

**Community Development Investment Grant Agreement
City of Waukesha – Waukesha Civic Theatre, Inc.**

This 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 Waukesha Civic Theatre, Inc., a Wisconsin non-stock corporation, 264 West Main Street, Waukesha, Wisconsin 53186, referred to herein as Civic Theatre. Civic Theatre and the City together are referred to herein as the Parties.

Recitals

Civic Theatre has begun a project to renovate and expand their theater facility at 264-270 Main Street in downtown Waukesha, which is referred to in this Agreement as the Project. The theater has historic roots in downtown, and Civic Theatre and its productions are an important part of the cultural fabric of downtown Waukesha. The City recognizes the benefits to the general public of Civic Theatre's presence downtown, and deems the Project to be worthy of City support.

On May 18, 2021, the City's Common Council passed Resolution 2021-17, which authorized City staff to apply to the Wisconsin Economic Development Corporation, referred to herein as WEDC, for a Community Development Investment grant to support the Project. This grant program, referred to herein as CDI, offers Wisconsin communities up to \$250,000 per project to support community redevelopment efforts.

The City submitted an application, and WEDC has determined that the City is an eligible recipient for a CDI grant of up to \$250,000, to assist in the funding of the Project. The City has entered into a Community Development Investment Grant Agreement with the WEDC, referred to in this Agreement as the CDI Grant Agreement.

Because the CDI grant is for the benefit of the Civic Theatre and the Project, the City will act as a pass-through conduit for CDI funds to be available to the Civic Theatre, and the Civic Theatre is willing to participate with the City in the arrangement.

Now, therefore, in consideration of the mutual promises of the Parties herein, the City and the Civic Theatre agree and contract as follows:

1. **Completion of the Project.** Civic Theatre shall complete the Project according to the plans, specifications, and drawings approved by the City's Plan Commission. Substantial completion shall occur no later than September 30, 2023. The Project will, at a minimum, consist of construction of a new rehearsal and reception area, a new seventy-five seat theatre called the Black Box Theatre, with backstage area for performers and control areas for technicians, a collaborative office suite, and the remodeling of the existing lobby and façade.
2. **Pass-Through CDI Funding.** The Parties acknowledge that the City is party to the CDI Grant Agreement with WEDC, but the Civic Theatre is the ultimate beneficiary of the CDI grant funds as sub-grantee. It is the intent of the Parties that the Civic Theatre assume as sub-grantee the responsibility for meeting all conditions imposed by the CDI Grant Agreement for the disbursement of CDI grant funds and providing to City at least 14 days in advance of the deadlines in the CDI Grant Agreement all information and documentation necessary to satisfy the conditions for disbursement in the CDI Grant Agreement. City shall not have any responsibility for satisfying those conditions, other than acting as a conduit and facilitating communication between Civic Theatre and WEDC. The maximum CDI grant aggregate amount is \$250,000.
3. **City Obligations.** City, as the nominal Recipient in the CDI Grant Agreement, shall perform all actions required of it by the CDI Grant Agreement, and shall not take any action that would adversely affect Civic Theatre's ability to receive CDI grant funds. City shall timely perform all actions necessary to facilitate disbursement of funds from WEDC to Civic Theatre as a conduit.

4. **No Guaranty of Payment.** Civic Theatre acknowledges that all disbursements of CDI funds are within the sole discretion of the WEDC, that Civic Theatre is solely responsible for providing information and documentation required to apply for disbursement of CDI grant funds, and that the City has no control over the disbursement of funds and is not a guarantor of payment. Civic Theatre acknowledges that payments to be made by WEDC to the City are conditioned on matching funds of at least \$750,000 towards Eligible Project Costs.
5. **Payment Procedure.** Application will be made to WEDC for grant disbursement only after completion of the work for which reimbursement is sought. Only one application will be made, and only one disbursement of funds will be made. Civic Theatre shall submit to City, no later than September 30, 2023, a completed application for payment in the form of Exhibit A attached to Appendix 1, along with all required supporting documentation. City shall promptly submit the application to WEDC, and shall promptly relay to Civic Theatre any communications concerning the application. City shall act in good faith to facilitate communications and to assist with any corrections or supplements to the application in an effort to ensure that the application is accepted and disbursement is made. No later than 30 days after WEDC approval and disbursement of funds to the City, City shall pay to Civic Theatre the amount received from WEDC in response to the application. City shall have no obligation to pay to Civic Theatre any amounts in excess of the funds received from WEDC.
6. **Incorporation of CDI Grant Agreement.** The following portions of the CDI Grant Agreement, appended to this Agreement as Appendix 1, are incorporated into this Agreement by reference. For purposes of their application, Civic Theatre shall be deemed to be the “Recipient” and City shall be deemed to be the “WEDC.”
 - a. Section 1, Definitions.
 - b. Section 3, Recipient Obligations.
 - c. Section 4, Release of Funds.
 - d. Section 5, Reporting.
 - e. Section 6, Schedule of Expenditures.
 - f. Section 7, Event of Default.
 - g. Section 8, Remedies in Event of Default.
 - h. Section 9, Warranties and Representations.
 - i. Section 10, Wisconsin Public Records Law. Civic Theatre shall maintain all records generated with respect to the Project and this Agreement for no less than 7 years, and shall provide them to the City promptly on request.
 - j. Section 11, Additional Requirements.
7. **Waiver of Liability.** Civic Theatre acknowledges that City agrees to act as a conduit for CDI grant funds as a favor and accommodation to Civic Theatre. Civic Theatre waives all claims, liabilities, damages, and causes of action against the City arising from a failure to obtain CDI grant funds from WEDC, regardless of the cause of the failure, specifically including City’s negligence.
8. **Indemnification.** Civic Theatre acknowledges that City acts as a conduit as a favor and accommodation to Civic Theatre, and is not assuming any responsibility or liability for any costs, fees, or other expenses in connection with this Agreement or the Project. Therefore, Civic Theatre shall indemnify, defend and hold the City harmless from any and all obligations, damages, penalties, costs, fees, judgments, claims, demands, and

any other liabilities arising in any way in connection with the performance of this Agreement, including without limitation any amounts owed to the WEDC as a result of a breach or a claimed breach of the terms of the CDI Grant Agreement by either the City or the Civic Theatre.

9. **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. The City shall not participate in, or have any responsibilities connected with, the Project in any way other than the City's specific obligations in this Agreement.
10. **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.
11. **Assignment Prohibited.** This Agreement, and the Civic Theatre's responsibilities under this Agreement, may not be assigned by the Civic Theatre without the City's written consent.
12. **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 Civic Theatre:
Executive Director
Waukesha Civic Theatre
264 W Main Street
Waukesha WI 53186

13. **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.
14. **Integration.** This Agreement constitutes the entire agreement of the Parties. All other agreements and understandings of the parties with respect to the subject matter expressed in this Agreement are unenforceable.

Executed this _____ day of _____, 2022.

City of Waukesha

Shawn N. Reilly, Mayor

Gina L. Kozlik, Clerk-Treasurer

Waukesha Civic Theatre, Inc.

(sign above)

Print name: _____

Title: _____

(sign above)

Print name: _____

Title: _____

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

This Agreement is entered into pursuant to Chapter 238 of the Wisconsin Statutes between the Wisconsin Economic Development Corporation (“WEDC”), a public body corporate and politic authorized to grant funds for the purpose of economic development pursuant to Chapter 238 of the Wisconsin Statutes, and City of Waukesha (“Recipient”). Certain capitalized terms are defined in Section 1 of the Agreement.

WITNESSETH

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

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

WHEREAS, in reliance upon the Application, WEDC has approved the Recipient for up to Two Hundred Fifty Thousand Dollars (\$250,000) 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 Section 21 of this Agreement.

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

(c) “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.

(d) “Effective Date” means the date on which this Agreement is fully executed by both parties.

(e) “Eligible Project Costs” means costs for which CDI Funds and Matching Funds may be used, as outlined in Section 3(b) of this Agreement, which the Recipient incurs between the Project Start Date and Project End Date.

(f) “Ineligible Costs” means costs for which CDI Funds and Matching Funds may not be used, means costs incurred prior to the Project Start Date; costs for acquisition; costs related to grant applications or bid preparation; costs which may be covered by other grant or statutory programs; permits; Phase I and II environmental studies; Lien claims of the Department of Natural Resources and Environmental Protection Agency; performance and payment bonds; contingencies; developer fees; insurance premiums; supplies and the purchase of moveable equipment; signage and advertising; financing fees, interest payments, or the assumption of debt; relocation fees; accounting, legal, appraisal, and architectural fees; mergers and acquisitions; project administration fees, including costs associated with WEDC compliance reporting, schedules of expenditures, and payment requests.

(g) “Leverage” means all funding provided for the Project other than CDI Funds, including Matching Funds.

(h) “Matching Funds” means non-WEDC funds secured by the Recipient to meet the match requirement of CDI Funds under this Agreement. Eligible Matching Funds must be incurred between the Project Start Date and Project End Date. In order to receive the full amount of CDI Funds contemplated under this Agreement, Matching Funds must be at least Seven Hundred Fifty Thousand Dollars (\$750,000). No more than Fifty Percent (50%) of the Matching Funds may consist of other state and/or federal grants. Matching Funds must be cash and may not be in-kind.

(i) “Project” means the Recipient assisting in the expansion and restoration of the Waukesha Civic Theatre, in accordance with the Application and the terms of this Agreement.

(j) “Project End Date” means December 31, 2023, the date by which the Project will be complete and the last day which the Recipient may incur costs against CDI Funds and Matching Funds.

(k) “Project Location” means the site or sites at which the Project will take place, specifically 264 and 270 West Main Street, Waukesha, Wisconsin.

(l) “Project Start Date” means April 13, 2022, the date on which the Project begins and the Recipient may start incurring costs against CDI Funds and Matching Funds.

(m) “Recipient” means City of Waukesha.

(n) “WEDC” means the Wisconsin Economic Development Corporation, together with its successors and assigns.

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 Two Hundred Fifty Thousand Dollars (\$250,000) in CDI Funds.

3. Recipient’s Obligations. The Recipient will or will ensure that:

(a) The Project is completed as it is contemplated in the Application and in accordance with the terms of this Agreement.

(b) CDI Funds and Matching Funds are used for Eligible Project Costs, incurred between the Project Start Date and Project End Date, as outlined in the following budget:

USES		SOURCES			TOTAL
Budget Code	Eligible Project Costs	CDI Funds	Private Funds	Public Funds	
0190	Site Clearance	\$100,910	\$69,504	\$0	\$170,414
0385	Renovation	\$149,090	\$2,553,354	\$10,000	\$2,712,444
TOTAL		\$250,000	\$2,622,858	\$10,000	\$2,882,858

(i) Eligible Project Costs to be applied to CDI Funds for site clearance include specifically select demolition of wall & ceiling systems, door systems, finishes, and mechanical, electrical and plumbing systems.

(ii) Eligible Project Costs to be applied to CDI Funds for renovation include specifically renovation and construction of the existing commercial and theatre buildings, including specific site preparation.

(iii) Eligible Project Costs to be applied to Matching Funds for site clearance include specifically select demolition of wall & ceiling systems, door systems, finishes, mechanical, electrical, and plumbing systems, shoring of walls and ceiling systems for structural modifications at building expansion.

(iv) Eligible Project Costs to be applied to Matching Funds for renovation include specifically renovation and construction of the existing commercial and theatre buildings, including specific site preparation.

(c) CDI Funds or Matching Funds are not used for Ineligible Costs.

(d) Matching Funds from non-WEDC sources are secured sufficient to achieve the match requirement of the CDI Funds under this Agreement. Matching Funds must equal at least Seven Hundred Fifty Thousand Dollars (\$750,000) in order for the Recipient to obtain the maximum amount of the CDI Funds, and must be documented prior to the final reimbursement.

(e) WEDC's participation in the Project is acknowledged in any signage at the Project Location and any planning and feasibility documents related to the Project.

(f) Reports are provided to WEDC as further described in Section 5 of this Agreement, in such form as required by WEDC.

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 CDI Funds in up to Three (3) disbursements and each disbursement will be contingent on the following:

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

(b) Recipient creating a Bill.com account unless Recipient has an existing account with Bill.com. Instructions for creating a Bill.com account will be provided by WEDC under separate cover. Recipient shall provide their Payment Network ID to WEDC with each request for payment.

(c) The Recipient submitting to WEDC a summary report of the Eligible Project Costs incurred against both the CDI Funds and Matching Funds. The amount of Matching Funds incurred for any request must be in an amount pro rata with the amount incurred against the CDI Funds being requested.

(d) The Recipient submitting to WEDC documentation evidencing that the Eligible Project Costs incurred at the Project Location against both the CDI Funds and the Matching Funds covered by the request have been purchased or will be purchased through an invoice, receipt, registration form, or other third-party documentation that contains the following information:

- (i) Vendor name and contact information;
- (ii) Description of the item(s) purchased;
- (iii) Cost of purchase;
- (iv) Date of purchase (invoice date or date received, not date ordered unless it is the same).

(e) The Recipient being in compliance with this Agreement, and with any other agreements by and between the Recipient and WEDC.

(f) The Recipient requesting all CDI Funds no later than February 29, 2024.

5. Reporting. The Recipient shall provide reports and information to WEDC according to the following requirements:

(a) Performance reports, due according to the Schedule of Reporting set forth in Section 5(b) below, in such form as required by WEDC. The report shall include information required by WEDC to determine Project performance which shall include, at a minimum, a financial overview and narrative summary on the progress of the Project to date, Project expenditures, and the Recipient's progress on achieving the goals related to the following Project-specific metrics:

Metric	Goal*
Taxable Property Value	\$450,000
Capital Investment	\$2,882,858
Leverage – Total	\$4,004,379

*These goals represent anticipated Project outcomes and failure to achieve these goals will not constitute an Event of Default, unless they are noted as a requirement elsewhere in the Agreement.

(b) Schedule of Reporting:

PERIOD COVERED	DOCUMENTATION	DUE DATE
See Section 6 Below	Schedule of Expenditures	See Section 6 Below
April 13, 2022- March 31, 2023	Performance Report	June 1, 2023
April 13, 2022 – December 31, 2023	Performance Report	March 1, 2024

(c) Within Thirty (30) days, notify WEDC in writing of any event or occurrence that may adversely impact the completion of the Project as represented in Recipient’s Application. Adverse impacts include, but are not limited to, lawsuits, regulatory intervention, and inadequate capital to complete the Project.

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 false or misleading information.

(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.

(d) The Recipient is in default under any other agreement between WEDC and the Recipient.

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 attorneys' fees incurred by WEDC in terminating this 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 Effective Date and as long as Recipient has obligations under 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 or to otherwise engage in its business.

(b) The Recipient is not in default under the terms of any loan, lease or financing agreements with any creditor where such default would have a material adverse effect on the Recipient's ability to fulfill its obligations under this Agreement.

(c) The financial statements and other information provided by the Recipient to WEDC are complete and accurate in accordance in all material respects with Generally Accepted Accounting Principles where applicable and have been relied on by WEDC in deciding whether to enter into this Agreement with the Recipient.

(d) There are no actions, suits or proceedings, whether litigation, arbitration, or administrative, pending or threatened against or affecting the Recipient or the Project which, if adversely determined, would individually or in the aggregate materially impair the ability of the Recipient to perform any of its obligations under this Agreement or adversely affect the financial condition or the assets of the Recipient.

(e) The Recipient is unaware of any conditions which could subject it to any damages, penalties or clean-up costs under any federal or state environmental laws which would have a material adverse effect on the Recipient's ability to comply with this Agreement.

(f) The Recipient has, or will acquire before commencing any work for which they are required, all necessary permits, licenses, certificates or other approval, governmental or otherwise, necessary to operate its business and own and operate its assets, all of which are in full force and effect and not subject to proceedings to revoke, suspend, forfeit or modify.

(g) The Recipient has filed when due all federal and state income and other tax returns required to be filed by the Recipient and has paid all taxes shown thereon to be due. The Recipient has no knowledge of any uncompleted audit of the returns or assessment of additional taxes thereon.

(h) The Recipient and the undersigned officer thereof has all necessary or requisite power and authority to execute and deliver this Agreement.

(i) The execution and delivery by the Recipient of this Agreement has been duly authorized by all necessary action of the Recipient and no other proceedings on the part of the Recipient are necessary to authorize this Agreement or to consummate the transactions contemplated hereby.

(j) The Recipient has available or has the capacity to secure funds necessary to cover, as and when incurred, the costs and expenditures necessary for completion of the Project, as identified in the Application and this Agreement.

(k) The Recipient is not making these representations and warranties specifically based upon information furnished by WEDC.

(l) These warranties and representations herein are true and accurate as of the Effective Date of this Agreement, and shall survive the execution thereof.

(m) The information disclosed to WEDC in the course of WEDC's evaluation of the Recipient's eligibility for the Program does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole and in light of the circumstances under which they were made, not misleading.

10. Wisconsin Public Records Law. 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, Wis. Stats. §§ 19.31-.39, and any successor statutes and regulations.

11. Additional Requirements.

(a) Project Records and Financial 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, whether held by the Recipient or by a third-party conducting Project-related activities on behalf of the Recipient, and the performance reports provided to WEDC. All of the Recipient's financial records shall be complete and accurate, and prepared, kept, and maintained in accordance with Generally Accepted Accounting Principles. The Recipient shall provide such

records to WEDC during the term of this Agreement as may be requested by WEDC. Such materials shall be retained by the Recipient for a period of at least Three (3) years after March 1, 2024.

(b) Inspection.

(i) WEDC and its respective agents, shall, upon Forty-Eight (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 inspection, examination, auditing and copying, upon reasonable advance notice, any and all records which relate to this Agreement, whether held by the Recipient or by a third-party conducting Project-related activities on behalf of the Recipient.

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

(c) Authorization to Receive Confidential Information. The Recipient hereby authorizes WEDC to request and receive confidential information that the Recipient has submitted to, including any adjustments to such information by, the Wisconsin Department of Revenue ("DOR") and the Wisconsin Department of Workforce Development ("DWD"), and to use such information solely for the purposes of assessing the Recipient's performance for the duration of the Project and ensuring that WEDC is properly administering or evaluating economic development programs. With regard to the information contained in the DWD unemployment insurance files, WEDC may access the following for the Eight (8) most recent quarters: the quarterly gross wages paid to the Recipient's employees; the monthly employee count; and the Recipient's FEIN, NAICS code, and legal and trade names. The Recipient also authorizes WEDC to share information submitted to WEDC by the Recipient with the DOR and DWD and to redisclose to the public the information received from the DOR and DWD used to evaluate the Recipient's performance under their specific economic development program and the impact of WEDC economic development programs. Records exempted from the public records law by Wis. Stat. § 19.36(1) will be handled by WEDC in accordance with that law.

(d) Consolidation or Merger. During the term of this Agreement, the Recipient shall provide written notice to WEDC within Thirty (30) days of any consolidation or merger with or into any other unrelated corporation or business entity.

(e) Public Announcement. The Recipient agrees to cooperate with WEDC in making a public announcement of this Agreement.

(f) Insurance. The Recipient covenants that it will maintain insurance in such amounts and against such liabilities and hazards as customarily is maintained by other companies operating similar businesses.

(g) Online Portal and Document Delivery. Recipient agrees to respond timely to any invitation sent by WEDC to create an online account for use with WEDC's online customer portal

("Portal"). Upon opening the account, Recipient hereby agrees to use the Portal to submit any required performance reports, schedule of expenditures and supporting documentation, unless WEDC directs otherwise. Recipient further agrees to identify appropriate assigned users, duly authorized by Recipient, to serve as contacts, to execute necessary documents, and to support specific tasks Recipient must complete in the Portal. WEDC may, in its sole discretion, rely on any document, performance report, schedule of expenditures, financial statement, tax return, agreement or other communication ("Document") physically delivered to WEDC by mail, hand delivery, delivery service, email, facsimile, the Portal or other electronic means which WEDC in good faith believes was sent by Recipient or any representatives or employees of Recipient. WEDC may treat any Document as genuine and authorized to the same extent as if it was an original document validly executed or authenticated as genuine by Recipient. WEDC may from time to time in its sole discretion reject any such Document and require a signed original or require Recipient to provide acceptable authentication of any such Document before accepting or relying on the same. Recipient understands and acknowledges that there is risk that Documents sent by electronic means may be viewed or received by unauthorized persons and Recipient agrees by sending Documents by electronic means that Recipient shall be deemed to have accepted this risk and the consequences of any such unauthorized disclosure. Recipient also agrees to create an account with Bill.com and provide a Payment Network ID in order to receive any payments from WEDC. Recipient accepts any risk associated with creating an account with Bill.com and releases WEDC from any liability related thereto.

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, ATTORNEYS' FEES AND OTHER AMOUNTS THAT MAY BE OWED BY THE RECIPIENT HEREUNDER. THIS JURY TRIAL WAIVER CONSTITUTES A SUBSTANTIAL CONSIDERATION FOR AND INDUCEMENT TO THE PARTIES TO ENTER INTO THIS AGREEMENT.

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. If any provision of this Agreement is held invalid or unenforceable by any Governmental Body of competent jurisdiction, such invalidity or unenforceability shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid or unenforceable, and an equitable adjustment shall be made and necessary provisions added so as to give effect to the intention of the parties as expressed in this Agreement at the time of the execution of this Agreement and of any amendments to this Agreement. In furtherance of and not in limitation of the foregoing, the parties expressly stipulate that this Agreement shall be construed in a manner which renders its provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable law. "Governmental Body" means any federal, state, local, municipal, foreign or other government; courts, arbitration commission, governmental or quasi-governmental authority of any nature; or an official of any of the foregoing.

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.

[Signature Page Follows]

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: _____
Melissa L. Hughes, Secretary and CEO
Date _____

CITY OF WAUKESHA

By: _____
Shawn Reilly, Mayor
Date _____

Notices to the Recipient hereunder shall be in writing and shall be deemed to have been given: (i) at the time it is sent, as recorded by the WEDC's system, when sent by electronic mail during a business day or, if sent after the close of normal business hours on a business day or sent on a non-business day, at the start of normal business hours on the next business day or (ii) Three (3) Business Days after deposit in the United States mail, certified and with proper postage prepaid, addressed as follows:

City of Waukesha
201 Delafield St.
Waukesha, WI 53188
Attn: Brian Brunning
Email: brunning@waukesha-wi.gov

Notices to WEDC hereunder shall be in writing and shall be deemed to have been given: (i) at the time it is sent, as recorded by Recipient's system, when sent by electronic mail during a business day or, if sent after the close of normal business hours on a business day or sent on a non-business day, at the start of normal business hours on the next business day or (ii) Three (3) Business Days after deposit in the United States mail, certified and with proper postage prepaid, addressed as follows:

Wisconsin Economic Development Corporation
Division of Credit & Risk
P.O. Box 1687
Madison, WI 53701
Attn: Community Development Investment
Email: legal@wedc.org
Contract # CDI FY22-53210

**EXHIBIT A
REQUEST FOR WEDC PAYMENT**

Award Number: CDI FY22-53210		Rep:	Recipient: City of Waukesha
FEIN #	Bill.com Payment Network ID (PNI):		Request Number:
Program: Community Development Investment			Award Type: Grant
Funding Period Covered by this Request From: _____ To _____			

PROJECT EXPENSES INCURRED/PAID DURING THIS PERIOD (see attachment)

Budget Code	Description Line Item	WEDC Funding This Period	+	Matching Funding This Period	=	Total This Period
0190	Site Clearance					
0385	Renovation					
TOTAL:						

Check here if this is the Final Request for Payment. If there is a balance remaining on the Project it may be lapsed.

PAYMENT/PROJECT EXPENSE/MATCH DESCRIPTION - Disbursement

Prior to the release of funds, the following requirements must be met (to be initialed by WEDC staff):

- Recipient creating a Bill.com account unless Recipient has an existing account with Bill.com. Instructions for creating a Bill.com account will be provided by WEDC under separate cover. Recipient shall provide their Payment Network ID to WEDC with each request for payment. _____
- The Recipient submitting to WEDC a summary report of the Eligible Project Costs incurred against both the CDI Funds and Matching Funds. The amount of Matching Funds incurred for any request must be in an amount pro rata with the amount incurred against the CDI Funds being requested. _____
- The Recipient submitting to WEDC documentation evidencing that the Eligible Project Costs incurred at the Project Location against both the CDI Funds and Matching Funds covered by the disbursement request have been purchased or will be purchased through an invoice, receipt, registration form, or other third-party documentation that contains the following information: Vendor name and contact information; Description of the item(s) purchased; Cost of purchase; Date of purchase (invoice date or date received, not date ordered unless it is the same). _____
- The Recipient being in compliance with this Agreement, and with any other agreements by and between the Recipient and WEDC. _____
- The Recipient requesting all CDI Funds no later than February 29, 2024. _____

I hereby certify that the expenses reported on this form are in accordance with the terms of the Agreement and that complete and accurate records are being kept to substantiate such expenses.

Authorized Recipient Signature

Date

WEDC Division VP or Designee

Date

WEDC Servicing

Date

WEDC Controller or Finance Department

Date

Retain a copy of the completed form for your records and email a copy of the original and documentation to:
disbursements@wedc.org. The hard copy may be required to be sent upon request.