MEMORANDUM

Date: June 28, 2012

To: Administration Committee
From: Pamela A. Captain, City Attorney

RE: Insurance and Fire Station #2 Update

On Monday, June 25, LGPIF sent its own contractor/appraiser to estimate the damages on Fire Station #2 (excerpt attached). The insurance company estimate of the damages totals: $17,649.48. This is considerably less than the estimate of damages provided by the City which totaled: $36,783. The largest discrepancy between the estimates is attributable to site demolition, allowances, design fees, contingency and profit margin added to the City's estimate totaling approximately $14,300.

Please remember that this is not the usual insurance claim matter. Usually, upon incurring damages, repairs are made and an actual bill is provided to the insurance company for reimbursement. In this case, the City has not decided what to do with respect to the building – repair it, sell it "as is" or demolish it.

At this point, the minimum insurance proceeds appear to be $17,649.48.

140 Main Street • Menasha, Wisconsin 54952-3151 • Phone (920) 967-3600 • Fax (920) 967-5273
www.cityofmenasha-wi.gov

CRAWFORD & COMPANY

175 N. PATRICK BLVD. STE 100
PHONE (262) 957-5012
FAX (262) 794-9153
CELL (262) 825-2259
mccyga@us.crawco.com

CONTINUED - Garage

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
15. Scaffold - per section (per week)	18.00 WK	35.74	643.32	(0.00)	643.32
16. Structural Shoring	1.00 EA	3,345.00	3,345.00	(0.00)	3,345.00
17. Gutter / downspout - aluminum - 7" to 8"	24.00 LF	13.83	331.92	(0.00)	331.92
18. R&R Soffit & fascia - metal - 4' overhang	60.00 LF	15.77	946.20	(0.00)	946.20
19. Electrical (Bid Item)	1.00 EA	2,500.00	2,500.00	(0.00)	2,500.00
20. Heat, Vent, & Air Conditioning (Bid Item)	1.00 EA	4,000.00	4,000.00	(0.00)	4,000.00
21. Metal Structure Installer - per hour	24.00 HR	58.75	1,410.00	(0.00)	1,410.00
Misc structural repairs as required.					
Totals: Garage			**17,649.48**	**0.00**	**17,649.48**
Total: Main Level			**17,649.48**	**0.00**	**17,649.48**
Total: Fire Station #2			**17,649.48**	**0.00**	**17,649.48**

Hart Park

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
22. Replace (1) line post and 42' of top rail - straighten (1) end post	1.00 EA	582.00	582.00	(0.00)	582.00
Totals: Hart Park			**582.00**	**0.00**	**582.00**

Police Department

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
23. Damaged Computer Equipment	1.00 EA	2,723.57	2,723.57	(0.00)	2,723.57
Per the receipts furnished by the insured including labor breakdown.					
Totals: Police Department			**2,723.57**	**0.00**	**2,723.57**

Approved by the Wisconsin Department of Regulation and Licensing
4-1-00 (Optional Use Date)
9-1-00 (Mandatory Use Date)

WB-15 COMMERCIAL OFFER TO PURCHASE

~~BROKER DRAFTING THIS OFFER ON _____ [DATE] AS (AGENT OF SELLER) (AGENT OF BUYER) (DUAL AGENT) STRIKE TWO~~

GENERAL PROVISIONS The Buyer, Endter Investments, LLC or assigns, offers to purchase the Property known as [Street Address] 901 Airport Road, a/k/a City of Menasha Fire Station #2 in the City of Menasha, County of Winnebago, Wisconsin, (Insert additional description, if any, at lines 293 - 297 or attach as an addendum per line 298), on the following terms:

■ PURCHASE PRICE: Eighty Thousand and 00/100 Dollars Dollars ($ 80,000.00).

■ EARNEST MONEY of $ 00.00 accompanies this Offer and earnest money of $ $5,000.00 will be paid within 30 days of acceptance.

■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.

■ ADDITIONAL ITEMS INCLUDED IN PURCHASE PRICE: Seller shall include in the purchase price and transfer, free and clear of encumbrances, all fixtures, as defined at lines 117 - 120 and as may be on the Property on the date of this Offer, unless excluded at lines 15 - 16, and the following additional items: _____

■ ITEMS NOT INCLUDED IN THE PURCHASE PRICE: ***CAUTION: Address rented fixtures or trade fixtures owned by tenants, if applicable.*** _____

All personal property included in purchase price will be transferred by bill of sale or _____.

ACCEPTANCE Acceptance occurs when all Buyers and Sellers have signed an identical copy of the Offer, including signatures on separate but identical copies of the Offer. ***CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines running from acceptance provide adequate time for both binding acceptance and performance.***

BINDING ACCEPTANCE This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before May 30, 2012. ***CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.***

DELIVERY OF DOCUMENTS AND WRITTEN NOTICES Unless otherwise stated in this Offer, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 25 - 34.

(1) By depositing the document or written notice postage or fees prepaid in the U.S. Mail or fees prepaid or charged to an account with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery designated at lines 28 or 30 (if any), for delivery to the Party's delivery address at lines 29 or 31.

Seller's recipient for delivery (optional): Mayor Don Merkes

Seller's delivery address: City of Menasha City Hall, 140 Main Street, Menasha, WI

Buyer's recipient for delivery (optional): Chris Endter with a copy to Andrew Rossmeissl, 800 N. Lynndale Drive, Appleton, WI

Buyer's delivery address: 1190 Goss Avenue, Menasha, WI

(2) By giving the document or written notice personally to the Party or the Party's recipient for delivery if an individual is designated at lines 28 or 30.

(3) By fax transmission of the document or written notice to the following telephone number:

Buyer: (_____) _____ Seller: (_____) _____

LEASED PROPERTY If Property is currently leased and lease(s) extends beyond closing, Seller shall assign Seller's rights under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written)(oral) STRIKE ONE lease(s), if any, are Seller represents that there are no leases affecting the subject property.

RENTAL WEATHERIZATION This transaction (is) (is not) STRIKE ONE exempt from State of Wisconsin Rental Weatherization Standards (Wisconsin Administrative Code, Comm 67). If not exempt, (Buyer) (Seller) STRIKE ONE will be responsible for compliance, including all costs. If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at closing.

PLACE OF CLOSING This transaction is to be closed at the place designated by Buyer's mortgagee or Evans Title Company no later than July 30, 2012 unless another date or place is agreed to in writing.

CLOSING PRORATIONS The following items shall be prorated at closing: real estate taxes, rents, water and sewer use charges, garbage pick-up and other private and municipal charges, property owner's association assessments, fuel, payments under governmental agricultural programs and _____. Any income, taxes or expenses shall accrue to Seller and be prorated through the day prior to closing. Net general real estate taxes shall be prorated based on (the net general real estate taxes for the current year, if known, otherwise on the net general real estate taxes for the preceding year) (_____). STRIKE AND COMPLETE AS APPLICABLE ***CAUTION: If Property has not been fully assessed for tax purposes (for example, recent land division or completed/pending reassessment) or if proration on the basis of net general real estate taxes is not acceptable (for example, changing mill rate), insert estimated annual tax or other basis for proration.***

PROPERTY CONDITION PROVISIONS

■ PROPERTY CONDITION REPRESENTATIONS: Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge of conditions affecting the Property or transaction other than those identified in Seller's Real Estate Condition Report dated _____, which was received by Buyer prior to Buyer signing this Offer and which is made a part of this Offer by reference COMPLETE DATE OR STRIKE AS APPLICABLE and _____ INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT .

■ A "condition affecting the Property or transaction" is defined as follows:
(a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property or the present use of the Property;
(b) government agency or court order requiring repair, alteration or correction of any existing condition;
(c) completed or pending reassessment of the Property for property tax purposes;
(d) structural inadequacies which if not repaired will significantly shorten the expected normal life of the Property;
(e) any land division involving the Property, for which required state or local approvals were not obtained;
(f) construction or remodeling on the Property for which required state or local approvals were not obtained;
(g) any portion of the Property being in a 100 year floodplain, a wetland or shoreland zoning area under local, state or federal regulations;
(h) that a structure on the Property is designated as a historic building or that any part of the Property is in a historic district;
(i) material violations of environmental laws or other laws or agreements regulating the use of the Property;
(j) conditions constituting a significant health or safety hazard for occupants of the Property;
(k) underground or aboveground storage tanks for storage of flammable, combustible or hazardous materials including but not limited to gasoline and heating oil, which are currently or which were previously located on the Property; ***NOTE: The Wisconsin Administrative Code contains registration and operation rules for such underground storage tanks.***
(l) high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property;
(m) material levels of hazardous substances located on Property or previous storage of material amounts of hazardous substances on Property;
(n) other conditions or occurrences which would significantly reduce the value of the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence.

■ PROPERTY DIMENSIONS AND SURVEYS: Buyer and Seller acknowledge that any Property, building or room dimensions, or total acreage or building square footage figures, provided to Buyer or Seller may be approximate because of rounding or other reasons, unless verified by survey or other means. Buyer also acknowledges that there are various formulas used to calculate total square footage of buildings and that total square footage figures will vary dependent upon the formula used. ***CAUTION: Buyer should verify total square footage formula, Property, building or room dimensions, and total acreage or square footage figures, if material to Buyer's decision to purchase.***

■ INSPECTIONS: Seller agrees to allow Buyer's inspectors reasonable access to the Property upon reasonable notice if the inspections are reasonably necessary to satisfy the contingencies in this Offer. Buyer agrees to promptly provide copies of all such inspection reports to Seller, and to listing broker if Property is listed. Furthermore, Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections are completed, unless otherwise agreed with Seller. An "inspection" is defined as an observation of the Property which does not include testing of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized.

■ TESTING: Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of these materials. If Buyer requires testing, testing contingencies must be specifically provided for at lines 293 - 297 or in an addendum per line 298. Note: Any contingency authorizing such tests should specify the areas of the Property to be tested, the purpose of the test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the contingency (e.g., Buyer's obligation to return the Property to its original condition). Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

■ PRE-CLOSING INSPECTION: At a reasonable time, pre-approved by Seller or Seller's agent, within 3 days before closing, Buyer shall have the right to inspect the Property to determine that there has been no significant change in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any defects Seller has elected to cure have been repaired in a good and workmanlike manner.

■ ENVIRONMENTAL SITE ASSESSMENT: An "environmental site assessment" (also known as a "Phase I Site Assessment")(see lines 279 to 283) may include, but is not limited to: (1) an inspection of the Property; (2) a review of the ownership and use history of the Property, including a search of title records showing private ownership of the Property for a period of 80 years prior to the visual inspection; (3) a review of historic and recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property; (5) an evaluation of results of any environmental sampling and analysis that has been conducted on the Property; and (6) a review to determine if the Property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment including the National Priorities List, the Department of Natural Resources' (DNR) registry of Abandoned Landfills, the DNR's Registry of Leaking Underground Storage Tanks, the DNR's most recent remedial response site evaluation report (including the Inventory of Sites and Facilities Which May Cause or Threaten to Cause Environmental Pollution). Any "environmental site assessment" performed under this Offer shall comply with generally recognized industry standards (e.g. current American Society of Testing and Materials "Standards for Environmental Site Assessments for Commercial Real Estate"), and state and federal guidelines, as applicable. ***CAUTION: Unless otherwise agreed an "environmental site assessment" does not include subsurface testing of the soil or groundwater or other testing of the Property for environmental pollution.***

■ PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING: Seller shall maintain the Property until the earlier of closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior to closing, the Property is damaged in an amount of not more than five per cent (5%) of the selling price, Seller shall be obligated to repair the Property and restore it to the same condition that it was on the day of this Offer. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at the option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy. However, if this sale is financed by a land contract or a mortgage to Seller, the insurance proceeds shall be held in trust for the sole purpose of restoring the Property.

FIXTURES A "Fixture" is an item of property which is physically attached to or so closely associated with land and improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the Property, items specifically adapted to the Property, and items customarily treated as fixtures. A "fixture" does not include trade fixtures owned by tenants of the Property. See Lines 11 to 17.

OCCUPANCY Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 293 - 297 or in an addendum per line 298. Occupancy shall be given subject to tenant's rights, if any.

SPECIAL ASSESSMENTS Special assessments, if any, for work actually commenced or levied prior to date of this Offer shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer. CAUTION: Consider a special agreement if area assessments, property owner's association assessments or other expenses are contemplated. "Other expenses" are one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments) relating to curb, gutter, street, sidewalk, sanitary and stormwater and storm sewer (including all sewer mains and hook-up and interceptor charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. § 66.55(1)(c) & (f).

PROPERTY ADDRESS: 901 Airport Road, Menasha, WI

OPTIONAL FINANCING CONTINGENCY: THE CONTINGENCY AT LINES 132 THROUGH 160 IS A PART OF THIS OFFER IF MARKED, SUCH AS WITH AN "X," AT LINE 132. IT IS NOT PART OF THIS OFFER IF IT IS MARKED N/A OR LEFT BLANK.

[X] **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain: [CHECK APPLICABLE FINANCING BELOW]

[ ] land contract financing from Seller at closing as further described at lines 136 to 153 and 161 to 168.

[X] a conventional [INSERT LOAN PROGRAM] (fixed) (adjustable) [STRIKE ONE] rate first mortgage loan commitment as further described at lines 136 to 149 and 154 to 178, within 30 days of acceptance of this Offer. The financing selected shall be in an amount of not less than $ 80,000.00 for a term of not less than 20 years, amortized over not less than 20 years. If the purchase price under this Offer is modified, the financed amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.

IF FINANCING IS FIXED RATE the annual rate of interest shall not exceed 5% % and monthly payments of principal and interest shall not exceed $ N/A .

IF FINANCING IS ADJUSTABLE RATE the initial annual interest rate shall not exceed _____ %. The initial interest rate shall be fixed for _____ months, at which time the interest rate may be increased not more than _____ % per year. The maximum interest rate during the mortgage term shall not exceed _____ %. Initial monthly payments of principal and interest shall not exceed $ _____ . Monthly payments of principal and interest may be adjusted to reflect interest changes.

MONTHLY PAYMENTS MAY ALSO INCLUDE 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay a loan fee in an amount not to exceed _____ % of the loan. (Loan fee refers to discount points and/or loan origination fee, but DOES NOT include Buyer's other closing costs.) Note: Unless otherwise agreed, Buyer's delivery of any document labeled a loan commitment will satisfy this contingency.

IF FINANCING IS BY LAND CONTRACT $ _____ shall be paid at closing (in addition to earnest money), interest rate following payment default shall be _____ %, the default period shall be _____ days for payments and _____ days for performance of any other obligations. Interest shall be calculated on a prepaid basis. Any amount may be prepaid on principal without penalty at any time. Buyer understands that if the term of the land contract is shorter than the amortization period a balloon payment will be due at the end of the term.

LOAN COMMITMENT: Buyer agrees to pay all customary financing costs (including closing fees), to apply for financing promptly, and to provide evidence of application promptly upon request by Seller. If Buyer qualifies for the financing described in this Offer or other financing acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline for loan commitment at line 135. **Buyer's delivery of a copy of any written loan commitment (even if subject to conditions) shall satisfy the Buyer's financing contingency unless accompanied by a notice of unacceptability.** ***CAUTION: BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHOULD NOT DELIVER A LOAN COMMITMENT TO SELLER WITHOUT BUYER'S PRIOR APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.***

LAND CONTRACT: If this Offer provides for a land contract both Parties agree to execute a State Bar of Wisconsin Form 11 Land Contract, the terms of which are incorporated into this Offer by reference. Prior to execution of the land contract Seller shall provide the same evidence of merchantable title as required above and written proof, at or before execution, that the total underlying indebtedness, if any, is not in excess of the proposed balance of the land contract, that the payments on the land contract are sufficient to meet all of the obligations of Seller on the underlying indebtedness, and that all creditors whose consent is required have consented to the land contract sale. Seller may terminate this Offer if creditor approval cannot be obtained. Seller may terminate this Offer if Buyer does not provide a written credit report which indicates that Buyer is credit worthy based upon reasonable underwriting standards within 15 days of acceptance. Buyer shall pay all costs of obtaining creditor approval and the credit report. Seller shall be responsible for preparation and the expense of preparation of all closing documentation, including the land contract.

FINANCING UNAVAILABILITY: If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is named in the financing contingency, Seller shall then have 10 days to give Buyer written notice of Seller's decision to finance this transaction on the same terms set forth in the financing contingency, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

SELLER TERMINATION RIGHTS: If Buyer does not make timely delivery of the loan commitment, Seller may terminate this Offer provided that Seller delivers a written notice of termination to Buyer prior to Seller's actual receipt of a copy of Buyer's written loan commitment.

NOTE: IF PURCHASE IS CONDITIONED ON BUYER OBTAINING FINANCING FOR OPERATIONS OR DEVELOPMENT CONSIDER ADDING A CONTINGENCY FOR THAT PURPOSE.

[TITLE EVIDENCE]

■ CONVEYANCE OF TITLE: Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or other conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, general taxes levied in the year of closing and _____ (provided none of the foregoing prohibit present use of the Property), which constitutes merchantable title for purposes of this transaction. Seller further agrees to complete and execute the documents necessary to record the conveyance. ***WARNING: If Buyer contemplates improving or developing Property, or a change in use, Buyer may need to address municipal and zoning ordinances, recorded building and use restrictions, covenants and easements which may prohibit some improvements or uses. The need for building permits, zoning variances, environmental audits,***

etc., may need to be investigated to determine feasibility of improvements, development or use changes for Property. Contingencies for investigation of these issues may be added to this Offer. See lines 293 to 298.

■ FORM OF TITLE EVIDENCE: Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. ***CAUTION: IF TITLE EVIDENCE WILL BE GIVEN BY ABSTRACT, STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.***

■ PROVISION OF MERCHANTABLE TITLE: Seller shall pay all costs of providing title evidence. For purposes of closing, title evidence shall be acceptable if the commitment for the required title insurance is delivered to Buyer's attorney or Buyer not less than 3 business days before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable, subject only to liens which will be paid out of the proceeds of closing and standard abstract certificate limitations or standard title insurance requirements and exceptions, as appropriate. ***CAUTION: BUYER SHOULD CONSIDER UPDATING THE EFFECTIVE DATE OF THE TITLE COMMITMENT PRIOR TO CLOSING, A "GAP ENDORSEMENT" TO THE TITLE COMMITMENT OR AN ESCROW CLOSING.***

■ TITLE ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove the objections, Buyer shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

DELIVERY/RECEIPT Unless otherwise stated in this Offer, any signed document transmitted by facsimile machine (fax) shall be treated in all manner and respects as an original document and the signature of any Party upon a document transmitted by fax shall be considered an original signature. Personal delivery to, or actual receipt by, any named Buyer or Seller constitutes personal delivery to, or actual receipt by Buyer or Seller. Once received, a notice cannot be withdrawn by the Party delivering the notice without the consent of the Party receiving the notice. A Party may not unilaterally reinstate a contingency after a notice of a contingency waiver has been received by the other Party. **The delivery/receipt provisions in this Offer may be modified when appropriate (e.g., when mail delivery is not desirable (see lines 25 - 31)).** Buyer and Seller authorize the agents of Buyer and Seller to distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction.

DATES AND DEADLINES Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated by excluding the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and other day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at midnight of that day.

DEFAULT Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions of this Offer. A material failure to perform any obligation under this Offer is a default which may subject the defaulting party to liability for damages or other legal remedies.

If Buyer defaults, Seller may:

(1) sue for specific performance and request the earnest money as partial payment of the purchase price; or

(2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) direct Broker to return the earnest money and have the option to sue for actual damages.

If Seller defaults, Buyer may:

(1) sue for specific performance; or

(2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

In addition, the Parties may seek any other remedies available in law or equity.

The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement. NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

EARNEST MONEY

■ HELD BY: Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker (buyer's agent if Property is not listed or seller if no broker is involved), until applied to purchase price or otherwise disbursed as provided in the Offer. ***CAUTION: Should persons other than a broker hold earnest money, an escrow agreement should be drafted by the Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special disbursement agreement.***

■ DISBURSEMENT: If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer (Note: Wis. Adm. Code § RL 18.09(1)(b) provides that an offer to purchase is not a written disbursement agreement pursuant to which the broker may disburse). If the disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed $250, prior to disbursement.

■ LEGAL RIGHTS/ACTION: Broker's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by broker. At least 30 days prior to disbursement per (1) or (4) above, broker shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or Seller disagree with broker's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with 1-4 dwelling units and certain other earnest money disputes. The Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the broker harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Regulation and Licensing regulations concerning earnest money. See Wis. Adm. Code Ch. RL 18. NOTE: WISCONSIN LICENSE LAW PROHIBITS A BROKER FROM GIVING ADVICE OR OPINIONS CONCERNING THE LEGAL RIGHTS OR OBLIGATIONS OF PARTIES TO A TRANSACTION OR THE LEGAL EFFECT OF A SPECIFIC CONTRACT OR CONVEYANCE. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS REQUIRED.

PROPERTY ADDRESS: 901 Airport Road, Menasha, WI [page 5 of 5, WB- 15]

TIME IS OF THE ESSENCE "TIME IS OF THE ESSENCE" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy; (4) date of closing; (5) contingency deadlines STRIKE AS APPLICABLE and all other dates and deadlines in this Offer except: _____. If "Time is of the Essence" applies to a date or deadline, failure to perform by the exact date or deadline is a breach of contract. If "Time is of the Essence" does not apply to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

[ ] **DOCUMENT REVIEW CONTINGENCY:** This Offer is contingent upon Seller delivering the following documents to Buyer within _____ days of acceptance: CHECK THOSE THAT APPLY

- [ ] Documents evidencing that the sale of the Property has been properly authorized, if Seller is a business entity.
- [ ] A complete inventory of all furniture, fixtures and equipment included in this transaction which is consistent with representations made prior to and in this Offer.
- [ ] Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property to be free and clear of all liens, other than liens to be released prior to or at closing.
- [ ] Other _____

This contingency shall be deemed satisfied unless Buyer, within _____ days of the earlier of receipt of the final record to be delivered or the deadline for delivery of the documents, delivers to Seller a written notice indicating that this contingency has not been satisfied. The notice shall identify which document(s) have not been timely delivered or do not meet the standard set forth for the document(s).

[X] **ENVIRONMENTAL EVALUATION/INSPECTION CONTINGENCY:** This Offer is contingent upon: CHECK THOSE THAT APPLY

- [X] A qualified independent environmental consultant of Buyer's choice conducting an environmental site assessment of the Property (see lines 96 to 108), at (Buyer's)(Seller's) expense STRIKE ONE, which discloses no defects. A defect is defined as a material violation of environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of contaminating the Property due to future migration from other properties.
- [X] A qualified independent inspector of Buyer's choice conducting an inspection of the Property and N/A _____, at (Buyer's)(Seller's) expense STRIKE ONE, which discloses no defects. A defect is defined as a structural, mechanical or other condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health and safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or have a significantly adverse effect on the expected normal life of the Property.

This contingency shall be deemed satisfied unless Buyer, within 30 days of acceptance, delivers to Seller a copy of the environmental site assessment/inspection report(s) and a written notice listing the defect(s) identified in the environmental site assessment/inspection report(s) to which Buyer objects. Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer. Buyer agrees to deliver a copy of the report and notice to listing broker, if Property is listed, promptly upon delivery to Seller.

ADDITIONAL PROVISIONS/CONTINGENCIES See additional contingencies at Addendem A.

[X] **ADDENDA:** The attached Addendum A is/are made part of this Offer.

THIS OFFER, INCLUDING ANY AMENDMENTS TO IT, CONTAINS THE ENTIRE AGREEMENT OF THE BUYER AND SELLER REGARDING THE TRANSACTION. ALL PRIOR NEGOTIATIONS AND DISCUSSIONS HAVE BEEN MERGED INTO THIS OFFER. THIS AGREEMENT BINDS AND INURES TO THE BENEFIT OF THE PARTIES TO THIS OFFER AND THEIR SUCCESSORS IN INTEREST.

This Offer was drafted on May 14, 2012 [date] by [Licensee and firm] Andrew J. Rossmeissl, Herrling Clark Law Firm Ltd.

(X) _____ _____ 5/15/12
Buyer's Signature ▲ Print Name Here: ► Chris Endter — Social Security No. or FEIN (optional) ▲ — Date ▲

(X) _____ _____ 5-15-2012
Buyer's Signature ▲ Print Name Here: ► Gilbert Mader — Social Security No. or FEIN (optional) ▲ — Date ▲

EARNEST MONEY RECEIPT Broker acknowledges receipt of earnest money as per line 8 of the above Offer. (See Lines 236 - 259)

_____ Broker (By) _____

SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.

(X) _____ _____ _____
Seller's Signature ▲ Print Name Here: ► — Social Security No. or FEIN (optional) ▲ — Date ▲

(X) _____ _____ _____
Seller's Signature ▲ Print Name Here: ► — Social Security No. or FEIN (optional) ▲ — Date ▲

This Offer was presented to Seller by _____ on _____, _____, at _____ a.m./p.m.

THIS OFFER IS REJECTED _____ _____ THIS OFFER IS COUNTERED [See attached counter] _____ _____
Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

ADDENDUM A

1. This Offer is contingent upon Buyer receiving a commitment from the City of Menasha and/or the Wisconsin Department of Transportation, as applicable, to maintain ingress and egress to and from the subject property to Airport Road.

2. This Offer is contingent upon the City of Menasha paying the actual cost to repair the roof of the structure located on the subject premises, not to exceed $20,000.00. Buyer and Seller are aware that Seller received approximately $39,000.00 in insurance proceeds to repair said roof; Seller may retain any portion of said proceeds not needed to repair the roof and/or any portion of said proceeds in excess of $20,000.00.

3. This Offer is contingent upon Buyer receiving a commitment from the City of Menasha to allow no less than eight (8) outdoor parking stalls on the subject premises with access to Airport Road.

4. This Offer is contingent upon the City of Menasha rezoning the subject property to C1.

5. This Offer is contingent upon Buyer, at Buyer's expense, obtaining a survey of the subject property demonstrating that all the improvements to the subject property are located within the legal boundaries of the subject property.

Menasha

MEMORANDUM

Date: May 18, 2012

To: Administration Committee and the Mayor
From: Pamela A. Captain, City Attorney

RE: Endter Investments, LLC & Fire Station #2

I have reviewed the Commercial Offer to Purchase the 901 Airport Road property (f/n/a Fire Station #2), dated May 15, 2012, submitted by Endter Investments, LLC (Endter).

RECOMMENDATION: My recommendation is to not accept the offer to purchase as submitted.

The recommendation not to accept the offer to purchase as submitted is based on the following list of concerns:

1. Lines 51 through 75 should be deleted. Under this provision Endter is proposing that the City make representations about the condition of the property. By law, the City is not required to provide a property condition report. As a matter of practice, it is not advisable that the City take on legal responsibilities associated with making representations or warranties.
2. Lines 278 through 292 should be modified.
   a. Under the first part of this provision Endter is proposing that it choose a consultant to conduct an environmental site assessment at the expense of the City. It is not unusual that a Seller performs a Phase I environmental study at its expense. However, the Seller should choose the consultant or there should be a limit as to the cost of the assessment.
   b. Under the second part of this provision Endter is proposing that it choose an inspector to look for defects, including structural and mechanical components at the expense of the City. It is unusual that a Seller pays for an inspector to inspect the property for defects. This is usually an expense of the Buyer. Should the City decide to pay for this expense, at the very least the City should choose the inspector or there should be a limit as to the cost of the inspection.
   c. The City is already aware that there is asbestos contained in the building. This defect has been disclosed and should not be a basis which would allow Buyer an opportunity to back out of an accepted offer to purchase.

d. Other defects such as the HVAC system, the roof and structural wind damage and water damage to the carpet, underlayment and basement are also known defects which should not be a basis which would allow Buyer an opportunity to back out of an accepted offer to purchase.
e. Rather than having a contract contingency, Endter can bring its own inspector now, before entering into any offer to purchase with the City, to see if it really wants to purchase the property.

3. ADDENDUM A.
   a. There should be clarifying language that contingencies 1, 3 and 4, which are legislative processes, do not contractually obligate the City to satisfy the contingencies.
   b. As to paragraph 2, it is unclear as to whether it is expected that the roof repairs will be done before closing and by whom (either Buyer or Seller).
   c. If the City chooses to address the roof damage, I suggest that it be modified to indicate a specific dollar amount (such as $20,000 or other lesser amount) as a credit on the purchase price to Buyer at closing in consideration of costs Buyer may incur in repairing the roof of the structure. Also, I suggest that it specifically indicate that Seller will not be responsible for nor make any repairs.
   d. There is also an incorrect statement in paragraph 2. The City has not "received" $39,000 in insurance proceeds for damage to the fire station.
4. Line 293 - 297. It should be added that the Buyer has had an opportunity to inspect the property before entering into this Offer to Purchase and has satisfied itself as to knowledge about the condition of the property. Also, Seller makes no warranties or representations about the condition of the property and is selling the property "as is."

Additionally, the following items are brought to your attention:

1. Line 2. Strike the word "assigns." Endter is proposing that it have the ability to assign its rights under the offer to purchase to someone else. If this is left in there should be additional language that the City needs to approve the assignment and that both Endter and its assignee will be bound by the terms of the offer to purchase.
2. Line 22. A binding acceptance date of May 30 is too short.
3. Line 136. The Buyer is proposing to be able to finance the entire purchase price. It is not likely that this contingency will be met.
4. Line 194. Endter is proposing that the City pay for and provide title insurance. Buyer's lender will require title insurance. This is generally Seller's expense, but it can be negotiated. As a governmental entity that has owned the property for many years, it is my opinion that title insurance is an extra unnecessary expense.