a disbursement basis. The Recipient may request the CDI Funds in one or more disbursements and will be contingent on the following:

(a) The Recipient submitting to WEDC a request for disbursement of funds in such form as required by WEDC, a sample of which is attached to this Agreement as Exhibit A.

(b) The Recipient submitting to WEDC a report detailing the dollar amount and purpose of the Eligible Project Costs included in the request for disbursement as well as the dollar amount and purpose of each expenditure that the Recipient has contributed to the Project since the date of the previous disbursement of CDI Funds.

(c) The Recipient submitting to WEDC documentation of the Eligible Project Costs incurred against the CDI Funds, and the Recipient submitting to WEDC documentation of the Eligible Project Costs incurred against the Matching Funds, in an amount that is 3:1 of the CDI Funds being requested. Such documentation may include, but not be limited to, purchase orders or invoices.

(d) The Recipient must request all CDI Funds no later than September 1, 2017.

5. Reporting. The Recipient shall provide reports to WEDC subject to the following requirements:

(a) Semi-Annual performance reports in such form as required by WEDC, a sample of which is attached to this Agreement as Exhibit B, which shall include a financial overview and

narrative summary on the progress of the Project to date, as well as the following metrics, specific to the Project:

- (i) Job creation;
- (ii) Job retention;
- (iii) Leveraged investment; and
- (iv) Increase in tax base as demonstrated by changes in assessments.

(b) Schedule of Reporting:

PERIOD COVERED	DOCUMENTATION	DUE DATE
See Paragraph 6 Below	Schedule of Expenditures	See Paragraph 6 Below
June 1 – December 31, 2016	Semi-Annual Performance Report	February 1, 2017
January 1 – July 31, 2017	Semi-Annual Performance Report	September 1, 2017

6. Schedule of Expenditures. Consistent with Wis. Stat. § 238.03(3)(a), the Recipient must submit to WEDC, within 120 days after the end of the Recipient’s fiscal year in which any grant or loan funds were expended, a schedule of expenditures of the grant or loan funds, including expenditures of any matching cash or in-kind match, signed by the director or principal officer of the recipient to attest to the accuracy of the schedule of expenditures. The Recipient shall engage an independent certified public accountant to perform procedures, approved by WEDC and consistent with applicable professional standards of the American Institute of Certified Public Accountants, to determine whether the grant or loan funds and any matching cash or in-kind match were expended in accordance with the grant or loan contract. The Recipient must make available for inspection the documents supporting the schedule of expenditures.

7. Event of Default. The occurrence of any one or more of the following events shall constitute an Event of Default for the purposes of this Agreement:

(a) The Recipient ceases the Project within five (5) years of the Effective Date of this Agreement and commences substantially the same economic activity outside of Wisconsin.

(b) The Recipient supplies false or misleading information to WEDC in connection with this Agreement, without providing a satisfactory explanation, in WEDC’s sole discretion, for the noncompliance.

(c) The Recipient fails to comply with or perform, in any material respect, any of its obligations under this Agreement, without providing a satisfactory explanation, in WEDC’s sole discretion, for the noncompliance.

8. Remedies in Event of Default.

(a) Upon the occurrence of any Event of Default, WEDC shall send a written notice of default to the Recipient, setting forth with reasonable specificity the nature of the default. If the Recipient fails to cure any such Event of Default to the reasonable satisfaction of WEDC within thirty (30) calendar days, WEDC may extend the cure period if WEDC determines, in its sole discretion, that the Recipient has begun to cure the Event of Default and diligently pursues such

cure, or, without further written notice to the Recipient, declare the Recipient in default. The cure period shall in no event be extended more than ninety (90) days. In the Event of Default, WEDC shall terminate the Agreement and recover from the Recipient:

- (i) One Hundred percent (100%) of the funds disbursed to the Recipient under this Agreement;
- (ii) All court costs and reasonable attorney's fees incurred by WEDC in terminating the Agreement and recovering the amounts owed by the Recipient under this provision; and
- (iii) A financial penalty of up to one percent (1%) of the CDI Funds.

(b) These amounts shall be paid to WEDC within thirty (30) calendar days of demand by WEDC hereunder. If the Recipient fails to pay these amounts to WEDC as and when due, the Recipient will be liable for the full unpaid balance plus interest at the annual rate of up to twelve percent (12%) from the date of the notice of Event of Default.

(c) Upon an Event of Default, WEDC shall, without further notice withhold remaining disbursements of the CDI Funds.

9. Recipient's Warranties and Representations. In addition to the other provisions of this Agreement, the Recipient hereby warrants and represents to the best of its knowledge that as of the date of this Agreement:

(a) The Recipient is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it, the violation of which would have a material, adverse effect on the Recipient's ability to perform its obligations under this Agreement.

(b) The undersigned officer of the Recipient is fully authorized to execute and deliver this Agreement on behalf of the Recipient.

(c) In making these warranties and representations, the Recipient has not relied on any information furnished by WEDC.

(d) The Recipient's warranties and representations herein are true and accurate as of the Effective Date of this Agreement, and shall survive the execution thereof.

10. Wisconsin Public Records Law and Confidential Documents. The Recipient understands that this Agreement and other materials submitted to WEDC may constitute public records subject to disclosure under Wisconsin's Public Records Law, §§ 19.31-.39.

11. Additional Requirements.

(a) **Project Records.** The Recipient shall prepare, keep and maintain such records as may be reasonably required by WEDC to validate the Recipient's performance under this Agreement and the performance reports provided to WEDC.

(b) **Inspection.**

- (i) WEDC and its respective agents, shall, upon 48 hours advance written notice to the Recipient, have the right to enter the Recipient's premises, during normal business hours, to inspect the Recipient's operations documentation relating to

this Agreement, provided, however, that such access does not unreasonably disrupt the normal operations of the Recipient.

(ii) The Recipient shall produce for WEDC's inspection, examination, auditing and copying, upon reasonable advance notice, any and all records which relate to this Agreement.

(iii) WEDC reserves the right to conduct a physical site visit of the Project during the term of this Agreement.

(c) **Nondiscrimination in Employment.** Consistent with Wis. Stat. § 16.765: In connection with the performance of work under this contract, Recipient agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in § 51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, Recipient further agrees to take affirmative action to ensure equal employment opportunities. Recipient agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

(d) **Consolidation or Merger.** During the term of this Agreement, the Recipient shall provide written notice to WEDC of any consolidation or merger with or into any other unrelated corporation or business entity.

(c) **Public Announcement.** The Recipient agrees to work with WEDC in making a public announcement of this Agreement.

12. Conflicts. In the event of any conflict between the provisions of this Agreement and any accompanying documents, the terms of this Agreement control.

13. Choice of Law. THIS AGREEMENT AND ALL MATTERS RELATING TO IT OR ARISING FROM IT – WHETHER SOUNDING IN CONTRACT LAW OR OTHERWISE – SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED PURSUANT TO, THE LAWS OF THE STATE OF WISCONSIN.

14. Venue, Jurisdiction. Any judicial action relating to the construction, interpretation, or enforcement of this Agreement, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. **EACH PARTY HEREBY CONSENTS AND AGREES TO JURISDICTION IN THOSE WISCONSIN COURTS, AND WAIVES ANY DEFENSES OR OBJECTIONS THAT IT MAY HAVE ON PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS.**

15. Waiver of Right to Jury Trial. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY JUDICIAL ACTION OR PROCEEDING THAT MAY ARISE BY AND BETWEEN WEDC AND THE RECIPIENT CONCERNING OR RELATING TO THE CONSTRUCTION, INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT, OR THE RECOVERY OF ANY

PRINCIPAL, ACCRUED INTEREST, COURT COSTS, ATTORNEY'S FEES AND OTHER AMOUNTS THAT MAY BE OWED BY THE RECIPIENT HEREUNDER.

- 16. LIMITATION OF LIABILITY. RECIPIENT HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER FROM WEDC ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR DAMAGES OF ANY OTHER NATURE OTHER THAN ACTUAL DAMAGES INCURRED OR SUFFERED BY RECIPIENT.**
- 17. Severability.** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions, which shall remain in full force and effect to govern the parties' relationship.
- 18. WEDC Not a Joint Venturer or Partner.** WEDC shall not, under any circumstances, be considered or represented to be a partner or joint venturer of the Recipient or any beneficiary thereof.
- 19. Captions.** The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.
- 20. No Waiver.** No failure or delay on the part of WEDC in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such power or right preclude any other exercise of any other power or right.
- 21. Entire Agreement.** This Agreement embodies the entire agreement of the parties concerning WEDC's and the Recipient's obligations related to the subject of this Agreement. This Agreement may not be amended, modified or altered except in writing signed by the Recipient and WEDC. This Agreement supersedes all prior agreements and understandings between the parties related to the subject matter of this agreement.

IN WITNESS WHEREOF, WEDC and the Recipient have executed and delivered this Agreement effective the date set forth next to WEDC's signature below.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

By: Mark R. Hogan 6/29/16
Mark R. Hogan Date
Secretary & CEO

CITY OF BURLINGTON

By: Geannie Hefty 6/29/2016
Robert Miller, Geannie Hefty Mayor Date
Mayor

Notices to the Recipient hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed to the following person and address or such other person and address as the Recipient may designate in writing:

City of Burlington
300 Pine Street
Burlington, WI 53105
Attn: Robert Miller

Notices to WEDC hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed as follows:

Wisconsin Economic Development Corporation
Division of Credit & Risk
P.O. Box 1687
Madison, WI 53701
Attn: Community Development Investment
Contract # CDI FY16-23345



COMMITTEE OF THE WHOLE

ITEM NUMBER 4B

DATE: September 5, 2017

SUBJECT: **RESOLUTION 4863(21)** - Approval of Amendment Number One with Ayres Associates, Inc. for Professional Services for the Burlington Community Pool Project.

SUBMITTED BY: Carina Walters, City Administrator

BACKGROUND/HISTORY:

On May 3, 2016 the Common Council approved via a resolution an agreement with Ayres Associates to provide professional planning and design services for the Burlington Community Pool Project for a total amount of \$152,788. Ayres completed several tasks that included 1) Site Assessment 2) Preliminary Design 3) Pool Management Plan 4) Referendum Education and Assistance and 5) Design and Bid the project.

As the Pool demolition and construction portion of the project is scheduled commence the week of September 5, the Common Council is asked to approve and amendment to the original agreement for additional scope of services. The scope will include:

- Attend pre-construction meeting to be held onsite with selected contractor(s).
- Review submittals and shop drawings for design elements of the project.
- Attend periodic construction meetings (8 anticipated).
- Administer contractor pay requests.
- Complete final walk through and punch list at completion of project.

BUDGET/FISCAL IMPACT:

Staff recommends the approval of the first amendment to the contract in the amount of 15,000. These dollars have been earmarked in the total pool budget.

RECOMMENDATION:

Staff recommends approval.

TIMING/IMPLEMENTATION:

This item will be set for final approval at the September 19, 2017 Common Council meeting.

Attachments

- Res 4863(21) Ayers Amendment
 - Amendment Agreement
-

A RESOLUTION APPROVING AMENDMENT NUMBER ONE AGREEMENT WITH AYRES ASSOCIATES TO PROVIDE PROFESSIONAL PLANNING AND DESIGN SERVICES FOR THE BURLINGTON COMMUNITY POOL PROJECT

WHEREAS, a Request for Proposal (RFP) was advertised in December 2015 for professional planning and design services with the Burlington Community Pool Project; and,

WHEREAS, the Common Council approved entering into contract negotiations with Ayres Associates as Motion 16-829 on March 15, 2016,

WHEREAS, the Common Council approved entering into an agreement on May 3, 2016 with Ayres Associates, via a Resolution 4784(3),

WHEREAS, the City of Burlington requires additional Professional Services to redevelop the Burlington Community Pool to include attendance at a pre-construction meeting to be held onsite with selected contractor(s), Review submittals and shop drawings for design elements of the project, Attend periodic construction meetings, Administer contractor pay requests and Complete final walk through and punch list at completion of project.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Burlington, Racine County, State of Wisconsin, approves the agreement Ayres Associates, dated June 8, 2017 attached hereto as Exhibit "A", for the total amount of \$15,000 for the services outlined above.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington that the Mayor is authorized to execute said agreement on behalf of the City.

Introduced: September 5, 2017
Adopted:

Jeannie Hefty, Mayor

Attest:

Diahn Halbach, City Clerk

AMENDMENT TO AGREEMENT

Amendment dated June 8, 2017

The Agreement for Professional Services made as of April 27, 2016 between The City of Burlington (OWNER) and Ayres Associates Inc, 101 East Badger road, Madison, WI (CONSULTANT) is hereby amended as set forth below.

SCOPE OF SERVICES

1.1 Scope of Services

- Attend pre-construction meeting to be held onsite with selected contractor(s).
- Review submittals and shop drawings for design elements of the project.
- Attend periodic construction meetings (8 anticipated).
- Administer contractor pay requests.
- Complete final walk through and punch list at completion of project.

1.2 During the Construction Phase Scope of Services 1.1 above:

1.2.1 Not Used

1.2.2 Visits to Site and Observation of Construction. In connection with observations of the work of Contractor(s) while it is in progress:

1.2.2.1 CONSULTANT shall make visits to the site at intervals appropriate to the various stages of construction as CONSULTANT deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s)' work. Based on information obtained during such visits and on such observations, CONSULTANT shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and CONSULTANT shall keep OWNER informed of the progress of the work.

1.2.2.2 The purpose of CONSULTANT's visits to and representation at the site will be to enable CONSULTANT to better carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase, and, in addition, by exercise of CONSULTANT's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, CONSULTANT shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, CONSULTANT can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

1.2.3 Defective Work. During such visits and on the basis of such observations, CONSULTANT may disapprove of or reject Contractor(s)' work while it is in progress if CONSULTANT believes that such work

will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.2.4 Interpretations and Clarifications. CONSULTANT shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

1.2.5 Shop Drawings. CONSULTANT shall review (and take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.2.6 Substitutes. CONSULTANT shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s).

1.2.7 Inspections and Tests. CONSULTANT shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

1.2.8 Disputes Between OWNER and Contractor. CONSULTANT shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. The final decision on all of these matters, however, shall be made by the OWNER, in OWNER'S sole discretion. CONSULTANT shall not be liable for the results of any such interpretations or decisions rendered in good faith.

1.2.9 Applications for Payment. Based on CONSULTANT's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules:

1.2.9.1 CONSULTANT shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of CONSULTANT's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, CONSULTANT's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.2.9.2 By recommending any payment CONSULTANT will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by CONSULTANT to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to CONSULTANT in this Agreement and the Contract Documents. CONSULTANT's review of Contractor(s)' work for the purposes of recommending payment

will not impose on CONSULTANT responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on CONSULTANT to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.2.10 Inspections. CONSULTANT shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that CONSULTANT may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 1.2.9.2.

1.2.11 Limitation of Responsibilities. CONSULTANT shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except CONSULTANT's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.2.1 thru 1.2.10 inclusive, shall be construed to release CONSULTANT from liability for failure to properly perform duties and responsibilities assumed by CONSULTANT in the Contract Documents.

COMPENSATION AND PAYMENTS

2.1 Compensation for Services and Expenses

2.1.1 Basic Services. OWNER shall pay CONSULTANT for Basic Services set forth in the above scope of services as follows:

2.1.1.1 An amount equal to the cumulative hours charged to the Project by each class of CONSULTANT's employees times Standard Hourly Rate of \$130 for all services performed on the Project, plus Reimbursable Expenses and charges of CONSULTANT's independent professional associates and subconsultants, if any.

2.1.1.2 The total compensation for services under paragraph 2.1.1 is estimated to be \$15,000.

2.1.1.3 The total estimated compensation for CONSULTANT's services as noted herein incorporates all labor, overhead, profit, Reimbursable Expenses, and charges of CONSULTANT's independent professional associates and subconsultants.

2.1.2 Annual Adjustments. The Standard Hourly Rates Schedule will be adjusted annually (as of January) and the Reimbursable Expenses Schedule will be adjusted annually (as of May) to reflect equitable changes in the compensation payable to CONSULTANT.

2.1.3 Other Provisions Concerning Compensation

2.1.3.1 Estimated Compensation Amounts. CONSULTANT's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the

parties, and are not the minimum or maximum amounts payable to CONSULTANT under the Agreement. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to CONSULTANT that a compensation amount thus estimated will be exceeded, CONSULTANT shall give OWNER written notice thereof. Promptly thereafter OWNER and CONSULTANT shall review the matter of services remaining to be performed and compensation for such services. OWNER shall either agree to such compensation exceeding said estimated amount or OWNER and CONSULTANT shall agree to a reduction in the remaining services to be rendered by CONSULTANT, so that total compensation for such services will not exceed said estimated amount when such services are completed. If CONSULTANT exceeds the estimated amount before OWNER and CONSULTANT have agreed to an increase in the compensation due CONSULTANT or a reduction in the remaining services, the CONSULTANT shall be paid for all services rendered hereunder.

2.1.3.4 Records. Records pertinent to CONSULTANT's compensation will be kept in accordance with generally accepted accounting practices. To the extent necessary to verify CONSULTANT's charges and upon OWNER's timely request, CONSULTANT shall make copies of such records available to OWNER at cost.

PERIOD OF SERVICES

3.1 The provisions of this Article and the compensation for CONSULTANT's services have been agreed to in anticipation of the orderly and continuous progress of the Project. If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided below and if such dates are exceeded through no fault of CONSULTANT, compensation provided herein shall be subject to equitable adjustment.

3.2 The services called for in the Construction Phase will be completed by June 30, 2018.

In Witness Whereof, the parties hereto have made and executed this Amendment to Agreement as of the day and year first written above.

		Ayres Associates Inc
OWNER		CONSULTANT
	(Signature)	
	(Typed Name)	Blake Theisen
	(Title)	Project Manager
	(Date)	June 8, 2017
	(Signature)	
	(Typed Name)	D. Bruce Morrow
	(Title)	Manager – Landscape Architecture
	(Date)	June 8, 2017