

Business Retention Grant Agreement
City of Waukesha – Wildeck, Inc.

Parcel ID WAKC 1002 990

After recording return to:
City Attorney
201 Delafield St Ste 330
Waukesha WI 53188-3646

This Business Retention Grant Agreement, referred to herein as the Agreement, is made by and between the **City of Waukesha**, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; and **Wildeck, Inc.**, a foreign corporation, 405 Commerce Street, Waukesha, Wisconsin 53186, referred to herein as Wildeck. Wildeck and the City are referred to herein as the Parties.

Legal Description:

All that part of the Northwest ¼ of Section 35, Township 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin, viz: Commencing at a point where the West ¼ line of Section 35 intersects with the center line of C.T.H. "F" former S.T.H. "164" and the Point of Beginning of lands described hereinafter; thence North 16°00" East along said line 127.81 feet to a point; thence North 88°01'35" West 134.28 feet to a point; thence South 01°58'21" West 50.00 feet to a point; thence South 15°59'47" West 31.29 feet to a point; thence South 89°40'06" West 395.43 feet to a point; thence South 00°40'00" West 45.14 feet to a point in the South line of said Northwest 1/4 section; thence due West along said South line 40.00 feet to a point in the East line of Palmer Street; thence North 00°40'00" East along said East line 60.08 feet to a point in the North line of said Palmer Street; thence North 89°20'00" West along said North line 20.00 feet to a point in the East line of Lot 13, Block 1 of Park View Subdivision; thence North 00°40'00" East along said East line 262.00 feet to a point in the South line of Lot 17, Block 1 of Gascoigne Addition; thence South 89°20'00" East along said South line 67.50 feet to a point; thence North 17°22'00" East 52.20 feet to a point in the East line of said Lot 17; thence North 00°39'33" East along said East line 624.55 feet to a point; thence due East 524.66 feet to a point; thence North 89°17'00" East 220.38 feet to a point in the West line of C.T.H. "F" former S.T.H. "164" as described in Document No. 341008; thence South 20°30'35" West along said West line 229.67 feet to a point; thence South 77°18'11" East 40.27 feet to a point on the center line of C.T.H. "F" former S.T.H. "164"; thence Southwesterly 340.81 feet along said centerline on an arc of a curve, whose center line lies to the Southeast, whose radius is 5815.23 feet, and whose chord bears South 17°41'30" West 340.76 feet to a point; thence South 16°00'00" West 340.31 feet to the Point of Beginning.

This land and the improvements thereon are referred to herein as the Real Property.

Recitals

Wildeck has proposed to consolidate and relocate its City of Waukesha and Village of Pewaukee facilities, operations and existing employees to the Real Property. Wildeck will expand its workforce to a total of 200 full-time-equivalent (FTE) employees at the Real Property.

The City has determined that it is in the best interests of the City and its taxpayers that the expansion of Wildeck occur in the City of Waukesha.

The City has been presented with satisfactory proof by Wildeck that to make the relocation feasible at this location significant investment will be required by Wildeck to update and upgrade the existing structures. Wildeck has also demonstrated that without City assistance this relocation is not financially feasible.

City has determined that to assist with Wildeck expansion and consolidation of operations in the City of Waukesha it will make a grant to Wildeck, as defined in Part Two of this Agreement; and further that the grant is intended to be used to offset the cost of upgrades to the existing facilities incurred by Wildeck.

Now, therefore, in consideration of the mutual promises of the Parties contained in this Agreement, the Parties agree and contract as follows:

Part One – Relocation and Consolidation

1. Relocation of Operations. Wildeck shall relocate all of its production operations existing in the City of Waukesha and Village of Pewaukee and production employees to the Real Property by no later than January 1, 2023. Wildeck shall relocate all of its office operations and office employees existing in the City of Waukesha and Village of Pewaukee to the Real Property by no later than December 31, 2024.

2. Upgrades to Structures. Wildeck shall upgrade the mechanical systems, lighting, restrooms and production areas of the existing structures; move an existing fire pump system to facilitate more efficient use of the site and fire protection; and obtain an occupancy permit from the City; no later than December 31, 2022.

3. Employment Level. Wildeck shall employ a minimum of 140 FTE employees at the Real Property by no later than January 1, 2023, and 200 FTE total employees at the Real Property by no later than December 31, 2024. Wildeck will maintain a minimum of 200 FTE employees at the Real Property from December 31, 2024 until at least January 1, 2032. Wildeck shall provide City with payroll records, tax returns, and other documentation sufficient for the City to verify employment numbers, on reasonable request.

Part Two – Financing Assistance

4. Grant. The City shall pay to Wildeck a grant of \$750,000.00, on the condition that the requirements stated in Part One of this Agreement are fully met. The grant shall be paid within 30 days after verification that all requirements have been met.

5. Conditional Refund of Grant. If at any time after the grant described in section 4 is made and before January 1, 2032, Wildeck or its successors or assigns for any reason either (i) cease usage of all or any portion of any of the buildings or improvements on the Real Property, (ii) employ fewer than 200 FTE employees at the real Property, or (iii) fail to provide City with sufficient proof of continuing compliance with the terms and conditions of this Agreement, then Wildeck shall refund a portion of the grant to the City, according to the table below.

<i>Event occurs in calendar year</i>	<i>Refund amount</i>
2023	\$750,000.00
2024	\$675,000.00

2025	\$600,000.00
2026	\$525,000.00
2027	\$450,000.00
2028	\$375,000.00
2029	\$300,000.00
2030	\$225,000.00
2031	\$150,000.00

6. Termination. This Agreement shall terminate upon the earlier of (i) full payment of a refund required by section 5, or (ii) January 1, 2032.

Part Three – Property Value Preservation

7. Requirement to Maintain the Real Property. During the term of this Agreement, Wildeck and its successors and assigns, during their period of ownership, shall maintain the Real Property, and all additions, improvements, and fixtures to the Real Property, in good condition, in compliance with all applicable statutes, building codes, and the Waukesha Municipal Code, for the purpose of maintaining the fair market value of the Real Property.

Part Four – General Provisions

8. Parties Are Independent Contractors. Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

9. Governmental Immunities and Notice Requirement Preserved. Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

10. Assignment Prohibited. This Agreement, and Wildeck's responsibilities under this Agreement, may not be assigned by Wildeck without the City's written consent, which cannot be unreasonably withheld, provided, however that the City hereby agrees that Wildeck may collaterally assign this Agreement to its lenders or to a successor to all or substantially all of the assets of Wildeck and the City shall acknowledge and consent to the same on terms and conditions reasonably acceptable to the City.

11. Notices. All notices required by this Agreement shall be in writing and delivered by first-class postage by the US Postal Service, addressed as follows:

To City: Director of Community Development
City of Waukesha
201 Delafield St
Waukesha WI 53188

To Wildeck: President
Wildeck Waukesha
XXXXXXX
XXXXXXX

12. Costs of Enforcement. The Parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

13. Corporate Authorization. The individuals executing this Agreement on behalf of Wildeck warrant and represent that they are duly authorized to bind Wildeck to this Agreement. Wildeck warrants and represents that the execution of this Agreement is not prohibited by Wildeck's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Wildeck shall provide proof upon request.

14. Assistance of Counsel, Voluntary Agreement. Wildeck acknowledges that it has either had the assistance of legal counsel in the negotiation, review and

execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.

15. Severability. If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.

16. Governing Law and Jurisdiction. This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Agreement, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin and waive all jurisdictional defenses.

17. Integration. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter expressed herein. All other agreements and understandings of the Parties with respect to the subject matter expressed herein are unenforceable. However, nothing in this Agreement shall be construed to limit the Common Council in the exercise of its legislative powers.

Executed as of the _____ day of _____, 2022.

City of Waukesha

Shawn N. Reilly, Mayor

Gina L. Kozlik, Clerk-Treasurer

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the persons who executed this Agreement on behalf of the City of Waukesha in the indicated capacities, personally came before me this _____ day of _____, 2022, signed their names in my presence, and acknowledged the same.

Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires _____)

Wildeck, Inc.

(sign above)
Print name: _____
Title: _____

(sign above)
Print name: _____
Title: _____

State of Wisconsin }
 } ss.
_____ County }

_____ and _____, known to me to be the persons who executed this Agreement on behalf of Wildeck, Inc., in the indicated capacities, personally came before me this ____ day of _____, 2022, signed their names in my presence, and acknowledged the same.

Notary Public, _____ County, Wisconsin
My commission (is permanent) (expires_____)

This document was drafted by City of Waukesha Department of Community Development.