



Memorandum

TO: Common Council
FROM: Greg Keil, CDD *GK*
DATE: July 11, 2013
RE: Questions regarding Amendment #3 to the Development Agreement with PJC Group, LLC

At the July 1, 2013 Common Council meeting questions were raised as to the prior amendments to the development agreement, site clearance expenditures, and the expected valuation of the Gilbert site upon completion of the demolition/site restoration work.

A copy of the original development agreement and subsequent amendments are attached. Email correspondence from the PJC Group, LLC relative to the amendments and site clearance expenditures is also attached. With regard to the anticipated site valuation, I made inquiry with Mark Brown from Associated Appraisal about what the expectation would be for assessed value for the Land Reclamation Project Site upon completion of site clearance. He is estimating a value of \$500,000 (please note that the value of the shoreline area recently donated to the city by PJC is not included in this figure). If the site is rezoned from I-1 Industrial to a suitable commercial classification, the expected value for 2014 would be \$731,000 to \$975,000.

Greg M. Keil

From: EDMUND JELINSKI [ejjelinski@sbcglobal.net]
Sent: Tuesday, July 09, 2013 8:29 AM
To: Greg M. Keil
Cc: 'Thomas Chalchoff'
Subject: Amendments to the Development Agreement

Greg,

Pursuant to your request, I am sending this memo outlining the first two amendments and our responsibilities with regard to them.

Amendment 1.

This amendment was suggested and approved at approximately the same time as the signing of the original agreement and was at the suggestion of Attorney Brandt. It called for the establishment of an escrow account in the amount of \$675,000.00 by PJC group for abatement and demolition purposes. It was anticipated that Menasha's Developer financed tif would result in PJC securing a loan for that amount or the City would be successful in its application for a brownfield grant.. This did not happen and therefore the funds were never deposited. Rather, the Demolition Contractor agreed to work on credit and to be paid through the tif payments. The \$675,000.00 was arrived at due to the estimate that abatement costs for the mill would be \$175,000.00 and the demo of the mill would be \$500,000.00.

Thus far PJC has invested the following in the site through land sales and other funding.

Mill Demolition and building improvements	\$220,000.00
Abatement	\$166,000.00
Total	\$386,000.00

We still owe the demolition contractor \$330,000.00 on the original contract although he has yet to complete the demolition.

Not contemplated in the original agreement was the cost for the boilerhouse and stack which is an additional \$235,000.00

The Prepayment of the tif by the City will cover the costs of mill demo, foundation removal in selected areas and the boilerhouse and stack.

Amendment 2.

This amendment corrected an error in the original agreement which set the increment on lot 3 at \$600,000.00 rather than the contemplated \$300,000.00.

If I can be of any further assistance or need to be available to answer questions, please let me know.

Thanks

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Ed Jelinski

PJC Group

— IMPORTANT NOTICES —

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**AMENDMENT #3 TO DEVELOPMENT AGREEMENT BETWEEN
PJC GROUP, LLC AND THE CITY OF MENASHA**

PJC Group LLC and the City of Menasha, wishing to amend their Development Agreement of December 7th 2007 in order to define certain environmental indemnifications and site preparation conditions between the parties, prepayment and interest obligations, hereby amend their Development Agreement as follows:

1. Article IV of the Agreement is amended to include the following sentences in section 4.5; **"On or before January 1, 2014, the Developer shall deliver the Shoreline Park area in a clean state, free of any structure or impediment, necessary to construct the park/trail area. Such areas to be cleaned of structures or other debris are marked in Exhibit E. Developer's responsibility shall include site preparation in accordance with the preliminary plans in Exhibit F such as sawcut and remove wall and concrete riverward, removal of the building foundations and floors and reestablishing the cap. The parties will cooperate in acquiring permitting under local, state and federal laws necessary to construct the park area/trail consistent with the plans. The City shall be responsible to pay the permit application fees."**
2. Exhibits E and F will be attached to and incorporated within the Development Agreement. Exhibit E is the CSM for the Shoreline Park site and will have the cleared area defined. Exhibit F is the preliminary park/trail Grading Plan & Profile prepared by R.A. Smith National.
3. Article VIII of the Development Agreement is amended to include the following paragraph; **"The Developer further agrees to indemnify the City against any and all environmental liability, known or unknown at the time of the gift of land to the City for Shoreline Park. The City agrees to use good faith efforts to apply for state, private or federal funds for which it may be eligible that have been identified in consultation with the Wisconsin Economic Development Corporation and the Wisconsin Department of Natural Resources before seeking indemnification from the Developer."**
4. Article VI of the Agreement is amended to include in section 6.1: **"City elects to prepay \$500,000.00 plus accrued interest, (\$250,000 Warehouse Project + \$250,000.00 Executive Office Project) of the remaining grant monies to Developer which amount due is \$675,000.00 on or before August 1, 2013 (\$581,506.71 assuming a loan closing date of August 1, 2013). Developer agrees to use these funds solely for completing the Land Reclamation Project including the Shoreline Park site preparation work described herein."**
5. Exhibit D in Article VI of the Agreement is amended to delete the sentence: **"This rate once established shall remain fixed for the entire period and shall be applied to the outstanding balance due the Developer from the City and shall not be modified."**

The proposed Amendment #3 to the development agreement is intended to address this situation through the following actions:

- Prepayment of the remaining incentive owed on the Warehouse and Executive Office projects (if prepaid on 8/1/13, the amount would be approximately \$597,592). This will require the city to borrow funds, however, at the current interest rate of 3.75%, our interest costs would be less than half of what we are now paying. Prepayment of the development incentive is permissible under the existing terms of the agreement. The repayment of the debt imposed by the borrowing will be paid out of TID #11 increment, and will not impact the property tax levy. We are proposing to advance monies from the general fund to prepay the incentives prior to the borrowing to accelerate the demolition timetable on the Land Reclamation Project.
- Reducing the interest rate to 4% on the Land Reclamation Project. We are not proposing prepayment on this project at this time because the project has not been completed. Furthermore, we are proposing that there should be no interest accrual on this project since its inception owing to the fact the Land Reclamation Project was not timely completed per the terms of the development agreement, and that interest will only begin accruing on the project after it has been completed.

In addition to the financial matters described above, the proposed Amendment #3 applies requirements to the condition the shoreline park is to be left in after demolition is completed. It also provides for indemnification of the city from environmental liability for the shoreline park area.

Executing this amendment will result in the acceleration of site clearance at the Gilbert site with the prepaid incentive to be applied to site clearance costs as follows:

- Asbestos abatement at the boiler house: \$95,000
- Demolition of the Boiler House \$110,000
- Demolition of the smokestack: \$35,000
- Demolition/site preparation in the shoreline park area: \$35,000
- Total: \$205,000

The balance of the prepayment amount is to be applied to demolition expenses currently being held by the demolition contractor and to other project expenses.

The city will realize multiple benefits from amending the development agreement. The site will finally be cleared and be in a state that is ready for redevelopment. The prospects for sale and redevelopment will be much improved once this condition has been achieved. The city will save over half the interest that would otherwise accrue on the incentive payments. These cost savings would amount to about \$271,000 for the Warehouse and Executive Office projects, and \$75,000 for the Land Reclamation Project over the remaining fifteen years the development incentive is to be paid. The shoreline park area will be brought to a condition suitable for construction of improvements within a timetable consistent with the anticipated award of grant funds. And finally, the negative influences on the neighborhood of partially demolished buildings and a debris filled site will be alleviated.

I urge the Common Council to endorse this amendment so that the Gilbert site development can enter a new stage as quickly as possible.

**DEVELOPMENT AGREEMENT
BETWEEN
PJC GROUP, LLC
AND THE CITY OF MENASHA**

THIS DEVELOPMENT AGREEMENT (the "Agreement"), is made and entered into as of the 16th day of July, 2007 by and between the City of Menasha, Wisconsin, a municipal corporation of the State of Wisconsin, with its principal offices located at 140 Main Street, Menasha, WI 54952 (hereinafter "City"), and PJC Group, LLC a Wisconsin Limited Liability Corporation with its principal offices located at 430 Ahnaip Street Menasha, WI 54952 (hereinafter "Developer").

RECITALS

The City is proposing to create a Tax Incremental District ("TID 11"), in accordance with Section 66.1105, Wis. Stats., Wisconsin's Tax Increment Law, in order to provide a viable method of financing the costs of needed public improvements within the district and thereby create incentives and opportunities for appropriate private development, which will contribute to the overall development of the City.

The City is authorized, by Section 66.1105(9)(a) of Wisconsin Statutes, as amended, to pay the "Project Costs" (as defined in such statutory section) from the special fund of TID 11 or from the proceeds of municipal obligations issued under Wisconsin Statutes, as amended.

The City is authorized by Section 66.1105(3)(e) of Wisconsin Statutes, as amended, to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of the Project Plan for TID 11.

The City has determined that at least 50%, by area, of the real property within the proposed TID 11 is a "Blighted Area" within the meaning of Section 66.1105(2)(a)1., Wis. Stats., and/or in need of "Rehabilitation or Conservation Work" within the meaning of Section 66.1337(2m)(a), Wis. Stats.

The Project to be undertaken by the Developer, as described herein, is of particular importance to the City and provides special benefits to the City because of its prominent location in the City.

The Project Plan includes "Development Incentive Payments" as eligible project costs for purposes of carrying out the Project Plan.

The City proposes to enter into this Agreement with the Developer to achieve the redevelopment of the Property, and the City is prepared to provide financial assistance to the Developer through Development Incentive Payments in order to bring about the continued development in accordance with this Agreement.

It is in the mutual interest of all parties to proceed with development of the Project, and in return for the benefits to be derived therefrom, the City is prepared to provide financial assistance to the Developer through development incentives in order to bring about the development and thereby promote the sound growth of the City's downtown area.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

All capitalized terms used herein and not otherwise defined herein, or by the specifically stated Wisconsin Statutory Reference shall be defined to have the following meanings unless a different meaning clearly appears from the context:

"Agreement" or "Development Agreement" means this Agreement, as the same may be from time to time modified, amended or supplemented.

"Demolition" means the removal of the old Gilbert Paper Mill and reclamation of the real estate.

"Developer" means PJC Group, LLC, and its permitted successors and assigns.

"Development Incentive Payments" means the payments due the Developer under Section 6.1 of this Agreement.

"Events of Default" means any of the events described in Section 9.1 hereof.

"Gilbert Paper Mill" means the paper factory building formerly owned by the Gilbert Paper Company as shown on Exhibit C.

"Grant" means the City of Menasha Tax Increment Financing grant made in the amount of the principle amount (\$675,000) and the amount of accrued interest at the time of the final City payment pursuant to Section 6.1 is made.

"Plans and Specifications" means the plans and specifications for the Project prepared from time to time by the Developer which are approved by the City in accordance with all procedures and requirements of the City for such approvals.

"Project" or "Project Plan" means the combined development projects proposed by Developer herein for the Warehouse Project, the Executive Office Project and the Land Reclamation Project located on the land described on Exhibit "A" (the "Property") and having an estimated cost of \$1,000,000.

"Warehouse Project" means the renovation of a 60,000 SF warehouse formally used by the Gilbert Paper Mill, to be used as warehouse space.

"Executive Office Project" means the renovation of a 6,000 SF historic office building formally used by the Gilbert Paper Mill, to be used as rentable office space.

"Land Reclamation Project" means the demolition of the former Gilbert Paper Mill buildings to be taken down to grade as specified in Exhibit C.

“Shoreline Park” means that portion of the Land Reclamation Project which the Developer shall donate to the City after completion of the Land Reclamation Project and which the City has agreed to, at a minimum, dedicate the land as a park and turn it into a “finished park area”.

“Project Costs” shall mean the total costs to complete the Project including Demolition.

“Property” means Lots 1,3,4 of CSM 6153, 430 Ahnaip Street, Menasha, WI 54952, as shown on Exhibit A.

“Tax Increment Value” means the assessed value of the Project, which is greater than the January 1, 2007 assessed value of the Property.

"Tax Increment Revenue" means the personal and real property tax revenue generated by the tax increment value (as defined in Section 66.1105(2)(i) of the Wisconsin Statutes) generated by the Project.

"TID Project Plan", as approved by the City, means the Project Plan for Tax Incremental Financing District No. 11 of the City of Menasha, Wisconsin.

ARTICLE II. OVERVIEW OF THE PROJECT

The Project consists of three (3) separate but related projects. They are the renovation of the former Gilbert Paper Mill warehouse (the Warehouse Project) and the renovation of the former Gilbert Paper Mill executive office building (the Executive Office Project) and the reclamation of land through the demolition of the former Gilbert Paper Mill paper manufacturing buildings as specified in Exhibit B (the Land Reclamation Project) Initiation of the construction and demolition of the Project is to commence within three (3) months of the approval of the Plans and Specifications by the City, said Plans and Specifications once approved shall be attached hereto as Exhibit "B" (the "Development Plan"), and be completed within twenty-four (24) months thereafter, at an estimated cost of \$1,000,000.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

The Developer makes the following representations and warranties which the City may rely upon in entering into this Agreement and all other agreements with the Developer and granting all approvals, permits and licenses for the Project.

(A) Developer is a duly organized and existing limited liability corporation in current status under the laws of the State of Wisconsin.

(B) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by Developer, and no other or further acts or proceedings of Developer are necessary to authorize and approve the execution, delivery and performance of this Agreement and the matters contemplated hereby. This Agreement, and the exhibits, documents and instruments associated herewith and made a part hereof, have been duly executed and delivered by Developer and constitute the legal, valid and binding agreement and obligation of Developer, enforceable against it in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy,

insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, and by general equitable principles.

(C) There are no lawsuits filed or pending, or to the knowledge of Developer, threatened against Developer that may in any way jeopardize the ability of Developer to perform its obligations hereunder.

(D) Developer has sufficient funds through equity investment in Developer and through lending sources for the completion of the Project, and Developer shall, from time to time upon the request of the City, provide evidence thereof satisfactory to the City. The Developer shall promptly notify the City of any material adverse change in the Developer's financial condition.

(E) Developer is the purchaser of the Property. The Project upon completion will be fully subject to taxation under Wisconsin Property Tax Laws. Developer, for itself, its successors and assigns, shall take no action(s), and shall file no claim(s) seeking, promoting or encouraging exemption of the Project in whole or part from taxability under Wisconsin Property Tax Laws.

ARTICLE IV. UNDERTAKINGS OF THE DEVELOPER

4.1 Construction of the Project. The Developer shall commence the Project in 2007 within three (3) months of approval of the Plans and Specifications by the City, and shall complete construction of the Project within twenty-four (24) months of commencement.

4.2 Compliance with Codes, Plans and Specifications, Etc. The building and other improvements to be constructed upon the Property, the construction thereof, and their uses shall be in compliance with all applicable codes and ordinances of the City, and with all pertinent provisions of this Agreement, the Project Plan and the Plans and Specifications. The acceptance of this Agreement and granting of any and all approvals, licenses and permits by the City shall not obligate the City to grant any variances, exceptions or conditional use permits, or approve any building the City determines not to be in compliance with the City codes and ordinances. All work done by or for Developer shall be in accordance with all applicable City codes and ordinances, the Plans and Specifications, and other applicable laws and regulations. All plans for each aspect of the work must be approved by the City (which may delegate such approvals to its staff in accordance with City codes, ordinances and policies). If permits or approvals are required for any such work, issuance of such permits or approvals is a condition to commencement of such work, and Developer will at its sole cost and expense take such action as required to seek such approvals and permits. Upon completion of the Land Reclamation Project, Developer shall dedicate to the City at least a thirty foot strip of land from Ahnaip Street to the Shoreline Park for public access.

4.3 Developer, as an inducement to the City to proceed with establishment of the TID 11 and to provide the Grant as provided herein to Developer for the development of the Project, hereby represents that the contemplated Project will be fully subject to real estate and personal property taxes under Wisconsin Property Tax Laws. Developer further represents and agrees for itself, its successors and assigns, that it shall take no action(s) or advocate any position or change in state law which would jeopardize or call into question the taxability of the Project.

Notwithstanding the above, in the event that the Project is determined at any time to be exempt from real and/or personal property taxation under state law, Developer, for itself, its successors and

assigns, agrees to make voluntary payments in lieu of taxes to the City, County, school district, and any other property taxing jurisdictions in the amounts and within the time periods that would otherwise be required as if the property were fully taxable, in recognition of the valuable governmental services and benefits available and/or provided to the Project and the Property.

4.4 Developer shall raze all structures identified in Appendix "C" and remove all demolition waste from the Property except for materials intended for reuse on the Property.

4.5 Upon completion of the Land Reclamation Project Developer shall donate to the City the Shoreline Park area for the City to develop into a finished park within a reasonable period of time after the consummation of the transfer.

ARTICLE V. CONDITIONS TO THE UNDERTAKINGS OF THE DEVELOPER

5.1 All Obligations of the Developer under this Agreement. As a condition to each and all of the covenants, agreements and other obligations of the Developer under this Agreement, all of the following shall occur, in addition to all other requirements and conditions set forth in this Agreement:

(A) The City establishing TID 11.

(B) All covenants and obligations of City under this Agreement are duly performed, observed and satisfied in all material respects.

(C) With regard to the City, no uncured Event of Default has occurred, or with the giving of notice or lapse of time would occur.

ARTICLE VI. UNDERTAKINGS OF THE CITY

6.1 Development Incentives. After the Tax Incremental Value of the Warehouse Project has exceeded \$400,000 the City agrees to provide the Developer a grant in the amount of \$250,000. After the Tax Incremental Value of the Executive Office Project has exceeded \$300,000 the City agrees to provide the Developer a grant in the amount of \$250,000. After the Tax Incremental Value of the Land Reclamation Project has exceeded \$200,000 the City agrees to provide the Developer a grant in the amount of \$175,000. All grants shall include the accrued interest as provided in Exhibit D. The Grant may be prepaid at any time, but until paid in full, the payments will be provided to the Developer as follows:

Each year for a maximum period of twenty (20) years, commencing in 2009, the City will pay to the Developer an amount equal to ninety-five percent (95%) of the Tax Increment Revenue received by the City with respect to the Projects in that year, provided that the Tax Incremental Value of the individual elements of the Project is in excess of the amounts given above for each individual Project on January 1 of the previous year. The City shall make the payment due to the Developer, if any, under this Section no later than September 30 of each succeeding year, commencing in 2009 if the Tax Incremental Value of the individual elements of the Project is in excess of the amounts given above for each individual Project by January 1, 2008.

Should the City elect to prepay the grant at any time prior to the maximum twenty year period, the City's grant shall be limited to the principal of \$675,000 along with any accumulated interest based on the interest rate stated in Exhibit D to the date of the City's payment. If the Developer refinances the grant in any fashion such that the interest is greater than that provided in Exhibit D, the City's annual payment shall not increase as a result of such refinancing.

6.2 Wisconsin Department of Commerce Brownfield Grant. Should the City be awarded a Brownfield Grant from the Wisconsin Department of Commerce, it shall disburse such proceeds to the Developer up to the total amount of the grant when the City receives the grant from the Department of Commerce and when the Department of Commerce approves the Developer's expenditures. Such payment shall constitute the entire obligation of the City if such payment is at least \$675,000 plus any accrued interest. At such time, this agreement shall terminate.

ARTICLE VII. CONDITIONS TO THE UNDERTAKINGS OF THE CITY

7.1 All Obligations of the City under this Agreement. As a condition to each and all of the covenants, agreements and other obligations of the City under this Agreement, all of the following shall occur, in addition to all other requirements and conditions set forth in this Agreement:

(A) The Project shall be completed within twenty-four (24) months of commencement of construction. If it is not, the City shall have the right to recalculate and reduce the amount of the development incentives to be paid to the Developer.

(B) All representations and warranties of Developer set forth in Article III and otherwise in this Agreement and in all agreements expressly referred to herein shall be true, complete and correct in all material respects.

(C) All material covenants and obligations of Developer under this Agreement are duly performed, observed and satisfied.

(D) With regard to the Developer, no uncured Event of Default has occurred, or with the giving of notice or lapse of time would occur.

ARTICLE VIII. INDEMNIFICATION OF THE CITY

The Developer hereby indemnifies and holds harmless the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section collectively referred to as the "Indemnified Parties"), against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the development of the Project or the Demolition, provided that the foregoing indemnification shall not be effective for any negligent acts of the Indemnified Parties in fulfilling the obligations of the City or its agents as set forth in this Agreement. Except for any willful misrepresentation or any willful misconduct of the Indemnified Parties, the Developer will protect and defend the Indemnified Parties from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the action or inaction of the Developer

(or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership and operation of the Project. To receive this indemnification, the Indemnified Parties must tender the defense of any claim or action to the Developer. If the Developer does not accept such tender, or, in the good faith determination of the Indemnified Parties the Developer will have a conflict of interest, the Indemnified Parties shall have the right to obtain and pursue their own defense and shall be reimbursed from the Developer. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

ARTICLE IX. DEFAULT/REMEDIES

9.1 Events of Default. An Event of Default is any of the following:

(A) A failure by the Developer to cause substantial completion of the Project to occur pursuant to the terms, conditions and limitations of this Agreement, or the failure of the Developer to perform or observe any and all covenants, conditions, obligations or agreements on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the Developer of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the Developer commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed within ninety (90) days of the date of written notice to Developer, then the event will not be an Event of Default.

(B) The failure by the City to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the City of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the City commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed within ninety (90) days of the date of notice to the City, then the event will not be an Event of Default.

(C) Developer becomes insolvent or is the subject of bankruptcy or insolvency proceedings.

9.2 Remedies on Default. Whenever an event of default occurs and is continuing, the other non-defaulting party may take any one or more of the following actions:

(A) The non-defaulting party may immediately suspend their performance under this Agreement from the time any notice of an Event of Default is given until they receive assurances from the defaulting party deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement.

(B) The non-defaulting party may take any action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the defaulting party under this Agreement.

9.3 No Remedy Exclusive. No remedy or right conferred upon or reserved to the City in this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

9.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

9.5 Agreement to Pay Attorneys' Fees and Expenses. Whenever any event of default occurs and either the non-defaulting party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party shall, on demand thereof, pay the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

ARTICLE X. FORCE MAJEURE

No party will be responsible to any other party for any resulting losses if the fulfillment of any of the terms of this Agreement (other than any financial obligation) is delayed or prevented by war, strikes, fires, floods, acts of God, and other reasons wholly without the control of the party with whose performance there was interference, and which, by the exercise of reasonable diligence, such party is unable to prevent, and the time for performance will be extended by the period of delay occasioned by any such cause. In the event a party becomes aware of a pending delay under this section, such party shall immediately notify the other party of the anticipated delay including the expected time of the delay.

ARTICLE XI. ADDITIONAL PROVISIONS

11.1 Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer's successors or assigns on any obligations under the terms of this Agreement.

11.2 Incorporation by Reference. All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

11.3 No Implied Approvals. Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of Developer to obtain all necessary approvals, licenses and permits from the City in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the City to approve or disapprove the Development Plan, Plans and Specifications, or any part thereof, or to impose any limitations, restrictions and requirements on the development, construction and/or use of the Project as a condition of any such approval, license or permit; including, without limitation, requiring any and all other development and similar agreements.

11.4 No Assignment. Developer may not assign its rights in this Agreement without the express prior written consent of the City. Developer shall not sell, transfer or convey the Property unless and until an occupancy permit has been issued.

11.5 Time of the Essence. Time is deemed to be of the essence with regard to all dates and time periods set forth herein or incorporated herein.

11.6 Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

11.7 Notices. Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, to the parties' respective addresses as follows:

To the City:

City of Menasha
c/o Greg Keil
140 Main Street
Menasha, WI 54952

With a copy to:
City Attorney Jeffrey S. Brandt
City Hall 140 Main
Menasha, WI 54952

To the Developer:

PJC Group, LLC
430 Ahnaip Street
Menasha, WI 54952

11.8 Entire Agreement. This document and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the City with respect to the matters set forth herein. This Agreement may be modified only by a writing signed by all parties.

11.9 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

11.10 Cooperation. The City and the Developer agree to cooperate and expedite in the prosecution of applications made by either party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use and occupancy of the Property. The City and the Developer each will at any time, or from time to time at the written request of the other, sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

11.11 Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed an original.

11.12 Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assigns.

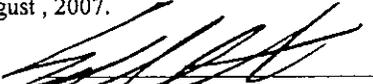
List of Exhibits:

- "A" Legal Description
- "B" Developer's Project Plans
- "C" Gilbert Paper Mill Building Demolition Schedule
- "D" Developer Financed Tax Increment Financing

This document consists of eleven (11) pages, including the following signature page.

**SIGNATURE PAGE FOR
DEVELOPMENT AGREEMENT**

IN WITNESS WHEREOF, the parties have duly executed this Agreement, or caused it to be duly executed, as of the 2nd day of August , 2007.



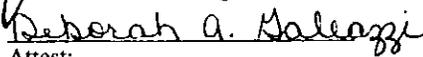
PJC Group, LLC
Edmund J. Jelinski



PJC Group, LLC
Tom Chalchoff



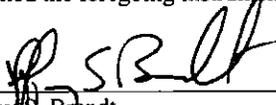
CITY OF MENASHA BY
Joseph F. Laux, Mayor



Attest:
Deborah A. Galeazzi, City Clerk

STATE OF WISCONSIN
COUNTY OF WINNEBAGO

Personally came before me this 7 day of December, 2007, the above-named Edmund Jelinski, Tom Chalchoff and Joseph F. Laux and Deborah A. Galeazzi, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and the purposes therein intended.



Jeffrey S. Brandt
Notary Public,
State of Wisconsin
Winnebago County.
My commission is permanent.

This document authorized by and in accordance with Res. No. ___-05-06.

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1, 3 and 4 of Exhibit A.

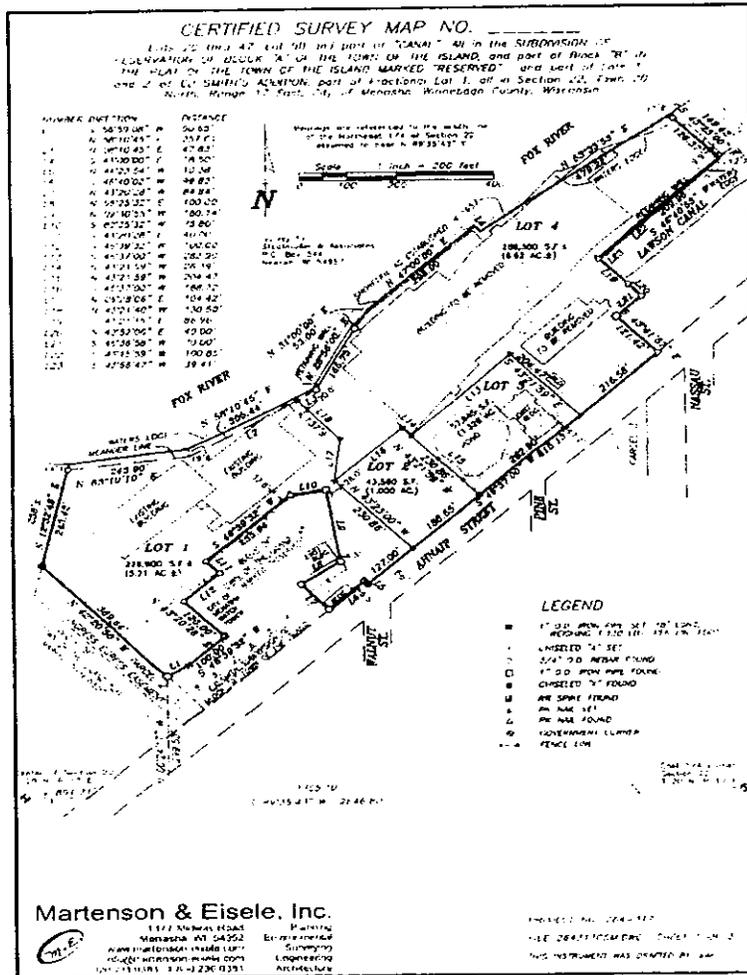


EXHIBIT "B"

DEVELOPER'S PROJECT PLANS

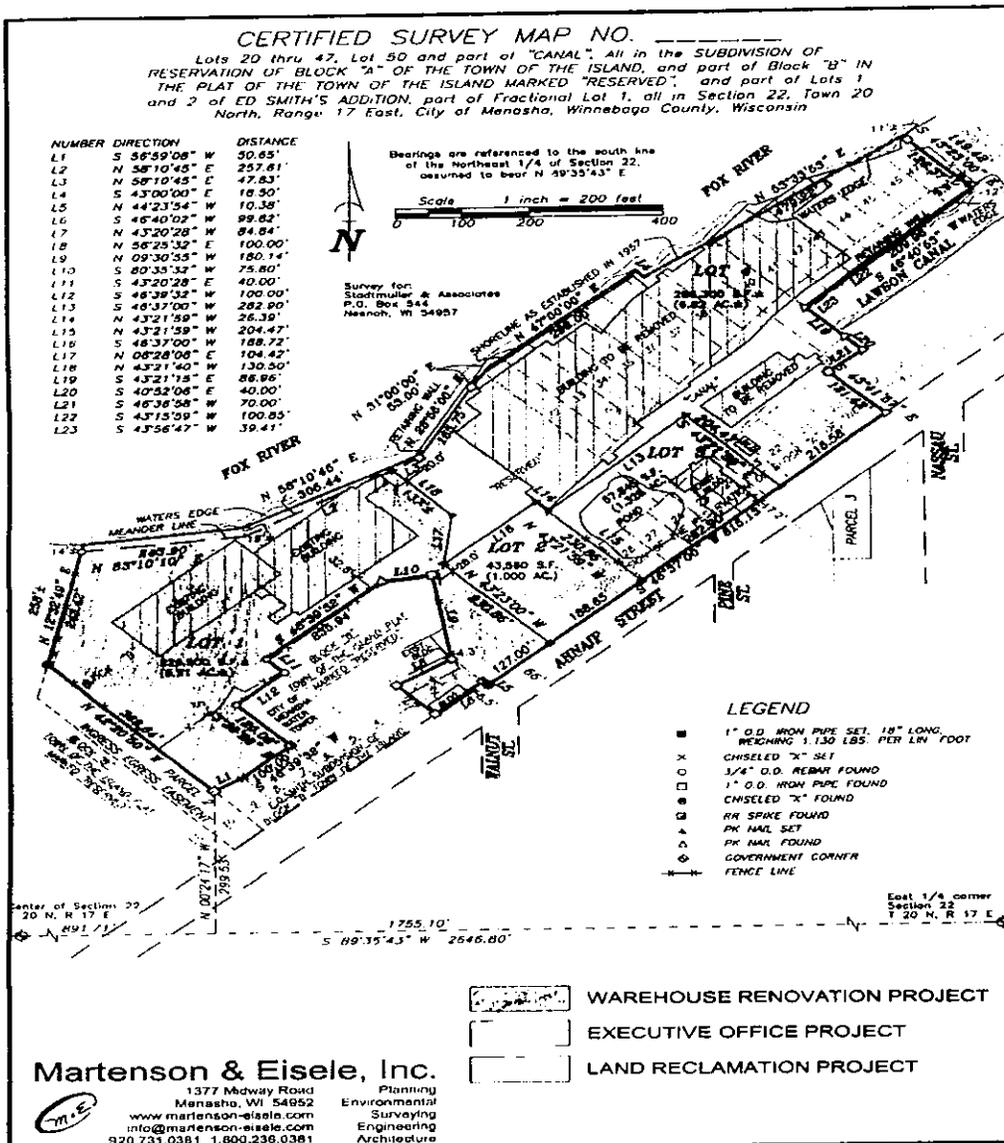


EXHIBIT "D"

**DEVELOPER FINANCED TAX INCREMENT FINANCING
Interest Rate Determination**

City shall be responsible to make payments to Developer for the Grant amount of \$675,000 as specified in Section 6.1 of the Agreement. The rate of interest applied to the unpaid balance shall be equal to the prime banking rate (defined to be the local bank cost of funds rate plus 3.25 points) as determined on the date of the full and complete approval and execution of this Agreement by the City and the Developer (if the approval and execution were to occur on 3-14-07 the rate would have been 8.25%). This rate once established shall remain fixed for the entire period and shall be applied to the outstanding balance due the Developer from the City and shall not be modified.

**AMENDMENT #1 TO DEVELOPMENT AGREEMENT BETWEEN
PJC GROUP, LLC AND THE CITY OF MENASHA**

It is desirable to enter into this Amendment to the Development Agreement between PJC Group, LLC and the City of Menasha to facilitate the financing arrangements necessary for PJC Group, LLC to advance the projects contemplated by the Development Agreement.

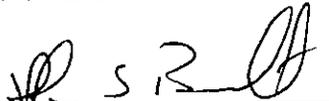
For mutual consideration, the parties agree as follows:

The City of Menasha hereby waives any objection to a sale of the property described as the Warehouse in the Development Agreement to Gilbert Warehouse, LLC by PJC Group, LLC without first securing an occupancy permit as would otherwise be required by sec. 11.4.

PJC Group, LLC promises that it will establish an escrow account with Evans Title of not less than \$675,000 from loan proceeds for this project. Such escrow account shall be used exclusively for the demolition of the former Gilbert Paper Mill and reclamation of the land on which the Mill was located, described as the "Land Reclamation Project". The City of Menasha shall receive, upon request, an accounting of this escrow account from Evans Title as the escrow agent.

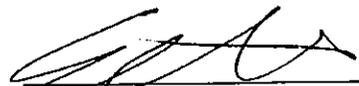
Dated at Menasha, Wisconsin this 19th day of November 2007.

BY THE CITY:



Jeffrey S. Brandt
City Attorney

BY PJC GROUP, LLC:



Member

AMENDMENT #2 TO DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MENASHA AND
PJC GROUP LLC

It is desirable to enter into this amendment to facilitate the financing arrangements necessary to advance the project contemplated by the original development agreement and correct said agreements to conform its language to the intentions of the parties.

For mutual consideration, the parties agree as follows:

1. Article VI Section 6.1 shall be amended such that the second sentence in paragraph one of this section shall be amended to read as follows:

"After the Tax Incremental Value of the Executive Office Project has exceeded \$100,000 the City agrees to provide the Developer a grant in the amount of \$250,000."

2. Article VI Section 6.1 shall be amended such that in the second paragraph of this section, the date of payment by the City to the Developer shall be changed from September 30 to January 30.

3. This amendment shall be retroactive to January 1, 2008 and any adjustments needed to bring the parties into conformity with this document shall be made forthwith.

BY THE CITY:



Pamela Captian
City Attorney

BY PJC GROUP LLC:



Edmund Jelinski
Managing Member

Date: 3/7/11