



# Common Council and Redevelopment Authority

335 South Broadway  
De Pere, WI 54115

<https://www.deperewi.gov/>

Special Untelevised

**Revised Agenda**

**Tuesday, December 1, 2020**

**6:00 PM**

Pursuant to Wisconsin Statutes 19.84, Notice is hereby given to the public that a meeting of the **Common Council and Redevelopment Authority** of the City of De Pere will be held on **December 1, 2020 at 6:00 PM.**

**Due to the current public health emergency, the meeting will be held electronically and the public may attend this meeting electronically or telephonically by accessing either:**

**Please join my meeting from your computer, tablet or smartphone.**

<https://www.gotomeet.me/DePere>

**You can also dial in using your phone.**

United States (Toll Free): [1 866 899 4679](tel:18668994679)

United States: [+1 \(312\) 757-3117](tel:+13127573117)

**Access Code:** 154-883-285

**THIS MEETING WILL NOT BE HELD IN PERSON.**

## Call to Order

1. Roll Call
2. Consideration of the Redevelopment Agreement Between the City of De Pere, the Redevelopment Authority of the City of De Pere and the De Pere Cultural Foundation, Inc.  
  
PLEASE TAKE NOTICE, that pursuant to Wis. Stats. §19.85(1)(e), the Council and Redevelopment Authority may convene in closed session for the purpose of deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.  
The Council and Redevelopment Authority may then reconvene in open session to take action on any matter discussed in closed session or for such other purposes as are allowed by law.
3. Redevelopment Authority Resolution #20-02 Authorizing and Approving the Redevelopment Agreement Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and the De Pere Cultural Foundation, Inc.
4. Resolution #20-122 Authorizing and Approving the Redevelopment Agreement Between the City of De Pere, the Redevelopment Authority of the City of De Pere and the De Pere Cultural Foundation, Inc.

## Adjournment

Agenda Sent To:

Alderspersons

Redevelopment Authority

City Administrator  
Mayor  
Department Heads  
TV, Newspapers & Radio Stations  
Kress Family Library  
De Pere Chamber of Commerce



City of De Pere, Wisconsin

**Request For Common Council and Redevelopment Authority  
Action**

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**MEETING DATE:** December 1, 2020

**DEPARTMENT:** City Attorney

**FROM:** Angela Zills

**SUBJECT:** Consideration of the Redevelopment Agreement Between the City of De Pere, the Redevelopment Authority of the City of De Pere and the De Pere Cultural Foundation, Inc.

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**ATTACHMENTS:**

- Development Agreement Memo - 12012020 (DOCX)
- Site Plan (PDF)
- Elevations (PDF)
- Redevelopment Agreement Transmittal Letter 11-20-20 (PDF)
- Final Agreement from Cultural Foundation 11-20-2020(PDF)

# CITY OF DE PERE MEMO



To: Common Council and the Redevelopment Authority of the City of De Pere (“RDA”)  
 From: Larry Delo, City Administrator  
 Judy Schmidt-Lehman, City Attorney  
 Scott Thoresen, Public Works Director  
 Eric Rakers, City Engineer  
 Daniel Lindstrom, Development Services Director  
 Peter Schleinzi, Senior Planner, Zoning Administrator

Date: December 1, 2020  
 RE: **Mulva Cultural Center Development Agreement**

## Introduction and Timeline

In May of 2019, the Mulva family announced plans to build an approximate \$50 million cultural center on the site called the “Mulva Cultural Center.” One week later, plans were announced to remove the middle school and the nearby Notre Dame Elementary School, and build a new middle/elementary school on the existing elementary school property. The new Notre Dame School completed construction this past summer/fall, shortly after the former middle school was demolished. In November 2019, St. Francis Xavier Church proposed a land division and site plan for Parcel ED-920 that included the removal of buildings, retaining and expanding the church building, and separating the parking lot. The purpose of the separation of the parking lot was to create a shared parking area with the future cultural center. On January 27, 2020, the RDA initiated the process of drafting agreements to transfer ownership of Parcel ED-812 to the De Pere Cultural Foundation, Inc (DPCF). In February and March 2020, the Mulva Cultural Center Foundation initiated a rezoning and a right-of-way vacation/discontinuance of lands to prepare the area for the Mulva Cultural Center building.

The COVID-19 pandemic caused some initial project development delays and during that time the design team revised the initial design of the structure to remove the large steps, along the Broadway Street side of the proposed cultural center, for added security for the exhibits. The landscape design expanded to include additional walkways and plazas. Finally, the design was revised to also include additional improvements in the right-of-way. The result of the design changes since 2019 increased the anticipated construction value to approximately \$70 million. The venue will now include a 10,000 square foot space for national exhibits, a 200 seat auditorium, board room, bathrooms, café, gift shop, and classroom spaces.

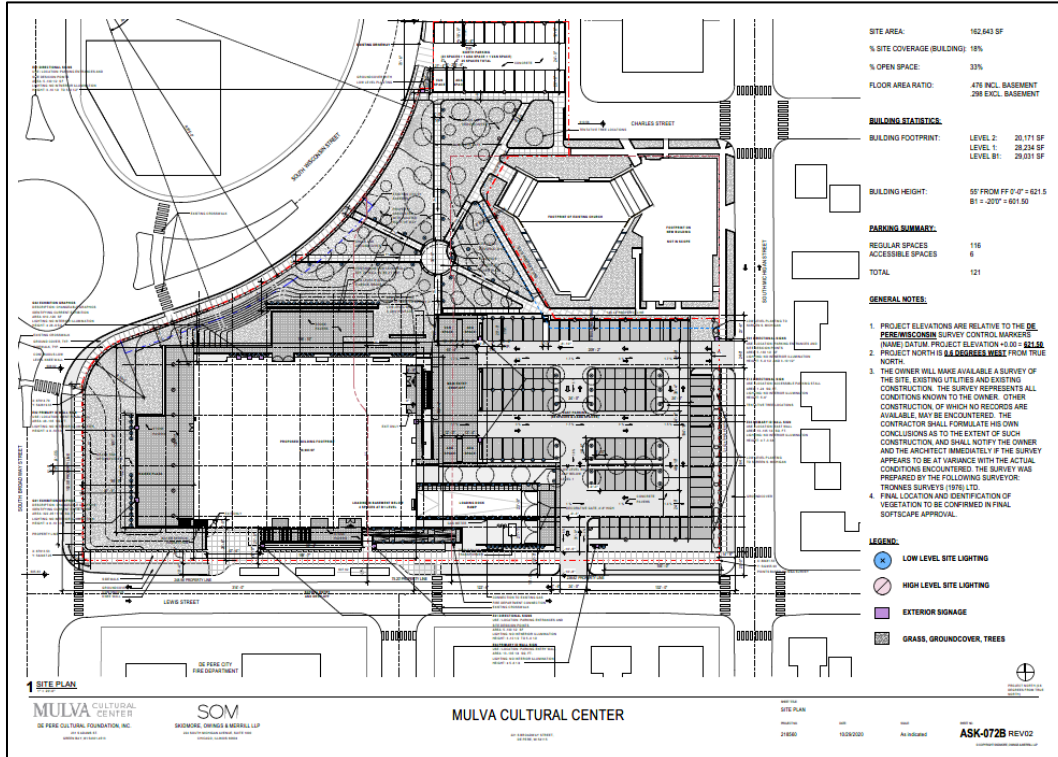
On November 23, 2020 the Plan Commission recommended approval of the following:

- Rezoning of the RDA property from B-1 PDD to B-1 to remove an outdated planned development.
- Rezoning of the former school property from R-4 to B-1 to match the RDA parcel.
- Traffic Impact Analysis.
- Site Plan.
- Sign Variance.

### Building and Site Plan Approvals

The building renderings portray a variety of materials (mostly glass and masonry) organized into a contemporary architectural style. Building height is two large stories and now includes additional park space and patios that will make the final height appear to be closer to three stories. The mixed-use of materials breaks up the mass, creating an interesting structure. Draft site plans are included as an exhibit to the draft agreement.

### Site Plan



### Elevations



### **Timeline and Constraints**

The agreement before the RDA and Common Council is the result of numerous hours of discussion between the City of De Pere staff and representatives for the DPCF. Many rounds of Agreement drafts back and forth resulted in DPCF presenting this Agreement as the final Agreement for approval on November 20, 2020. The DPCF requests approval of the agreement by December 15, 2020 to meet their contract timelines. Moreover, the CEO of DPCF indicated to staff they are requesting the City approve the development agreement as submitted or not at all.

### **RDA and City of De Pere Agreement Highlights**

The following are the highlights of the agreement as drafted:

- A. Close by December 15, 2020 or at Developer's option by July 31, 2021.
- B. Project commencement within 90-day of the agreement (subject to Enforced Delays).
- C. DPCF development of Mulva Cultural Center (center, parking, landscaping, plaza, etc.).
- D. The value of RDA land is listed as \$1,500,000.
- E. Rezoning of subject RDA lands to B-1 by December 15, 2020.
- F. Site plan approval by December 15, 2020.
- G. Street vacation of Michigan Street (Exhibit A - Area 2A) and Charles Street (Exhibit A - Area 2B) by December 15, 2020, including:
  - I. Terminating and relocation of necessary Wisconsin Street utilities and easements.
  - II. Relocation of WPS electrical lines before the sidewalk along Michigan Street within 90 days of the agreement. This also includes the replacement of the recently constructed sidewalk along Michigan Street (Exhibit B).
- H. City removal and replacement of light poles around S. Broadway to match Mulva Cultural Center Design. According to the agreement the light poles are to be provided by the Developer but installed and maintained by the City (Exhibit D). This also includes relocating and metering electrical lines in the roundabout.
- I. City removal and replacement of existing sidewalks and red stamped concrete surrounding the site. (Exhibit G). Exhibit G does not include the location of red stamped concrete.
- J. City installation of right-in/right-out intersection improvements at S Broadway and Lewis Street as part of the Lewis Street reconstruction.
- K. Occupancy permit for bus drop-off on Lewis Street.
- L. Public sidewalk easement from Charles Street to Wisconsin Street.
- M. Public sidewalk easement along Lewis Street for an enlarged sidewalk (Exhibit F).
- N. Snow storage easement at the western end of Charles Street.

### **Agreement Structure and Extraordinary Development Request**

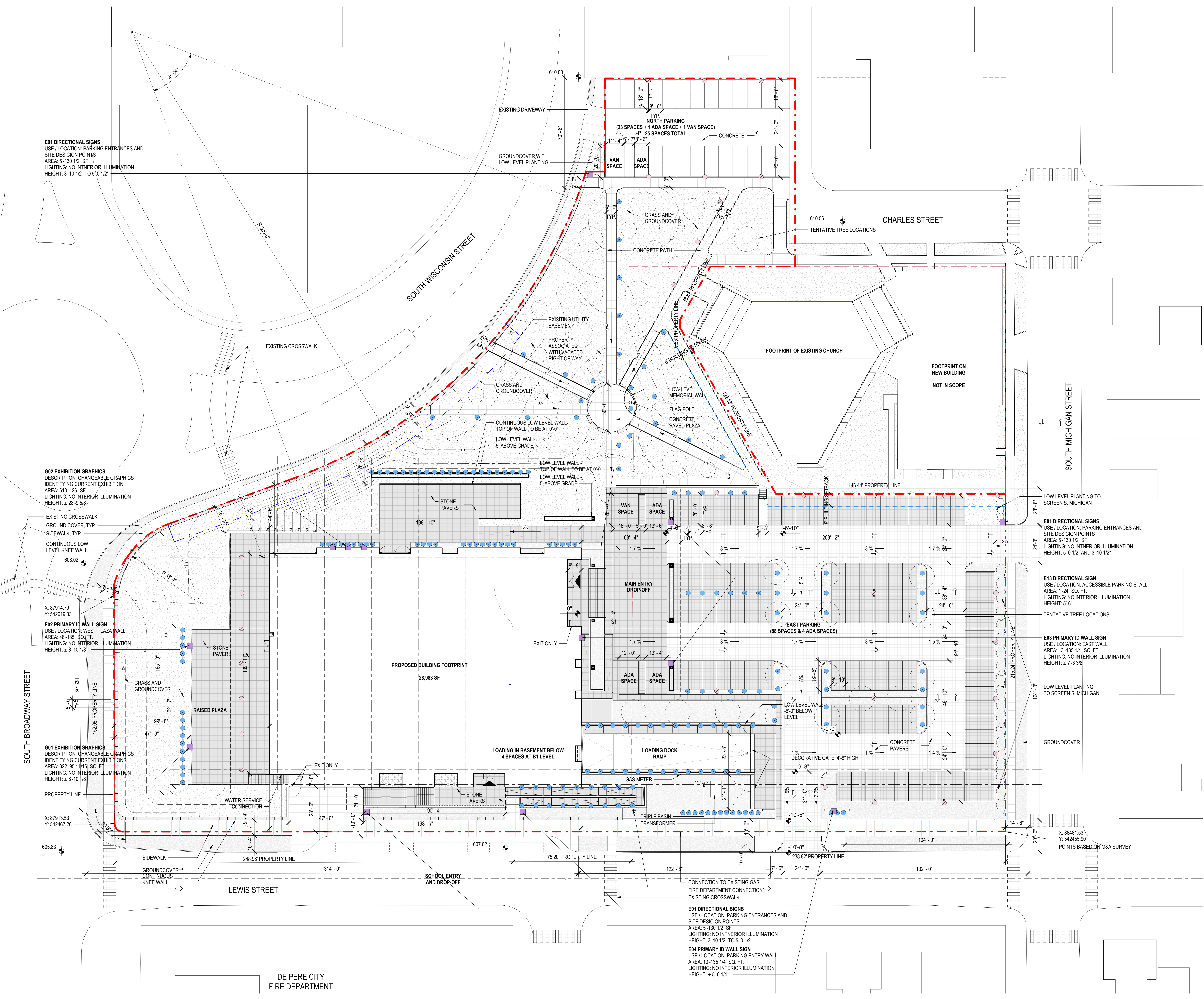
In exchange for the \$70 million cultural center development in Downtown De Pere, the DPCF requests the site to be free and clear of encumbrances and easements where utilities can be relocated. DPCF also requests additional right-of-way improvements to match the aesthetics of their development – these items are specifically noted as G-K above. These are beyond the scope of our typical agreements and the Public Works staff is preparing final estimates for these items. Staff anticipates these additional items could cost approximately \$700,000 but will have a more definitive estimate to present at the meeting. If approved, the Common Council will need to identify additional funding sources. Staff identified approximately \$450,000 that could be reappropriated from the Stadium Tax fund for tourism and economic development purposes that were previously committed for a splash pad and a bandshell. The balance of additional requested funds could from the unassigned reserve fund. Staff will present this option and other funding impacts during the meeting.

**Other Issues**

- *Street Vacation deadline of December 15, 2020.* Due to the recurring conceptual design changes with the utility plans, staff was unable to present the initial resolution for the Charles Street vacation until November 17, 2020. Wisconsin Statutes require a public hearing, but the hearing may not be held less than forty days after adoption of the initial resolution (66.1003(4)(b)). Therefore, Charles Street cannot be formally vacated until the January 5, 2021 meeting of the Common Council.

Staff will be available for questions during the special meeting of the RDA and Common Council.

DJL



14.60 MUNICIPAL PLAN

**SITE STATISTICS:**

SITE ZONING:	B-1 PDD
SITE AREA:	162,643 SF
% SITE COVERAGE (BUILDING):	18%
% OPEN SPACE:	33%
FLOOR AREA RATIO:	.476 INCL. BASEMENT .298 EXCL. BASEMENT

**BUILDING STATISTICS:**

BUILDING FOOTPRINT:	LEVEL 2: 20,171 SF
	LEVEL 1: 28,234 SF
	LEVEL B1: 29,031 SF

BUILDING HEIGHT: 55' FROM FF 0'-0" = 621.5  
B1 = -20'0" = 601.50

**PARKING SUMMARY:**

REGULAR SPACES	116
ACCESSIBLE SPACES	6
TOTAL	121

- GENERAL NOTES:**
- PROJECT ELEVATIONS ARE RELATIVE TO THE **DE PERE/WISCONSIN** SURVEY CONTROL MARKERS (NAME) DATUM. PROJECT ELEVATION +0.00 = **621.50**
  - PROJECT NORTH IS **0.6 DEGREES WEST** FROM TRUE NORTH.
  - THE OWNER WILL MAKE AVAILABLE A SURVEY OF THE SITE, EXISTING UTILITIES AND EXISTING CONSTRUCTION. THE SURVEY REPRESENTS ALL CONDITIONS KNOWN TO THE OWNER. OTHER CONSTRUCTION, OF WHICH NO RECORDS ARE AVAILABLE, MAY BE ENCOUNTERED. THE CONTRACTOR SHALL FORMULATE HIS OWN CONCLUSIONS AS TO THE EXTENT OF SUCH CONSTRUCTION, AND SHALL NOTIFY THE OWNER AND THE ARCHITECT IMMEDIATELY IF THE SURVEY APPEARS TO BE AT VARIANCE WITH THE ACTUAL CONDITIONS ENCOUNTERED. THE SURVEY WAS PREPARED BY THE FOLLOWING SURVEYOR: TRONNES SURVEYS (1976) LTD.
  - FINAL LOCATION AND IDENTIFICATION OF VEGETATION TO BE CONFIRMED IN FINAL SOFTSCAPE APPROVAL.

**LEGEND:**

	LOW LEVEL SITE LIGHTING
	HIGH LEVEL SITE LIGHTING
	EXTERIOR SIGNAGE
	GRASS, GROUNDCOVER, TREES

**1 SITE PLAN**  
1" = 20'-0"



**3 WEST EXTERIOR RENDERING**



**1 NORTH EXTERIOR RENDERING**



**4 SOUTH EXTERIOR RENDERING**



**2 EAST EXTERIOR RENDERING**

**DE PERE CULTURAL FOUNDATION, INC.**

November 20, 2020

Larry Delo, Administrator  
 City of De Pere  
 335 S. Broadway  
 De Pere, WI 54115

Re: Redevelopment Agreement, Mulva Cultural Center


Dear Larry,

Enclosed, please find a copy of the above referenced agreement (the "Agreement") setting forth the terms and conditions upon which De Pere Cultural Foundation, Inc. ("DPCF") would construct the Mulva Cultural Center (the "Center") in downtown De Pere. Under the Agreement, in exchange for the development of the Center, the City would, *inter alia*:

1. Transfer the RDA Property to DPCF;
2. Rezone the Project Site to B-1;
3. Vacate the right of way covering identified portions of Wisconsin Street and Charles Street;
4. Terminate certain easements and abandon and/or reroute certain existing utilities;
5. Modify the westbound movement of traffic on Lewis Street to "right-in/right-out";
6. Replace existing light poles and light fixtures bordering the property with light poles and fixtures supplied by DPCF;
7. Construct (or replace where currently existing) sidewalks bordering the project site and, in certain areas, place (or replace where currently existing) new stamped concrete in a red brick pattern to match existing on Broadway; and
8. Grant an occupancy permit for the use of what is labeled on the site plan as a "Bus Drop-Off Area" on Lewis Street for so long as such area is used as vehicular drops off area.

The City's satisfaction of each of these conditions is important to the Project and our development plan and project budget assume each of these conditions will be satisfied by the City. As a result, with the exception of any timing issues related to the discontinuance of the right-of-way on Charles Street, we neither seek nor request approval of the Agreement subject to any change with respect to the above items but, rather, respectfully request the Common Council to approve the Redevelopment Agreement as submitted or not at all.

You and I can only begin to imagine the economic benefits the Mulva Cultural Center will have on DePere. Add to this the enhanced quality of life for residents, which correlates to the ability of a city to attract businesses, investment, talent and tourists. Through our collective leadership, we have a rare opportunity to make a positive impact on our community for generations.

Sincerely,  


Mike Van Asten  
 Chief Executive Officer

cc: Mayor James Boyd

**REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF DE PERE,  
THE REDEVELOPMENT AUTHORITY OF THE CITY OF DE PERE,  
AND THE DE PERE CULTURAL FOUNDATION, INC.**

THIS AGREEMENT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of De Pere, a Wisconsin municipal corporation ("City"), the Redevelopment Authority of the City of De Pere, Wisconsin, a public body corporate and politic ("RDA") and the De Pere Cultural Foundation, Inc., a Wisconsin non-stock, non-profit corporation ("Developer"), individually and collectively referred to as "Party" or "Parties".

**RECITALS**

WHEREAS, in October 2006, the RDA and City adopted the East Side Redevelopment Project Plan and designated such area as blighted and in need of redevelopment; and

WHEREAS, also in October 2006, the City created Tax Incremental Financing District No. 7, (TID #7) for the area comprising the East Side Redevelopment Project Plan, finding that not less than 50% of the area included in the East Side Redevelopment Project District was in need of rehabilitation or conservation work; and

WHEREAS, §66.1337 and §66.1331 Wis. Stats. empowers cities to assist redevelopment projects by lending or contributing funds and performing other actions of a character which the City is authorized to perform for other purposes; and

WHEREAS, Developer proposes to construct a cultural destination and community focal point that will be open to the public and feature various exhibitions, an auditorium with classrooms for educational and intellectual programming, and other amenities; and

WHEREAS, RDA and City have determined that such development will have not only a significant, positive educational/cultural impact in De Pere but also a significant and positive economic impact in De Pere, through increased tourism, along with the direct and indirect impact of added employment, business openings, construction investment and the like, likely to exceed \$3.1 million annually; and

WHEREAS, the RDA and City have also determined that Developer is uniquely qualified to undertake this redevelopment project; and

WHEREAS, as such, this desirable development will assist the RDA and City in their efforts to promote revitalization and economic stability in TID #7; and

WHEREAS, Wis. Stats. §66.1105, provides the authority and establishes procedures by which the City of De Pere may undertake redevelopment projects within blighted areas of the city and finance such projects through the use of tax incremental financing; and

Redevelopment Agreement  
De Pere Cultural Foundation

Page 1 of 18

WHEREAS, allowable project costs include, among other things, Real Property Assembly Costs as defined herein.

NOW, THEREFORE, upon the mutual obligations, benefits and other consideration contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1. The following terms as used herein shall have the following meanings:

- A. "City" means the City of De Pere.
- B. "Certificate of Occupancy" means the certificate issued by the Development Services Department upon Substantial Completion of the Project.
- C. "Closing" means the RDA's conveyance of the RDA Property to Developer.
- D. "Commence Construction" or "Commencement of Construction" means physical work at the Project Site has occurred such that the site is excavated, and footing and foundation installation is underway.
- E. "Developer" means De Pere Cultural Foundation, Inc., a Wisconsin non-stock, non-profit corporation, or any assignee of same.
- F. "Effective Date" means the date the last of all of the following events has occurred: (a) the Parties have each signed this Agreement; and (b) the Developer's Board of Directors has approved this Agreement by its written Resolution.
- G. "Municipal Property" means the RDA Property and the Vacated Right-of-Way Property.
- H. "Project" or "Development" means the real estate and building improvements contemplated by the Parties as finally approved by the City Plan Commission and City Council. "Project" and "Development" can be/are used interchangeably in this Agreement.
- I. "Project Cost" has the meaning set forth in Wis. Stats. §66.1105(2)(f), including, without limitation, any Real Property Assembly Costs associated with the conveyance of RDA Property to Developer pursuant to Article II Section 1.A.

J. "Project Site" means that property depicted in Exhibit A, which includes the Municipal Property and other property under the control of Developer.

K. "RDA Property" means the 1.343-acre parcel of real property known as Tax Parcel ED-812 and depicted as Area 1 in Exhibit A.

L. "Real Property Assembly Costs" has the meaning set forth in Wis. Stats. §66.1105(2)(f)1.c, defining such term as any deficit incurred resulting from the sale by a municipality of real property within a tax incremental district for consideration less than cost.

M. "Substantially Improve," means the actual pursuit of construction of the permanent structures comprising the Development consistent with the approvals obtained in accordance with Article III, Section 2.A of this Agreement, taking into consideration the customary industry standards for the type and complexity of construction involved.

N. "Substantial Completion" means the Project is sufficiently complete so that it can be used for its intended purpose and a Certificate of Occupancy has been issued by the Development Services Department.

O. "Term of this Agreement" means that period from the Effective Date of this Agreement to Substantial Completion.

P. "Vacated Right of Way" means those portions of Wisconsin Street and Charles Street depicted as Area 2 in Exhibit A that are to be vacated by City under Article II, Section 1.C.2 of this Agreement.

## **ARTICLE II** **CITY AND RDA OBLIGATIONS**

Section 1. Real Property Assembly; RDA Property. At Closing, the RDA and/or City, as the case may be, shall convey to Developer the RDA Property, which is legally described as:

*Lot 1 of 54 CSM 312 being all of Lots 5-8 and part of Lots 1-4, 9 and 10 BLK 17 of the Original Plat of De Pere and being part of Dickinson's Addition to the Original Plat of De Pere;*

under the following terms and conditions:

A. Consideration. The consideration for the City and RDA obligations undertaken hereunder, including without limitation, the conveyance of the RDA Property, which the parties mutually agree is sufficient and binding upon them, is comprised of the considerable community and economic benefits the Project will generate in the City of De Pere as set forth in the Recitals. Should there be a determination by a Court of competent jurisdiction that such consideration is less than the

cost associated with the conveyance of the RDA Property to Developer, such deficit shall be treated as Real Property Assembly Costs and deemed a Project Cost of the Development under Wis. Stats. §66.1105(2)(f), with the remainder comprising the consideration for the transfer.

B. The Closing. The Closing shall take place at De Pere City Hall, 2d Floor Administrative Offices on December 15, 2020 or, at Developer's option, at such other date as determined by Developer within six (6) months following the date upon which the last condition precedent specified in subsection C, below, has occurred. If the Closing has not been completed on or before July 31, 2021, this Agreement shall terminate.

C. Conditions Precedent. Developer's obligations under this Agreement shall arise only upon the RDA's conveyance of the RDA Property to Developer at the Closing. Developer's obligation to close and take title to and possession of the RDA Property is expressly subject to the following conditions precedent:

1. Transfer of RDA Property.

a. Title Insurance. The RDA shall, at its own expense, provide title insurance for the property to be conveyed and shall forward a copy of the commitment of such title insurance to Developer at least fourteen (14) calendar days prior to closing. The commitment shall be for an owner's policy of title insurance in the amount of one million five-hundred thousand dollars (\$1,500,000), naming Developer as the intended insured, written by a responsible title insurance company licensed in the State of Wisconsin with an extended coverage and gap endorsement showing title to the property to be marketable. The RDA shall, at its cost and expense, cause the deletion of all standard title insurance exceptions to such title insurance policy, except for those exceptions which would be removed by an ALTA/ACSM Minimum Survey. If Developer gives the RDA notice of any title defects prior to the closing which are not acceptable or if the commitment does not contain the extended coverage endorsement, the RDA shall use its best effort to cure such defects. If any such defects are not cured by the date of closing, Developer may terminate this Agreement or reschedule the closing at its option.

b. Closing Costs. The RDA shall pay all closing costs usually and customarily paid by sellers, including the cost of the title insurance as provided herein and deed recording fees.

c. Conveyance of Title. The City shall convey good title to Developer by good and sufficient warranty deed as of the date of closing, free and clear of liens and encumbrances except the following:

(i) Municipal and zoning ordinances, provided the same do not restrict or interfere with the intended use of the property.

(ii) Easements of record, provided the same do not restrict or interfere with the intended use of the property.

(iii) Obligations contained in this Agreement.

d. Environmental Condition of Property. Except as otherwise provided in this Agreement, after the closing, as between the Developer and the RDA and the City, the risk or expense for undertaking or performing any environmental remediation tasks or efforts upon the RDA Property that are required under Wisconsin Law will be the sole responsibility of the Developer.

e. Soil and Geotechnical Condition of Property. Developer has obtained and tested (or will, before closing, obtain and test) such soil samples of the RDA Property as Developer deems sufficient. Neither the RDA nor the City shall have any obligation to undertake or perform any task or provide any funding for geotechnical efforts upon the RDA Property, it being the intent of the Parties that Developer shall bear any such costs or efforts to determine if the Project Site soils and geography are suitable for the Development.

2. Vacated Rights of Way. The right of way covering those portions of Wisconsin Street and Charles Street depicted as Area 2 in Exhibit A shall have been vacated and discontinued by the City no later than December 15, 2020. City shall convey unencumbered title to the land, excepting existing utility easements in the Charles Street right-of-way, to Developer or, with the conveyance of the RDA Parcel, the same shall transfer to and vest in Developer.

3. Utility Easements. The City shall have terminated, modified or relocated all utility easements within the Vacated Right of Way described in subsection 2, above, in order to accommodate the Project and any new easements required to accommodate the Project shall have been agreed upon no later than December 15, 2020.

4. Utility Changes. The City, at its sole cost and expense, shall have caused or agreed to cause the:

a. abandonment and relocation of the utility services within the right of way covering those portions of Wisconsin Street that is to be vacated and discontinued, with electrical lines, the relocation of which is shown as being the responsibility of the City on Exhibit B, to be relocated as shown in such Exhibit and other utilities to be capped and/or relocated, if necessary to maintain service in areas other than the Project Site, with all such work to be completed as follows:

(i) Relocation of electrical lines to be completed no later than ninety (90) calendar days following the Effective Date of this Agreement, or at such later date as agreed in writing by the parties; and

(ii) Relocation of other utilities (e.g., fiber optics, water, sewer, storm sewer), to be completed within six (6) months following the Closing; and

b. replacement of the sidewalk on the West side of Michigan Street from Charles Street to Lewis Street with commencement and ultimate completion of this work to be coordinated with Developer to accommodate the construction schedule of the Project.

5. Rezoning. The Project Site shall have been rezoned to B-1 to accommodate the Project no later than December 15, 2020. The City shall cooperate with Developer to obtain any amendment or modification of any law, regulation, or ordinance required to permit (or to avoid the restriction or interference with) either the Development or the intended use of the Project or the Project Site.

6. Implement Recommendations – Traffic Impact Study. The City shall have agreed to implement within twelve (12) months following the Commencement of Construction, at its sole cost and expense, all traffic recommendations set forth in the Traffic Impact Analysis dated April, 2020 that was prepared by JT Engineering, Inc. for The Boldt Company, including, without limitation, the recommendation to modify the westbound movement of traffic on Lewis Street to “right-in/right out.”

7. Light Poles. The City shall have caused or agreed to cause within twelve (12) months following the Commencement of Construction (or at such later date as agreed in writing by the parties) the removal of all light poles identified for removal in Exhibit D and the replacement of such light poles and installation of any additional light poles where indicated in Exhibit D. All light poles required to be installed under this section shall:

- a. meet applicable state requirements;
  - b. be supplied by Developer at Developer’s sole cost and expense;
  - c. be installed and maintained by the City at the City’s sole cost and expense;
- and
- d. be connected via a separate meter such that the electrical cost of operating lights affixed to such poles will be at the City’s sole cost and expense.

As used in this section, the term Light Poles means the light poles and any light fixtures affixed thereto.

8. Sidewalks. The City, at its sole cost and expense, shall have caused or agreed to cause:

a. the demolition and replacement of existing sidewalks and the construction of new sidewalks bordering the Project Site where indicated in Exhibit G. All such sidewalks shall be:

(i) constructed to comply with the rules and regulations applicable to public sidewalks, and

(ii) of a width determined solely by Developer, provided only that such width meets or exceeds any applicable minimum width requirements under the Americans with Disabilities Act.

b. the placement of new stamped concrete in red brick pattern to match existing on Broadway in areas adjacent to new sidewalks constructed by the City in accordance with section 8.a, above, where indicated by Developer.

9. Approval of Project. Excepting required State and building permit approvals, all other required approvals for the Project have been obtained no later than December 15, 2020.

10. Occupancy Permit – Bus Drop-Off Area. The City shall have caused or agreed to cause the issuance of an occupancy permit granting the Developer the right to utilize the area adjacent to Lewis Street that extends into the Lewis Street right-of-way that is described and depicted in Exhibit F as the “Bus Drop-Off Area” for so long as such area is used for vehicular drop-offs.

Section 2. Access Prior to Closing. The RDA shall permit Developer access to the RDA Parcel prior to Closing at no cost to Developer for the purpose of site examination and testing as deemed reasonable by Developer. Developer agrees to hold the RDA and City harmless for any and all injury that may occur to Developer, its agents or employees, City’s agents, employees or third parties, or any properties or interest of any of the above-referenced persons occasioned as a result of Developer’s site examination and testing activities as contemplated by this section. The hold harmless provision of this paragraph is intended to include all costs of defense, including reasonable attorney fees.

Section 3. Developer May Terminate Agreement. Notwithstanding anything contained in this Agreement to the contrary, if at any time prior to Closing, the Developer determines, in its sole discretion, that: (a) the RDA Property, or any portion thereof, is not satisfactory to Developer, or (b) any of the conditions precedent to closing set forth in this Article II are not completable to the satisfaction of

Developer, then Developer may terminate this Agreement upon written notice thereof given to RDA or City not less than five (5) business days before the Closing.

Section 4. Satisfaction of Conditions Precedent and Cooperation. The RDA and City shall:

A. Use their respective best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth in Section 1.C, above, including, without limiting the generality of the foregoing, obtaining all consents, authorizations and approvals that may be necessary or reasonably required to satisfy each of them; and

B. Cooperate in and take all necessary steps to facilitate the timely prosecution and granting of applications made by Developer for any certifications, permits or approvals appropriate or necessary for the Development, including, without, limitation, any building permits and certificates of occupancy, and/or the intended use of the Project or the Project Site.

### ARTICLE III DEVELOPER OBLIGATIONS

Section 1. Project Description. The Project contemplates the following features and characteristics (all numbers are approximations and are subject to change pending final design): A 77,400 square foot structure to be primarily used as a cultural destination and community focal point that will be open to the public and feature a 10,000 square foot space for national exhibitions, a 200 seat auditorium with classrooms for educational and intellectual programming, a restaurant or café and other amenities. The Parties acknowledge and agree that the preceding description of the Project is preliminary and the Developer warrants only that the actual Development shall be of a size and contain such spaces, parking, landscaping and other site features and amenities as is set forth in the design, site and landscape plans for the Project, including revisions ("design drawings or construction documents") finally submitted by Developer to the City and Plan Commission for approval in accordance with Section 2.A, below.

Section 2. Plan Approval and Construction.

A. Plan Approval. Developer shall, prior to the Commencement of Construction, submit such plans and drawings as required for approval of the Project in accordance with the requirements of Sections 14-23 and 14-60, Municipal Code, City of De Pere. A copy of the final approved design drawings or construction documents submitted for such approval, which shall include any subsequent revisions, will be incorporated herein as Exhibit C.

B. De Pere Cultural Center Bus Drop-Off Area. Plans for the Development show a bus drop-off area (such area being described and depicted in Exhibit F) adjacent to Lewis Street that extends into the Lewis Street right-of-way. The Parties acknowledge that usual and customary City snow removal activities will be difficult to perform without snow from Lewis Street being plowed into

the bus drop-off area (the "Impacted Area-A"). Developer therefore agrees that, in consideration of said drop-off area being approved by the Plan Commission and City Council, it shall not object in such event to snow from Lewis Street ending up within the Impacted Area-A; provided that the amount of such snow does not exceed an amount reasonably to be expected to end up in such area given the amount of snowfall and the employment of the usual and customary snow removal procedures utilized by the City. Under no circumstances shall such area be used by the City for snow storage or to accumulate snow from other parts of Lewis Street. Developer further agrees that, in connection with its own snow removal activities for the Development, it shall remove such snow from the Impacted Area-A as may be required to utilize such area in conjunction with the bus drop-off.

C. Sidewalk-Lewis Street from Michigan Street to Broadway Street. As depicted in Exhibit F, preliminary plans for the Development show the sidewalk from Michigan Street to Broadway Street being located both on Developer's property and the public right-of-way. Developer shall provide a Public Sidewalk Easement for the benefit of the public encompassing the sidewalk area. Such sidewalk shall be constructed by the City and considered a public sidewalk for purposes of federal, state, and local laws and regulations.

D. Snow Removal – Charles Street. Preliminary plans for the Development show there will be no City right-of-way where Charles Street dead ends into Developer's property. The Parties acknowledge that usual and customary City snow removal activities will be difficult to perform without snow from Charles Street ending up on such portion of Developer's property (the "Impacted Area-B"). Developer therefore agrees that it shall not object in such event to snow from Charles Street ending up within Impacted Area-B; provided that the amount of such snow does not exceed an amount reasonably to be expected to end up in such area given the amount of snowfall and the employment of usual and customary snow removal procedures utilized by the City. Under no circumstances shall Impacted Area-B be used by the City for snow storage or to accumulate snow from other areas, including without limitation, other parts of Charles Street.

E. Sidewalk-Vacated Charles Street East to Wisconsin Street. After the vacation of the westerly portion of Charles Street to be discontinued (such area being depicted as Area 2B in Exhibit A), the parties acknowledge and agree that the existing public sidewalk in such area shall be replaced by City. To that end, Developer shall provide a Public Sidewalk Easement for the benefit of the public encompassing the sidewalk area. Such sidewalk shall be considered a public sidewalk for purposes of federal, state, and local laws and regulations.

### Section 3. Project Prosecution and Progress.

A. Commence Construction. Subject to Enforced Delays, Developer shall Commence Construction on the Project within ninety (90) days of the issuance of a building permit and all other permits or licenses required to commence construction. If Developer fails to Commence Construction on the Project within such time for any reason other than an Enforced Delay, the RDA shall be entitled to the return of the RDA Parcel under Article VI, Section 2.B.

B. Project Site to be Substantially Improved. Following Commencement of Construction, Developer shall Substantially improve the Project Site consistent with the design drawings or construction documents finally approved in accordance with Section 2.A, above. Subject to Enforced Delays, Developer shall achieve Substantial Completion no later than ninety (90) days following the date specified for Substantial Completion in Developer's agreement with the General Contractor engaged to construct the Development. If Developer fails to achieve Substantial Completion within this time, the RDA may elect to invoke the remedy provided in Article VI, Section 2.C.

C. Certificate of Occupancy. Developer shall obtain a Certificate of Occupancy from the Development Services Department prior to occupancy of the building improvements contemplated by the Parties herein.

#### **ARTICLE IV INDEMNIFICATION**

Developer agrees to protect, defend, indemnify, and hold City and RDA, its officers, agents, and employees, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, attorney fees, or other expenses or liabilities of every kind and character in connection with, or arising directly or indirectly out of, this Agreement and/or arising out of the construction of the Development. Developer agrees that City will, if City deems appropriate, provide any additional reasonable defense to any claim hereunto, the full cost of which shall be borne by City.

#### **ARTICLE V NOT FOR SPECULATION**

Developer represents and agrees that its acquisition of the Municipal Property, as well as its undertakings pursuant to this Agreement, will be for the sole and express purpose of the developing the property consistent with the Plan Commission and Council approvals and the terms and conditions of this Agreement and are not for the speculation in land holdings. Accordingly, Developer agrees for itself, its successors and assigns that, except only by way of security for and only for the purpose of obtaining the financing necessary to perform its obligations with respect to making the improvements on the property under this Agreement, Developer has not made and will not make or suffer, cause or permit to be made prior to the Substantial Completion of the Project, any total or partial sale, assignment, conveyance or lease, or any trust or power or transfer in any other mode or form of or with respect to this Agreement, the RDA Parcel, the Redevelopment, or any interest of Developer therein or in this Agreement or any other agreement related to the Development without the prior written approval of the City.

**ARTICLE VI**  
**DEFAULT AND REMEDIES**

Section 1. Notice and Right to Cure. Except for defaults specified in Section 2.B.1, below, a party shall be in default under this Agreement if such party shall fails to carry out or fulfill one or more of its obligations hereunder for any reason other than an Enforced Delay and such failure shall continue for a period of thirty (30) days following receipt of written notice from the other party specifying such failure; provided, however, that if the nature of the default is such that it cannot be cured within thirty (30) days, a party shall not be in default if it immediately undertakes steps to cure the default after receipt of notice and then diligently and in good faith prosecutes the curing of such default to its conclusion.

Section 2. Remedies.

A. General. If a party does not cure or undertake to cure a default within the time periods set forth in Section 1, above, the non-defaulting party may pursue the remedies provided for in this Agreement.

B. Failure to Commence Construction.

1 This Section B.1, shall be the sole remedy available to the RDA and City for Developer's failure to Commence Construction in accordance with Article III, Section 3.A. In such event, the RDA shall send Developer notice of its default and right to cure the same. Developer shall have ten (10) business days from receipt of such notice to Commence Construction. If Developer has still not cured the default by Commencing Construction, the RDA shall be entitled to compel Developer to convey the RDA Parcel to it without consideration, it being agreed that Developer has not performed sufficient acts to constitute consideration for its purchase of the same. In such event, Developer shall be responsible for all usual and customary closing costs of a seller of property in Wisconsin and shall reimburse City for costs reasonably incurred to relocate utilities under Article II, Section 1.C.4; pay to RDA all sums due for special assessments, real property taxes properly imposable and due, if any, as well as any liens or judgments of record that arose during the time Developer held title to the RDA Parcel that are owing and remain unpaid.

2 Upon Developer's conveyance of the RDA Property to the RDA and payment of any amounts properly due and owing to the RDA and City under Section B.1, above, this Agreement shall terminate, any obligation, risk or responsibility of Developer under Article II, Section 1.C.1.d, with respect to the risk or expense for undertaking or performing any environmental remediation tasks or efforts upon the RDA Property that are required under Wisconsin Law, shall cease and revert to the RDA and City in toto, and the Parties shall have no further obligations to each other.

C. Failure to Substantially Improve.

1. This Section C.1, shall be the sole remedy available to the RDA and City for Developer's failure to achieve Substantially Completion of the Project in accordance with Article III, Section 3.B. In such event, the RDA shall be entitled to payment by Developer in the amount equal to the sum of one million five-hundred thousand dollars (\$1,500,000.00) as agreed upon damages, said sum representing the actual costs the City and RDA have incurred in acquiring the RDA Property.

2. Upon Developer's payment to the City of the agreed damages provided for in in Section C.1, above, this Agreement shall terminate, and the Parties shall have no further obligations to each other.

Section 3. Enforced Delay in Performance for Causes Beyond the Control of the Parties. Whether stated or not, all periods of time in this Agreement applicable to the Parties are subject to this Section 3. No Party nor any successor in interest thereof shall be considered to be in breach of, or to have caused an event of default with respect to, its obligations under this Agreement with respect to the commencement, progress or completion of the Development or of any phase of construction or progress in respect thereto in the event of Enforced Delay, as herein defined, in the performance of such obligations. For purposes of this Agreement, the term "Enforced Delay" shall mean any delay due to unforeseeable causes, whether actual or threatened, beyond any Party's actual and reasonable control and without its fault, or negligence including, but not restricted to, acts of God, force majeure, acts of the Federal, state and local governments, acts of any other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby, fires, floods, pandemics, epidemics, quarantine restrictions, labor disputes or strikes or interruptions, embargoes, unavailability of supplies or materials or labor, breach of contract by contractors or subcontractors or materialmen, unusually severe weather or delays of contractors or subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of a national emergency or national alert, blockade, insurrection, riot, extortion, sabotage, or similar occurrence or any exercise of a power of eminent domain, condemnation, or other taking by the action of any government body on behalf of any public, quasi-public, or private entity, or declaration of a moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public, or private entity, it being the purpose and intent of this Section 3 that in the event of the occurrence of an Enforced Delay, the time or times of performance of any of the obligations of Developer under this Agreement shall be extended for the period of the Enforced Delay; provided that the Developer, in seeking the benefit of the provisions of this Section 3 shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other Parties thereof and of the cause or causes thereof and requested an extension for the period of the Enforced Delay. The Parties acknowledge and agree that any delay permitted or extension of time allowable under Developer's agreement with the General Contractor engaged to construct the Development shall be deemed an Enforced Delay for purposes of this Agreement.

Section 4. Rights and Remedies Cumulative. Except with respect to the exclusive remedies set forth in Sections 2.B, and 2.C above, the rights and remedies of the Parties, whether provided by law, in equity or by this Agreement shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same time or different times of any such other remedies for the same event of default or breach or of any remedies for any other event of default or breach. No waiver made by a Party with respect to the performance or manner or time of any obligation under this Agreement shall be considered a waiver of any rights to enforce any other obligations hereunder.

**ARTICLE VII**  
**REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Section 1. City and RDA Representations. The City and RDA represent and warrant to the Developer that:

A. The City and RDA have the authority to enter into and perform this Agreement and each of the City's and RDA's obligations and undertakings under this Agreement, and the City's and RDA's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City's Code and Wisconsin law.

B. All consents and approvals necessary to the execution, delivery and performance of this Agreement by the City and RDA have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

C. The City and RDA will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. The City and RDA believe that this Agreement (and each undertaking of the City and RDA contained herein), constitutes a valid, binding and enforceable obligation of the City and RDA, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Notwithstanding any contrary provision of this Agreement, the City and RDA will defend, through final, non-appealable order, the validity and enforceability of this Agreement in the event of any proceeding or litigation against the City or RDA which challenges the authority of the City or RDA to enter into or perform any of its obligations hereunder and will cooperate with Developer in connection with any action by a third party in which Developer is a party and the benefits or any other aspect of this Agreement to Developer are challenged.

E. The execution, delivery and performance of this Agreement by the City and RDA is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City or RDA is a party.

F. The TID #7 is in effect and in good standing certified by the Wisconsin Department of Revenue.

G. Except as otherwise explicitly set forth in Exhibit E, the property comprising the Project Site and the Project contemplated herein conforms in all respects with the applicable zoning and land division laws, rules, regulations, and ordinances.

Section 2. Developer Representations. The Developer represents and warrants to the City and RDA that:

A. Developer has the authority to enter into and perform this Agreement and each of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer have been duly authorized and agreed to in compliance with the organizational documents of Developer.

B. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

C. Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. Developer believes that this Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer will defend, through final, non-appealable order, the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with the City and RDA in connection with any action by a third party in which the City or RDA is a party and the benefits of this Agreement to the City and RDA are challenged. Notwithstanding the foregoing, a determination by a court of competent jurisdiction that this Agreement is invalid or unenforceable shall not constitute a breach of, or default under, this Agreement by Developer.

E. The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments, or decrees to which Developer is a party or to which Developer is otherwise subject.

**ARTICLE VIII**  
**OTHER PROVISIONS**

Section 1. Changes. The Parties to this Agreement may, from time to time, require changes in the scope of the Agreement. Such changes, which are mutually agreed upon by and between Developer and RDA or City shall be incorporated in written amendments to this Agreement.

Section 2. Approvals in Writing. Whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized officer of the RDA and/or City and delivered to the party to whom it is directed at the address specified in Section 3 hereunder. Whenever under this Agreement the consent, approval or waiver of City or RDA is required or the discretion of City or RDA may be exercised, the Mayor and/or the Chair of the RDA shall have the authority to act, as the case may be. Whenever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld, conditioned or delayed.

Section 3. Notices and Demands. A notice, demand, or other communication under this Agreement by any party to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, to the party to whom such notice, demand or communication is directed, or delivered personally to such party, as follows:

A. In the case of Developer to:

De Pere Cultural Foundation  
Attention: Chief Executive Officer  
P.O. Box 5426  
De Pere, WI 54115

B. In the case of the RDA to:

Redevelopment Authority for the City of De Pere  
Attention: Chair  
De Pere City Hall  
335 S. Broadway De  
Pere, WI 54115

C. In the case of the City to:

City of De Pere  
 Attention: City Administrator  
 De Pere City Hall  
 335 S. Broadway De  
 Pere, WI 54115

Section 4. No Liability of City. Neither RDA nor City shall have any obligation or liability to the lending institution, architect, contractor, or subcontractor, or any other party retained by Developer in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Developer specifically agrees that no representations, statements, assurances, or guarantees will be made by Developer to any third party or by any third party which are contrary to this provision.

Section 5. Completeness of Agreement. This Agreement, and any addition or supplementary documents or documentation incorporated herein by specific reference, contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part hereof shall have any validity or bind any of the parties hereto.

Section 6. Matters to be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarding in construing or interpreting any of the provisions of this Agreement.

Section 7. Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws and the Project Plan.

Section 8. Recording of Agreement. The Agreement and any and all subsequent modifications thereof or additions thereto shall, upon being duly executed, be recorded by Developer with the Register of Deeds for Brown County, Wisconsin.

Section 9. Successors and Assigns. The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective successors, transferees, and assigns. Any transfer of any party's interest under this Agreement or real property described as Area 1 in Exhibit A shall not release the transferor from its obligations hereunder.

Section 10. Covenant Running with the Land. This Agreement, which will be attached to the deed as part of the conveyance and deemed to be, and interpreted as a covenant running with the land depicted in Exhibit A as Area 1, shall terminate upon the date a Certificate of Occupancy is issued by the Development Services Department for the building improvements contemplated by the Parties herein.

Section 11. Exhibits Incorporated by Reference. Each of the exhibits referenced herein and attached hereto are expressly incorporated by reference and are so incorporated for all purposes.

Section 12. Developer Board Approval. The parties acknowledge and agree that Developer's obligations under this Agreement shall be subject to Developer obtaining the approval of the Developer's Board of Directors ("Developer Board Approval"). Developer shall provide written notice to the City promptly upon obtaining such approval ("Developer Board Approval Notice"). If Developer does not provide the Developer Board Approval Notice on or before 5:00 p.m. on December 14, 2020, the Developer shall be deemed not to have obtained Developer Board Approval and this Agreement shall terminate and the parties shall have no further rights or obligations under this Agreement.

Dated this 20th day of November, 2020.

**DE PERE CULTURAL FOUNDATION, INC.**

**CITY OF DE PERE**

By: James J. Mulva  
Name: James J. Mulva  
Title: President

By: \_\_\_\_\_  
James G. Boyd  
Mayor

\_\_\_\_\_  
Carey E. Danen  
City Clerk

**STATE OF WISCONSIN  
BROWN COUNTY**

**STATE OF WISCONSIN  
BROWN COUNTY**

Personally came before me this 20th  
day of November, 2020, the above-  
named, James J. Mulva, President of De  
Pere Cultural Foundation, Inc., who is known  
to me and who executed the foregoing  
on behalf of such corporation.

Personally came before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2020, the above-  
named James G. Boyd, Mayor and  
Carey E. Danen, City Clerk, known as the  
instrument and acknowledged the same  
persons who executed the foregoing  
instrument and acknowledged the same.

Mark H. Hill

Notary Public:  
State of Wisconsin  
My Commission Expires: 01-15-2021

\_\_\_\_\_  
Notary Public:  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_

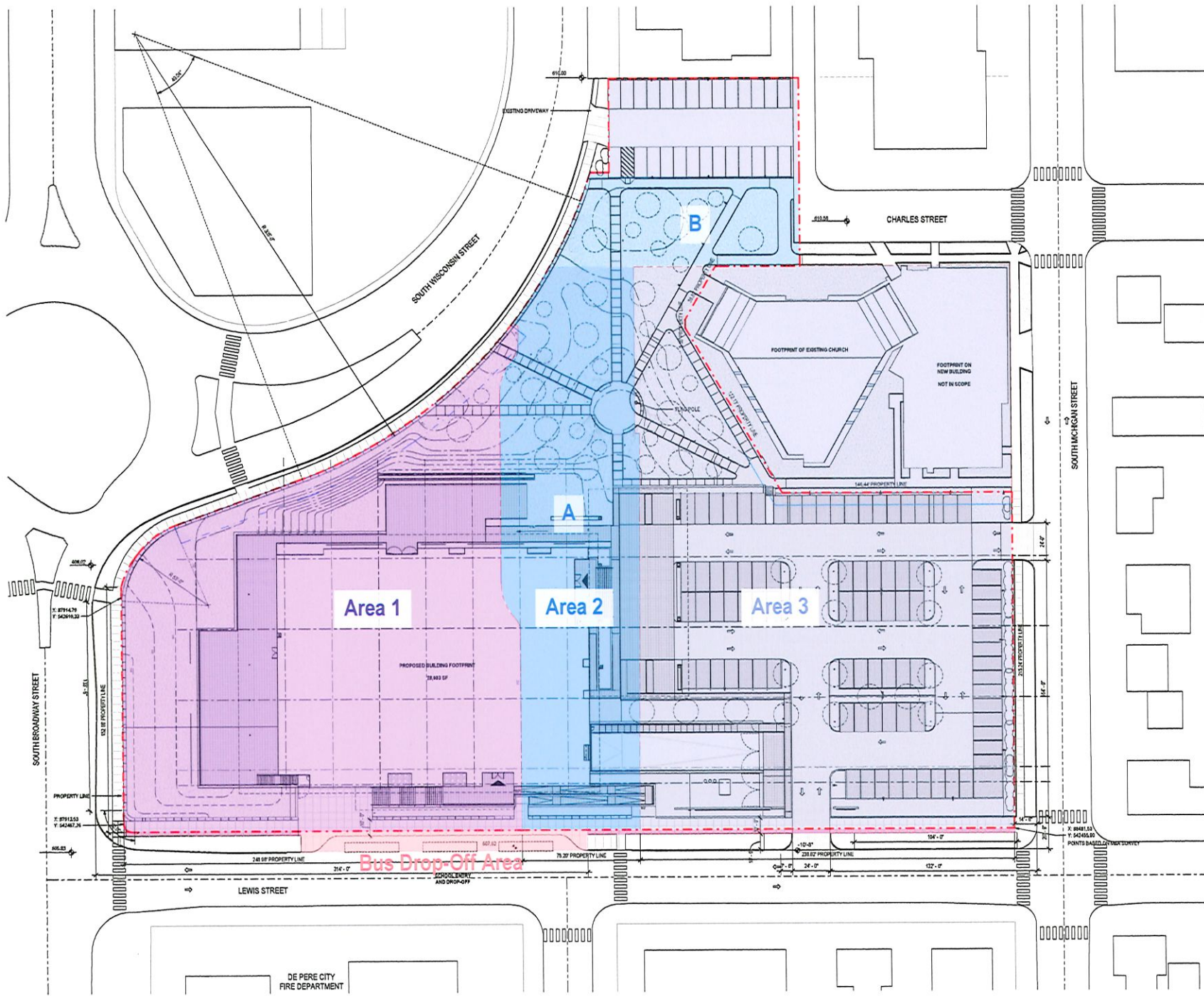
**REDEVELOPMENT AUTHORITY OF  
THE CITY OF DE PERE**

**STATE OF WISCONSIN  
BROWN COUNTY**

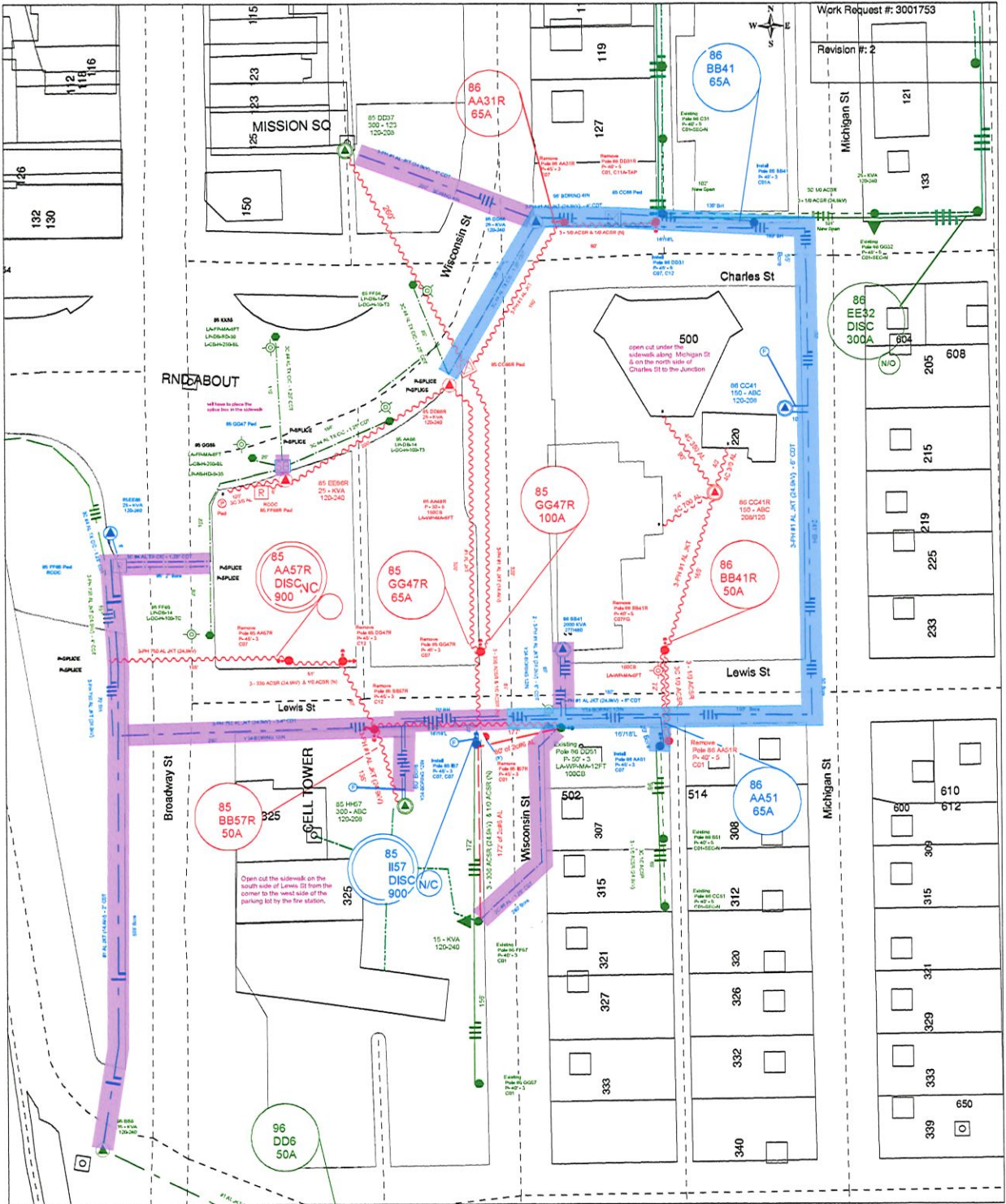
By: \_\_\_\_\_  
Theodore J. Penn  
Chair

Personally came before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2020, the above- named  
Theodore J. Penn, RDA Chair, known as the  
person who executed the foregoing instrument  
and acknowledged the same.

\_\_\_\_\_  
Notary Public:  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_



- Area 1
- Area 2 - A
- Area 2 - B
- Area 3
- Bus Drop-Off



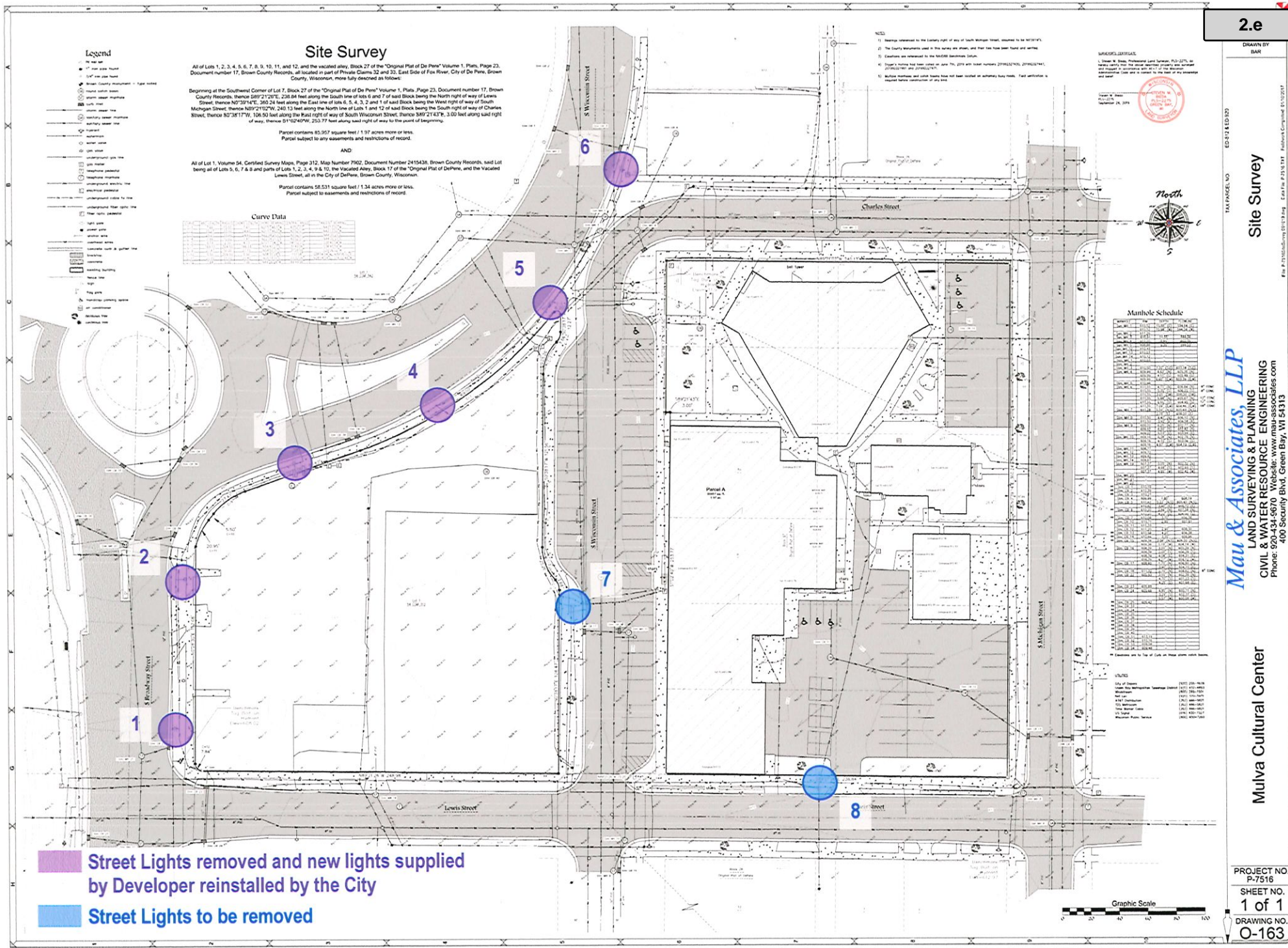
City of De Pere  
 Mulva Cultural Center

**Exhibit B: Redevelopment Agreement  
De Pere Cultural Foundation**

**EXHIBIT C**

**SITE PLAN DOCUMENTS, AS SUBMITTED FOR APPROVAL**

Redevelopment Agreement  
De Pere Cultural Foundation



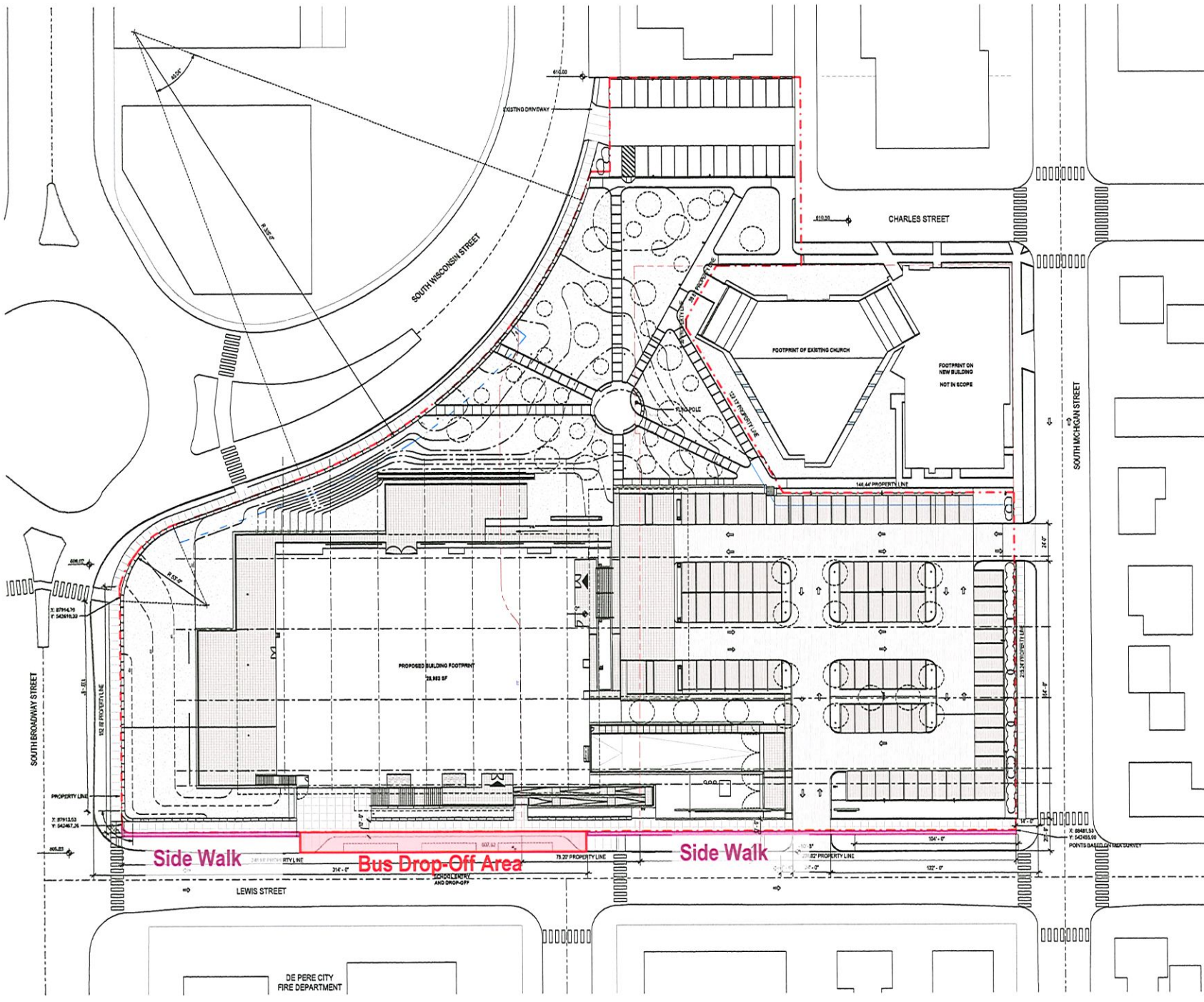
Street Lights removed and new lights supplied by Developer reinstalled by the City  
Street Lights to be removed

Manhole Schedule

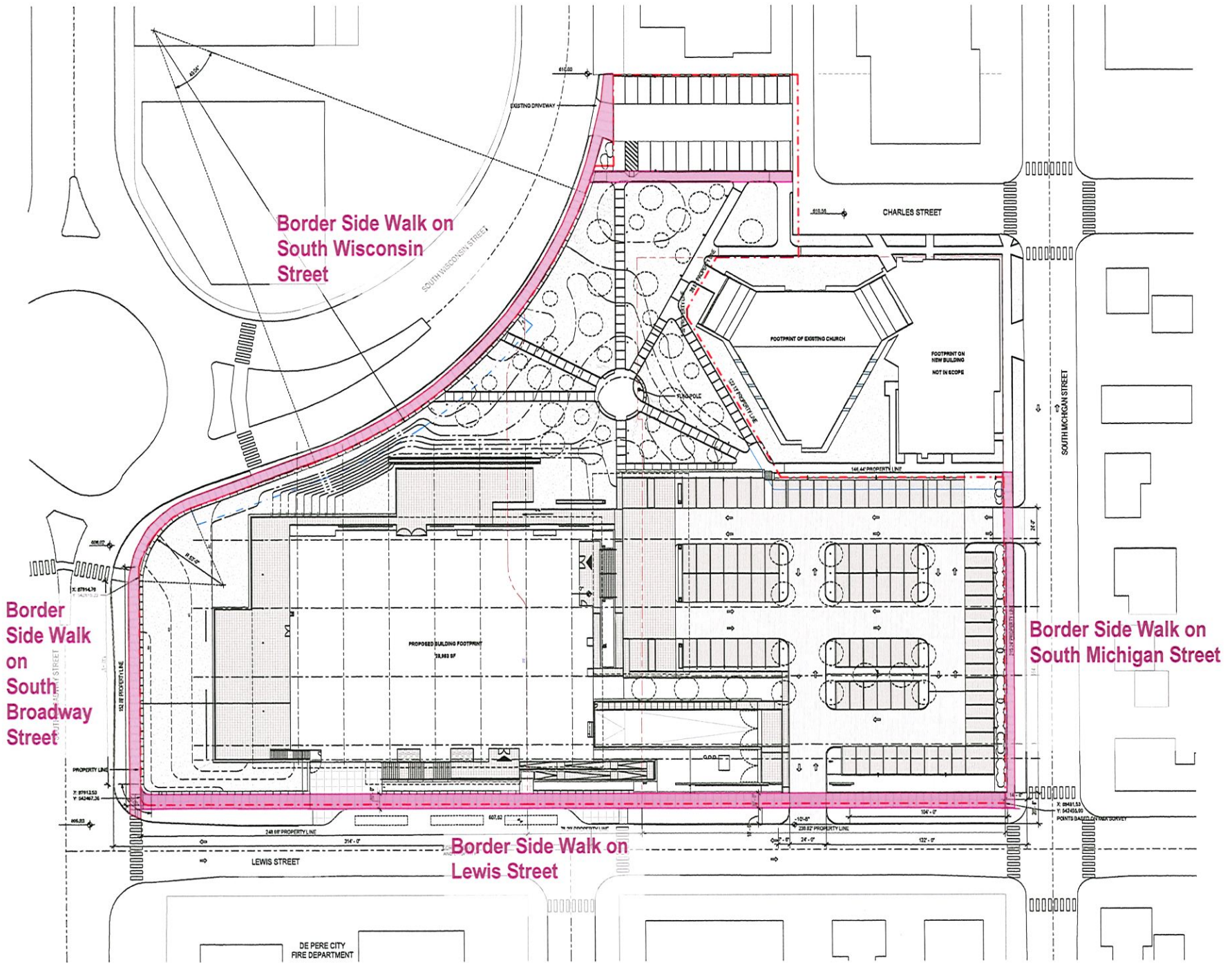
Station	Manhole	Depth	Notes
1+00	MH 1	3.00	
1+50	MH 2	3.00	
2+00	MH 3	3.00	
2+50	MH 4	3.00	
3+00	MH 5	3.00	
3+50	MH 6	3.00	
4+00	MH 7	3.00	
4+50	MH 8	3.00	
5+00	MH 9	3.00	
5+50	MH 10	3.00	
6+00	MH 11	3.00	
6+50	MH 12	3.00	
7+00	MH 13	3.00	
7+50	MH 14	3.00	
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25+50	MH 50	3.00	
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26+50	MH 52	3.00	
27+00	MH 53	3.00	
27+50	MH 54	3.00	
28+00	MH 55	3.00	
28+50	MH 56	3.00	
29+00	MH 57	3.00	
29+50	MH 58	3.00	
30+00	MH 59	3.00	
30+50	MH 60	3.00	

**EXHIBIT E**

**LISTING OF AREAS WHERE PROJECT OR PROJECT SITE DOES NOT CONFORM TO  
APPLICABLE ZONING, LAND DIVISION LAWS, RULES, REGULATIONS OR ORDINANCES, IF  
ANY**



Bus Drop-Off  
Side Walk





City of De Pere, Wisconsin

**Request For Common Council and Redevelopment Authority  
Action**

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**MEETING DATE:** December 1, 2020

**DEPARTMENT:** City Attorney

**FROM:** Judith Schmidt-Lehman

**SUBJECT:** Redevelopment Authority Resolution #20-02 Authorizing and Approving the Redevelopment Agreement Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and the De Pere Cultural Foundation, Inc.

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**ATTACHMENTS:**

- Reso Revised RDA20-02 Approving Redevelopment Agreement (PDF)
- Final Agreement from Cultural Foundation 11-20-2020(PDF)
- Redevelopment Agreement Transmittal Letter 11-20-20 (PDF)

**REVISED  
REDEVELOPMENT AUTHORITY  
RESOLUTION #RDA 20-02**

**AUTHORIZING AND APPROVING THE REDEVELOPMENT AGREEMENT BETWEEN THE  
CITY OF DE PERE, THE REDEVELOPMENT AUTHORITY OF THE CITY OF DE PERE,  
AND THE DE PERE CULTURAL FOUNDATION, INC.**

WHEREAS, in October 2006, the Redevelopment Authority for the City of De Pere (“RDA”) and City of De Pere (“City”) adopted the East Side Redevelopment Project Plan and designated such area as blighted and in need of redevelopment; and

WHEREAS, also in October 2006, the City created Tax Incremental Financing District No. 7, as amended in 2014 and 2016 (TID #7) for the area comprising the East Side Redevelopment Project Plan, finding that not less than 50% of the area included in the East Side Redevelopment Project District was in need of rehabilitation or conservation work; and

WHEREAS, §66.1337 and §66.1331 Wis. Stats. empowers cities to assist redevelopment projects by lending or contributing funds and performing other actions of a character which the City is authorized to perform for other purposes; and

WHEREAS, the De Pere Cultural Foundation, Inc. (“Foundation”) proposes to construct a cultural destination and community focal point that will be open to the public and feature various exhibitions, an auditorium with classrooms for educational and intellectual programming, and other amenities; and

WHEREAS, RDA and City have determined that such development will have not only a significant, positive educational/cultural impact in De Pere but also a significant and positive economic impact in De Pere, through increased tourism, along with the

direct and indirect impact of added employment, business openings, construction investment and the like, likely to exceed \$3.1 million annually; and

WHEREAS, the RDA and City have also determined that Foundation is uniquely qualified to undertake this redevelopment project; and

WHEREAS, as such, this desirable development will assist the RDA and City in their efforts to promote revitalization and economic stability in TID #7; and

WHEREAS, Wis. Stats. §66.1105, provides the authority and establishes procedures by which the City of De Pere may undertake redevelopment projects within blighted areas of the city and finance such projects through the use of tax incremental financing; and

WHEREAS, allowable project costs include, among other things, real property assembly costs and payments made in the discretion of the RDA and City which are found to be necessary and convenient to the implementation of the TID #7 project plan; and

WHEREAS, the RDA and City have reviewed such redevelopment project and Redevelopment Agreement therefore, attached and incorporated as Addendum 1, and, subject to revision of any timing issues related to the Charles Street discontinuance identified therein, recommends approval thereof.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

The Chair is authorized and directed to execute the attached Redevelopment Agreement Between the City of De Pere, the Redevelopment Authority for the City of De Pere and De Pere Cultural Foundation, Inc. (Addendum A), subject to (1) revision or resolution of any timing issues related to the Charles Street discontinuance; and (2) Wisconsin Street utility easements not being vacated and abandoned until the utilities therein are removed; and (3) any other changes deemed necessary by the City Attorney.

BE IT FURTHER RESOLVED:

That all City officials, officers, and employees are authorized and directed to take such steps as are lawful and necessary in furtherance thereof.

Adopted by the Redevelopment Authority for the City of De Pere, Wisconsin,  
this 1<sup>st</sup> day of December, 2020.

APPROVED:

\_\_\_\_\_  
Theodore J. Penn, Chair

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

**REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF DE PERE,  
THE REDEVELOPMENT AUTHORITY OF THE CITY OF DE PERE,  
AND THE DE PERE CULTURAL FOUNDATION, INC.**

THIS AGREEMENT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of De Pere, a Wisconsin municipal corporation ("City"), the Redevelopment Authority of the City of De Pere, Wisconsin, a public body corporate and politic ("RDA") and the De Pere Cultural Foundation, Inc., a Wisconsin non-stock, non-profit corporation ("Developer"), individually and collectively referred to as "Party" or "Parties".

**RECITALS**

WHEREAS, in October 2006, the RDA and City adopted the East Side Redevelopment Project Plan and designated such area as blighted and in need of redevelopment; and

WHEREAS, also in October 2006, the City created Tax Incremental Financing District No. 7, (TID #7) for the area comprising the East Side Redevelopment Project Plan, finding that not less than 50% of the area included in the East Side Redevelopment Project District was in need of rehabilitation or conservation work; and

WHEREAS, §66.1337 and §66.1331 Wis. Stats. empowers cities to assist redevelopment projects by lending or contributing funds and performing other actions of a character which the City is authorized to perform for other purposes; and

WHEREAS, Developer proposes to construct a cultural destination and community focal point that will be open to the public and feature various exhibitions, an auditorium with classrooms for educational and intellectual programming, and other amenities; and

WHEREAS, RDA and City have determined that such development will have not only a significant, positive educational/cultural impact in De Pere but also a significant and positive economic impact in De Pere, through increased tourism, along with the direct and indirect impact of added employment, business openings, construction investment and the like, likely to exceed \$3.1 million annually; and

WHEREAS, the RDA and City have also determined that Developer is uniquely qualified to undertake this redevelopment project; and

WHEREAS, as such, this desirable development will assist the RDA and City in their efforts to promote revitalization and economic stability in TID #7; and

WHEREAS, Wis. Stats. §66.1105, provides the authority and establishes procedures by which the City of De Pere may undertake redevelopment projects within blighted areas of the city and finance such projects through the use of tax incremental financing; and

WHEREAS, allowable project costs include, among other things, Real Property Assembly Costs as defined herein.

NOW, THEREFORE, upon the mutual obligations, benefits and other consideration contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1. The following terms as used herein shall have the following meanings:

- A. "City" means the City of De Pere.
- B. "Certificate of Occupancy" means the certificate issued by the Development Services Department upon Substantial Completion of the Project.
- C. "Closing" means the RDA's conveyance of the RDA Property to Developer.
- D. "Commence Construction" or "Commencement of Construction" means physical work at the Project Site has occurred such that the site is excavated, and footing and foundation installation is underway.
- E. "Developer" means De Pere Cultural Foundation, Inc., a Wisconsin non-stock, non-profit corporation, or any assignee of same.
- F. "Effective Date" means the date the last of all of the following events has occurred: (a) the Parties have each signed this Agreement; and (b) the Developer's Board of Directors has approved this Agreement by its written Resolution.
- G. "Municipal Property" means the RDA Property and the Vacated Right-of-Way Property.
- H. "Project" or "Development" means the real estate and building improvements contemplated by the Parties as finally approved by the City Plan Commission and City Council. "Project" and "Development" can be/are used interchangeably in this Agreement.
- I. "Project Cost" has the meaning set forth in Wis. Stats. §66.1105(2)(f), including, without limitation, any Real Property Assembly Costs associated with the conveyance of RDA Property to Developer pursuant to Article II Section 1.A.

J. "Project Site" means that property depicted in Exhibit A, which includes the Municipal Property and other property under the control of Developer.

K. "RDA Property" means the 1.343-acre parcel of real property known as Tax Parcel ED-812 and depicted as Area 1 in Exhibit A.

L. "Real Property Assembly Costs" has the meaning set forth in Wis. Stats. §66.1105(2)(f)1.c, defining such term as any deficit incurred resulting from the sale by a municipality of real property within a tax incremental district for consideration less than cost.

M. "Substantially Improve," means the actual pursuit of construction of the permanent structures comprising the Development consistent with the approvals obtained in accordance with Article III, Section 2.A of this Agreement, taking into consideration the customary industry standards for the type and complexity of construction involved.

N. "Substantial Completion" means the Project is sufficiently complete so that it can be used for its intended purpose and a Certificate of Occupancy has been issued by the Development Services Department.

O. "Term of this Agreement" means that period from the Effective Date of this Agreement to Substantial Completion.

P. "Vacated Right of Way" means those portions of Wisconsin Street and Charles Street depicted as Area 2 in Exhibit A that are to be vacated by City under Article II, Section 1.C.2 of this Agreement.

## **ARTICLE II** **CITY AND RDA OBLIGATIONS**

Section 1. Real Property Assembly; RDA Property. At Closing, the RDA and/or City, as the case may be, shall convey to Developer the RDA Property, which is legally described as:

*Lot 1 of 54 CSM 312 being all of Lots 5-8 and part of Lots 1-4, 9 and 10 BLK 17 of the Original Plat of De Pere and being part of Dickinson's Addition to the Original Plat of De Pere;*

under the following terms and conditions:

A. Consideration. The consideration for the City and RDA obligations undertaken hereunder, including without limitation, the conveyance of the RDA Property, which the parties mutually agree is sufficient and binding upon them, is comprised of the considerable community and economic benefits the Project will generate in the City of De Pere as set forth in the Recitals. Should there be a determination by a Court of competent jurisdiction that such consideration is less than the

cost associated with the conveyance of the RDA Property to Developer, such deficit shall be treated as Real Property Assembly Costs and deemed a Project Cost of the Development under Wis. Stats. §66.1105(2)(f), with the remainder comprising the consideration for the transfer.

B. The Closing. The Closing shall take place at De Pere City Hall, 2d Floor Administrative Offices on December 15, 2020 or, at Developer's option, at such other date as determined by Developer within six (6) months following the date upon which the last condition precedent specified in subsection C, below, has occurred. If the Closing has not been completed on or before July 31, 2021, this Agreement shall terminate.

C. Conditions Precedent. Developer's obligations under this Agreement shall arise only upon the RDA's conveyance of the RDA Property to Developer at the Closing. Developer's obligation to close and take title to and possession of the RDA Property is expressly subject to the following conditions precedent:

1. Transfer of RDA Property.

a. Title Insurance. The RDA shall, at its own expense, provide title insurance for the property to be conveyed and shall forward a copy of the commitment of such title insurance to Developer at least fourteen (14) calendar days prior to closing. The commitment shall be for an owner's policy of title insurance in the amount of one million five-hundred thousand dollars (\$1,500,000), naming Developer as the intended insured, written by a responsible title insurance company licensed in the State of Wisconsin with an extended coverage and gap endorsement showing title to the property to be marketable. The RDA shall, at its cost and expense, cause the deletion of all standard title insurance exceptions to such title insurance policy, except for those exceptions which would be removed by an ALTA/ACSM Minimum Survey. If Developer gives the RDA notice of any title defects prior to the closing which are not acceptable or if the commitment does not contain the extended coverage endorsement, the RDA shall use its best effort to cure such defects. If any such defects are not cured by the date of closing, Developer may terminate this Agreement or reschedule the closing at its option.

b. Closing Costs. The RDA shall pay all closing costs usually and customarily paid by sellers, including the cost of the title insurance as provided herein and deed recording fees.

c. Conveyance of Title. The City shall convey good title to Developer by good and sufficient warranty deed as of the date of closing, free and clear of liens and encumbrances except the following:

(i) Municipal and zoning ordinances, provided the same do not restrict or interfere with the intended use of the property.

(ii) Easements of record, provided the same do not restrict or interfere with the intended use of the property.

(iii) Obligations contained in this Agreement.

d. Environmental Condition of Property. Except as otherwise provided in this Agreement, after the closing, as between the Developer and the RDA and the City, the risk or expense for undertaking or performing any environmental remediation tasks or efforts upon the RDA Property that are required under Wisconsin Law will be the sole responsibility of the Developer.

e. Soil and Geotechnical Condition of Property. Developer has obtained and tested (or will, before closing, obtain and test) such soil samples of the RDA Property as Developer deems sufficient. Neither the RDA nor the City shall have any obligation to undertake or perform any task or provide any funding for geotechnical efforts upon the RDA Property, it being the intent of the Parties that Developer shall bear any such costs or efforts to determine if the Project Site soils and geography are suitable for the Development.

2. Vacated Rights of Way. The right of way covering those portions of Wisconsin Street and Charles Street depicted as Area 2 in Exhibit A shall have been vacated and discontinued by the City no later than December 15, 2020. City shall convey unencumbered title to the land, excepting existing utility easements in the Charles Street right-of-way, to Developer or, with the conveyance of the RDA Parcel, the same shall transfer to and vest in Developer.

3. Utility Easements. The City shall have terminated, modified or relocated all utility easements within the Vacated Right of Way described in subsection 2, above, in order to accommodate the Project and any new easements required to accommodate the Project shall have been agreed upon no later than December 15, 2020.

4. Utility Changes. The City, at its sole cost and expense, shall have caused or agreed to cause the:

a. abandonment and relocation of the utility services within the right of way covering those portions of Wisconsin Street that is to be vacated and discontinued, with electrical lines, the relocation of which is shown as being the responsibility of the City on Exhibit B, to be relocated as shown in such Exhibit and other utilities to be capped and/or relocated, if necessary to maintain service in areas other than the Project Site, with all such work to be completed as follows:

(i) Relocation of electrical lines to be completed no later than ninety (90) calendar days following the Effective Date of this Agreement, or at such later date as agreed in writing by the parties; and

(ii) Relocation of other utilities (e.g., fiber optics, water, sewer, storm sewer), to be completed within six (6) months following the Closing; and

b. replacement of the sidewalk on the West side of Michigan Street from Charles Street to Lewis Street with commencement and ultimate completion of this work to be coordinated with Developer to accommodate the construction schedule of the Project.

5. Rezoning. The Project Site shall have been rezoned to B-1 to accommodate the Project no later than December 15, 2020. The City shall cooperate with Developer to obtain any amendment or modification of any law, regulation, or ordinance required to permit (or to avoid the restriction or interference with) either the Development or the intended use of the Project or the Project Site.

6. Implement Recommendations – Traffic Impact Study. The City shall have agreed to implement within twelve (12) months following the Commencement of Construction, at its sole cost and expense, all traffic recommendations set forth in the Traffic Impact Analysis dated April, 2020 that was prepared by JT Engineering, Inc. for The Boldt Company, including, without limitation, the recommendation to modify the westbound movement of traffic on Lewis Street to “right-in/right out.”

7. Light Poles. The City shall have caused or agreed to cause within twelve (12) months following the Commencement of Construction (or at such later date as agreed in writing by the parties) the removal of all light poles identified for removal in Exhibit D and the replacement of such light poles and installation of any additional light poles where indicated in Exhibit D. All light poles required to be installed under this section shall:

- a. meet applicable state requirements;
  - b. be supplied by Developer at Developer’s sole cost and expense;
  - c. be installed and maintained by the City at the City’s sole cost and expense;
- and
- d. be connected via a separate meter such that the electrical cost of operating lights affixed to such poles will be at the City’s sole cost and expense.

As used in this section, the term Light Poles means the light poles and any light fixtures affixed thereto.

8. Sidewalks. The City, at its sole cost and expense, shall have caused or agreed to cause:

a. the demolition and replacement of existing sidewalks and the construction of new sidewalks bordering the Project Site where indicated in Exhibit G. All such sidewalks shall be:

(i) constructed to comply with the rules and regulations applicable to public sidewalks, and

(ii) of a width determined solely by Developer, provided only that such width meets or exceeds any applicable minimum width requirements under the Americans with Disabilities Act.

b. the placement of new stamped concrete in red brick pattern to match existing on Broadway in areas adjacent to new sidewalks constructed by the City in accordance with section 8.a, above, where indicated by Developer.

9. Approval of Project. Excepting required State and building permit approvals, all other required approvals for the Project have been obtained no later than December 15, 2020.

10. Occupancy Permit – Bus Drop-Off Area. The City shall have caused or agreed to cause the issuance of an occupancy permit granting the Developer the right to utilize the area adjacent to Lewis Street that extends into the Lewis Street right-of-way that is described and depicted in Exhibit F as the “Bus Drop-Off Area” for so long as such area is used for vehicular drop-offs.

Section 2. Access Prior to Closing. The RDA shall permit Developer access to the RDA Parcel prior to Closing at no cost to Developer for the purpose of site examination and testing as deemed reasonable by Developer. Developer agrees to hold the RDA and City harmless for any and all injury that may occur to Developer, its agents or employees, City’s agents, employees or third parties, or any properties or interest of any of the above-referenced persons occasioned as a result of Developer’s site examination and testing activities as contemplated by this section. The hold harmless provision of this paragraph is intended to include all costs of defense, including reasonable attorney fees.

Section 3. Developer May Terminate Agreement. Notwithstanding anything contained in this Agreement to the contrary, if at any time prior to Closing, the Developer determines, in its sole discretion, that: (a) the RDA Property, or any portion thereof, is not satisfactory to Developer, or (b) any of the conditions precedent to closing set forth in this Article II are not completable to the satisfaction of

Developer, then Developer may terminate this Agreement upon written notice thereof given to RDA or City not less than five (5) business days before the Closing.

Section 4. Satisfaction of Conditions Precedent and Cooperation. The RDA and City shall:

A. Use their respective best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth in Section 1.C, above, including, without limiting the generality of the foregoing, obtaining all consents, authorizations and approvals that may be necessary or reasonably required to satisfy each of them; and

B. Cooperate in and take all necessary steps to facilitate the timely prosecution and granting of applications made by Developer for any certifications, permits or approvals appropriate or necessary for the Development, including, without, limitation, any building permits and certificates of occupancy, and/or the intended use of the Project or the Project Site.

### ARTICLE III DEVELOPER OBLIGATIONS

Section 1. Project Description. The Project contemplates the following features and characteristics (all numbers are approximations and are subject to change pending final design): A 77,400 square foot structure to be primarily used as a cultural destination and community focal point that will be open to the public and feature a 10,000 square foot space for national exhibitions, a 200 seat auditorium with classrooms for educational and intellectual programming, a restaurant or café and other amenities. The Parties acknowledge and agree that the preceding description of the Project is preliminary and the Developer warrants only that the actual Development shall be of a size and contain such spaces, parking, landscaping and other site features and amenities as is set forth in the design, site and landscape plans for the Project, including revisions ("design drawings or construction documents") finally submitted by Developer to the City and Plan Commission for approval in accordance with Section 2.A, below.

Section 2. Plan Approval and Construction.

A. Plan Approval. Developer shall, prior to the Commencement of Construction, submit such plans and drawings as required for approval of the Project in accordance with the requirements of Sections 14-23 and 14-60, Municipal Code, City of De Pere. A copy of the final approved design drawings or construction documents submitted for such approval, which shall include any subsequent revisions, will be incorporated herein as Exhibit C.

B. De Pere Cultural Center Bus Drop-Off Area. Plans for the Development show a bus drop-off area (such area being described and depicted in Exhibit F) adjacent to Lewis Street that extends into the Lewis Street right-of-way. The Parties acknowledge that usual and customary City snow removal activities will be difficult to perform without snow from Lewis Street being plowed into

the bus drop-off area (the "Impacted Area-A"). Developer therefore agrees that, in consideration of said drop-off area being approved by the Plan Commission and City Council, it shall not object in such event to snow from Lewis Street ending up within the Impacted Area-A; provided that the amount of such snow does not exceed an amount reasonably to be expected to end up in such area given the amount of snowfall and the employment of the usual and customary snow removal procedures utilized by the City. Under no circumstances shall such area be used by the City for snow storage or to accumulate snow from other parts of Lewis Street. Developer further agrees that, in connection with its own snow removal activities for the Development, it shall remove such snow from the Impacted Area-A as may be required to utilize such area in conjunction with the bus drop-off.

C. Sidewalk-Lewis Street from Michigan Street to Broadway Street. As depicted in Exhibit F, preliminary plans for the Development show the sidewalk from Michigan Street to Broadway Street being located both on Developer's property and the public right-of-way. Developer shall provide a Public Sidewalk Easement for the benefit of the public encompassing the sidewalk area. Such sidewalk shall be constructed by the City and considered a public sidewalk for purposes of federal, state, and local laws and regulations.

D. Snow Removal – Charles Street. Preliminary plans for the Development show there will be no City right-of-way where Charles Street dead ends into Developer's property. The Parties acknowledge that usual and customary City snow removal activities will be difficult to perform without snow from Charles Street ending up on such portion of Developer's property (the "Impacted Area-B"). Developer therefore agrees that it shall not object in such event to snow from Charles Street ending up within Impacted Area-B; provided that the amount of such snow does not exceed an amount reasonably to be expected to end up in such area given the amount of snowfall and the employment of usual and customary snow removal procedures utilized by the City. Under no circumstances shall Impacted Area-B be used by the City for snow storage or to accumulate snow from other areas, including without limitation, other parts of Charles Street.

E. Sidewalk-Vacated Charles Street East to Wisconsin Street. After the vacation of the westerly portion of Charles Street to be discontinued (such area being depicted as Area 2B in Exhibit A), the parties acknowledge and agree that the existing public sidewalk in such area shall be replaced by City. To that end, Developer shall provide a Public Sidewalk Easement for the benefit of the public encompassing the sidewalk area. Such sidewalk shall be considered a public sidewalk for purposes of federal, state, and local laws and regulations.

### Section 3. Project Prosecution and Progress.

A. Commence Construction. Subject to Enforced Delays, Developer shall Commence Construction on the Project within ninety (90) days of the issuance of a building permit and all other permits or licenses required to commence construction. If Developer fails to Commence Construction on the Project within such time for any reason other than an Enforced Delay, the RDA shall be entitled to the return of the RDA Parcel under Article VI, Section 2.B.

B. Project Site to be Substantially Improved. Following Commencement of Construction, Developer shall Substantially improve the Project Site consistent with the design drawings or construction documents finally approved in accordance with Section 2.A, above. Subject to Enforced Delays, Developer shall achieve Substantial Completion no later than ninety (90) days following the date specified for Substantial Completion in Developer's agreement with the General Contractor engaged to construct the Development. If Developer fails to achieve Substantial Completion within this time, the RDA may elect to invoke the remedy provided in Article VI, Section 2.C.

C. Certificate of Occupancy. Developer shall obtain a Certificate of Occupancy from the Development Services Department prior to occupancy of the building improvements contemplated by the Parties herein.

#### **ARTICLE IV INDEMNIFICATION**

Developer agrees to protect, defend, indemnify, and hold City and RDA, its officers, agents, and employees, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, attorney fees, or other expenses or liabilities of every kind and character in connection with, or arising directly or indirectly out of, this Agreement and/or arising out of the construction of the Development. Developer agrees that City will, if City deems appropriate, provide any additional reasonable defense to any claim hereunto, the full cost of which shall be borne by City.

#### **ARTICLE V NOT FOR SPECULATION**

Developer represents and agrees that its acquisition of the Municipal Property, as well as its undertakings pursuant to this Agreement, will be for the sole and express purpose of the developing the property consistent with the Plan Commission and Council approvals and the terms and conditions of this Agreement and are not for the speculation in land holdings. Accordingly, Developer agrees for itself, its successors and assigns that, except only by way of security for and only for the purpose of obtaining the financing necessary to perform its obligations with respect to making the improvements on the property under this Agreement, Developer has not made and will not make or suffer, cause or permit to be made prior to the Substantial Completion of the Project, any total or partial sale, assignment, conveyance or lease, or any trust or power or transfer in any other mode or form of or with respect to this Agreement, the RDA Parcel, the Redevelopment, or any interest of Developer therein or in this Agreement or any other agreement related to the Development without the prior written approval of the City.

**ARTICLE VI**  
**DEFAULT AND REMEDIES**

Section 1. Notice and Right to Cure. Except for defaults specified in Section 2.B.1, below, a party shall be in default under this Agreement if such party shall fails to carry out or fulfill one or more of its obligations hereunder for any reason other than an Enforced Delay and such failure shall continue for a period of thirty (30) days following receipt of written notice from the other party specifying such failure; provided, however, that if the nature of the default is such that it cannot be cured within thirty (30) days, a party shall not be in default if it immediately undertakes steps to cure the default after receipt of notice and then diligently and in good faith prosecutes the curing of such default to its conclusion.

Section 2. Remedies.

A. General. If a party does not cure or undertake to cure a default within the time periods set forth in Section 1, above, the non-defaulting party may pursue the remedies provided for in this Agreement.

B. Failure to Commence Construction.

1 This Section B.1, shall be the sole remedy available to the RDA and City for Developer's failure to Commence Construction in accordance with Article III, Section 3.A. In such event, the RDA shall send Developer notice of its default and right to cure the same. Developer shall have ten (10) business days from receipt of such notice to Commence Construction. If Developer has still not cured the default by Commencing Construction, the RDA shall be entitled to compel Developer to convey the RDA Parcel to it without consideration, it being agreed that Developer has not performed sufficient acts to constitute consideration for its purchase of the same. In such event, Developer shall be responsible for all usual and customary closing costs of a seller of property in Wisconsin and shall reimburse City for costs reasonably incurred to relocate utilities under Article II, Section 1.C.4; pay to RDA all sums due for special assessments, real property taxes properly imposable and due, if any, as well as any liens or judgments of record that arose during the time Developer held title to the RDA Parcel that are owing and remain unpaid.

2 Upon Developer's conveyance of the RDA Property to the RDA and payment of any amounts properly due and owing to the RDA and City under Section B.1, above, this Agreement shall terminate, any obligation, risk or responsibility of Developer under Article II, Section 1.C.1.d, with respect to the risk or expense for undertaking or performing any environmental remediation tasks or efforts upon the RDA Property that are required under Wisconsin Law, shall cease and revert to the RDA and City in toto, and the Parties shall have no further obligations to each other.

C. Failure to Substantially Improve.

1. This Section C.1, shall be the sole remedy available to the RDA and City for Developer's failure to achieve Substantially Completion of the Project in accordance with Article III, Section 3.B. In such event, the RDA shall be entitled to payment by Developer in the amount equal to the sum of one million five-hundred thousand dollars (\$1,500,000.00) as agreed upon damages, said sum representing the actual costs the City and RDA have incurred in acquiring the RDA Property.

2. Upon Developer's payment to the City of the agreed damages provided for in in Section C.1, above, this Agreement shall terminate, and the Parties shall have no further obligations to each other.

Section 3. Enforced Delay in Performance for Causes Beyond the Control of the Parties. Whether stated or not, all periods of time in this Agreement applicable to the Parties are subject to this Section 3. No Party nor any successor in interest thereof shall be considered to be in breach of, or to have caused an event of default with respect to, its obligations under this Agreement with respect to the commencement, progress or completion of the Development or of any phase of construction or progress in respect thereto in the event of Enforced Delay, as herein defined, in the performance of such obligations. For purposes of this Agreement, the term "Enforced Delay" shall mean any delay due to unforeseeable causes, whether actual or threatened, beyond any Party's actual and reasonable control and without its fault, or negligence including, but not restricted to, acts of God, force majeure, acts of the Federal, state and local governments, acts of any other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby, fires, floods, pandemics, epidemics, quarantine restrictions, labor disputes or strikes or interruptions, embargoes, unavailability of supplies or materials or labor, breach of contract by contractors or subcontractors or materialmen, unusually severe weather or delays of contractors or subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of a national emergency or national alert, blockade, insurrection, riot, extortion, sabotage, or similar occurrence or any exercise of a power of eminent domain, condemnation, or other taking by the action of any government body on behalf of any public, quasi-public, or private entity, or declaration of a moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public, or private entity, it being the purpose and intent of this Section 3 that in the event of the occurrence of an Enforced Delay, the time or times of performance of any of the obligations of Developer under this Agreement shall be extended for the period of the Enforced Delay; provided that the Developer, in seeking the benefit of the provisions of this Section 3 shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other Parties thereof and of the cause or causes thereof and requested an extension for the period of the Enforced Delay. The Parties acknowledge and agree that any delay permitted or extension of time allowable under Developer's agreement with the General Contractor engaged to construct the Development shall be deemed an Enforced Delay for purposes of this Agreement.

Section 4. Rights and Remedies Cumulative. Except with respect to the exclusive remedies set forth in Sections 2.B, and 2.C above, the rights and remedies of the Parties, whether provided by law, in equity or by this Agreement shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same time or different times of any such other remedies for the same event of default or breach or of any remedies for any other event of default or breach. No waiver made by a Party with respect to the performance or manner or time of any obligation under this Agreement shall be considered a waiver of any rights to enforce any other obligations hereunder.

**ARTICLE VII**  
**REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Section 1. City and RDA Representations. The City and RDA represent and warrant to the Developer that:

A. The City and RDA have the authority to enter into and perform this Agreement and each of the City's and RDA's obligations and undertakings under this Agreement, and the City's and RDA's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City's Code and Wisconsin law.

B. All consents and approvals necessary to the execution, delivery and performance of this Agreement by the City and RDA have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

C. The City and RDA will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. The City and RDA believe that this Agreement (and each undertaking of the City and RDA contained herein), constitutes a valid, binding and enforceable obligation of the City and RDA, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Notwithstanding any contrary provision of this Agreement, the City and RDA will defend, through final, non-appealable order, the validity and enforceability of this Agreement in the event of any proceeding or litigation against the City or RDA which challenges the authority of the City or RDA to enter into or perform any of its obligations hereunder and will cooperate with Developer in connection with any action by a third party in which Developer is a party and the benefits or any other aspect of this Agreement to Developer are challenged.

E. The execution, delivery and performance of this Agreement by the City and RDA is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City or RDA is a party.

F. The TID #7 is in effect and in good standing certified by the Wisconsin Department of Revenue.

G. Except as otherwise explicitly set forth in Exhibit E, the property comprising the Project Site and the Project contemplated herein conforms in all respects with the applicable zoning and land division laws, rules, regulations, and ordinances.

Section 2. Developer Representations. The Developer represents and warrants to the City and RDA that:

A. Developer has the authority to enter into and perform this Agreement and each of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer have been duly authorized and agreed to in compliance with the organizational documents of Developer.

B. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

C. Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. Developer believes that this Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer will defend, through final, non-appealable order, the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with the City and RDA in connection with any action by a third party in which the City or RDA is a party and the benefits of this Agreement to the City and RDA are challenged. Notwithstanding the foregoing, a determination by a court of competent jurisdiction that this Agreement is invalid or unenforceable shall not constitute a breach of, or default under, this Agreement by Developer.

E. The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments, or decrees to which Developer is a party or to which Developer is otherwise subject.

**ARTICLE VIII**  
**OTHER PROVISIONS**

Section 1. Changes. The Parties to this Agreement may, from time to time, require changes in the scope of the Agreement. Such changes, which are mutually agreed upon by and between Developer and RDA or City shall be incorporated in written amendments to this Agreement.

Section 2. Approvals in Writing. Whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized officer of the RDA and/or City and delivered to the party to whom it is directed at the address specified in Section 3 hereunder. Whenever under this Agreement the consent, approval or waiver of City or RDA is required or the discretion of City or RDA may be exercised, the Mayor and/or the Chair of the RDA shall have the authority to act, as the case may be. Whenever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld, conditioned or delayed.

Section 3. Notices and Demands. A notice, demand, or other communication under this Agreement by any party to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, to the party to whom such notice, demand or communication is directed, or delivered personally to such party, as follows:

A. In the case of Developer to:

De Pere Cultural Foundation  
Attention: Chief Executive Officer  
P.O. Box 5426  
De Pere, WI 54115

B. In the case of the RDA to:

Redevelopment Authority for the City of De Pere  
Attention: Chair  
De Pere City Hall  
335 S. Broadway De  
Pere, WI 54115

C. In the case of the City to:

City of De Pere  
 Attention: City Administrator  
 De Pere City Hall  
 335 S. Broadway De  
 Pere, WI 54115

Section 4. No Liability of City. Neither RDA nor City shall have any obligation or liability to the lending institution, architect, contractor, or subcontractor, or any other party retained by Developer in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Developer specifically agrees that no representations, statements, assurances, or guarantees will be made by Developer to any third party or by any third party which are contrary to this provision.

Section 5. Completeness of Agreement. This Agreement, and any addition or supplementary documents or documentation incorporated herein by specific reference, contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part hereof shall have any validity or bind any of the parties hereto.

Section 6. Matters to be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarding in construing or interpreting any of the provisions of this Agreement.

Section 7. Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws and the Project Plan.

Section 8. Recording of Agreement. The Agreement and any and all subsequent modifications thereof or additions thereto shall, upon being duly executed, be recorded by Developer with the Register of Deeds for Brown County, Wisconsin.

Section 9. Successors and Assigns. The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective successors, transferees, and assigns. Any transfer of any party's interest under this Agreement or real property described as Area 1 in Exhibit A shall not release the transferor from its obligations hereunder.

Section 10. Covenant Running with the Land. This Agreement, which will be attached to the deed as part of the conveyance and deemed to be, and interpreted as a covenant running with the land depicted in Exhibit A as Area 1, shall terminate upon the date a Certificate of Occupancy is issued by the Development Services Department for the building improvements contemplated by the Parties herein.

Section 11. Exhibits Incorporated by Reference. Each of the exhibits referenced herein and attached hereto are expressly incorporated by reference and are so incorporated for all purposes.

Section 12. Developer Board Approval. The parties acknowledge and agree that Developer's obligations under this Agreement shall be subject to Developer obtaining the approval of the Developer's Board of Directors ("Developer Board Approval"). Developer shall provide written notice to the City promptly upon obtaining such approval ("Developer Board Approval Notice"). If Developer does not provide the Developer Board Approval Notice on or before 5:00 p.m. on December 14, 2020, the Developer shall be deemed not to have obtained Developer Board Approval and this Agreement shall terminate and the parties shall have no further rights or obligations under this Agreement.

Dated this 20th day of November, 2020.

**DE PERE CULTURAL FOUNDATION, INC.**

**CITY OF DE PERE**

By: James J. Mulva  
Name: James J. Mulva  
Title: President

By: \_\_\_\_\_  
James G. Boyd  
Mayor

\_\_\_\_\_  
Carey E. Danen  
City Clerk

**STATE OF WISCONSIN  
BROWN COUNTY**

**STATE OF WISCONSIN  
BROWN COUNTY**

Personally came before me this 20th  
day of November, 2020, the above-  
named, James J. Mulva, President of De  
Pere Cultural Foundation, Inc., who is known  
to me and who executed the foregoing  
on behalf of such corporation.

Personally came before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2020, the above-  
named James G. Boyd, Mayor and  
Carey E. Danen, City Clerk, known as the  
instrument and acknowledged the same  
persons who executed the foregoing  
instrument and acknowledged the same.

Mark Hill  
\_\_\_\_\_  
Notary Public:  
State of Wisconsin  
My Commission Expires: 01-15-2021

\_\_\_\_\_  
Notary Public:  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_

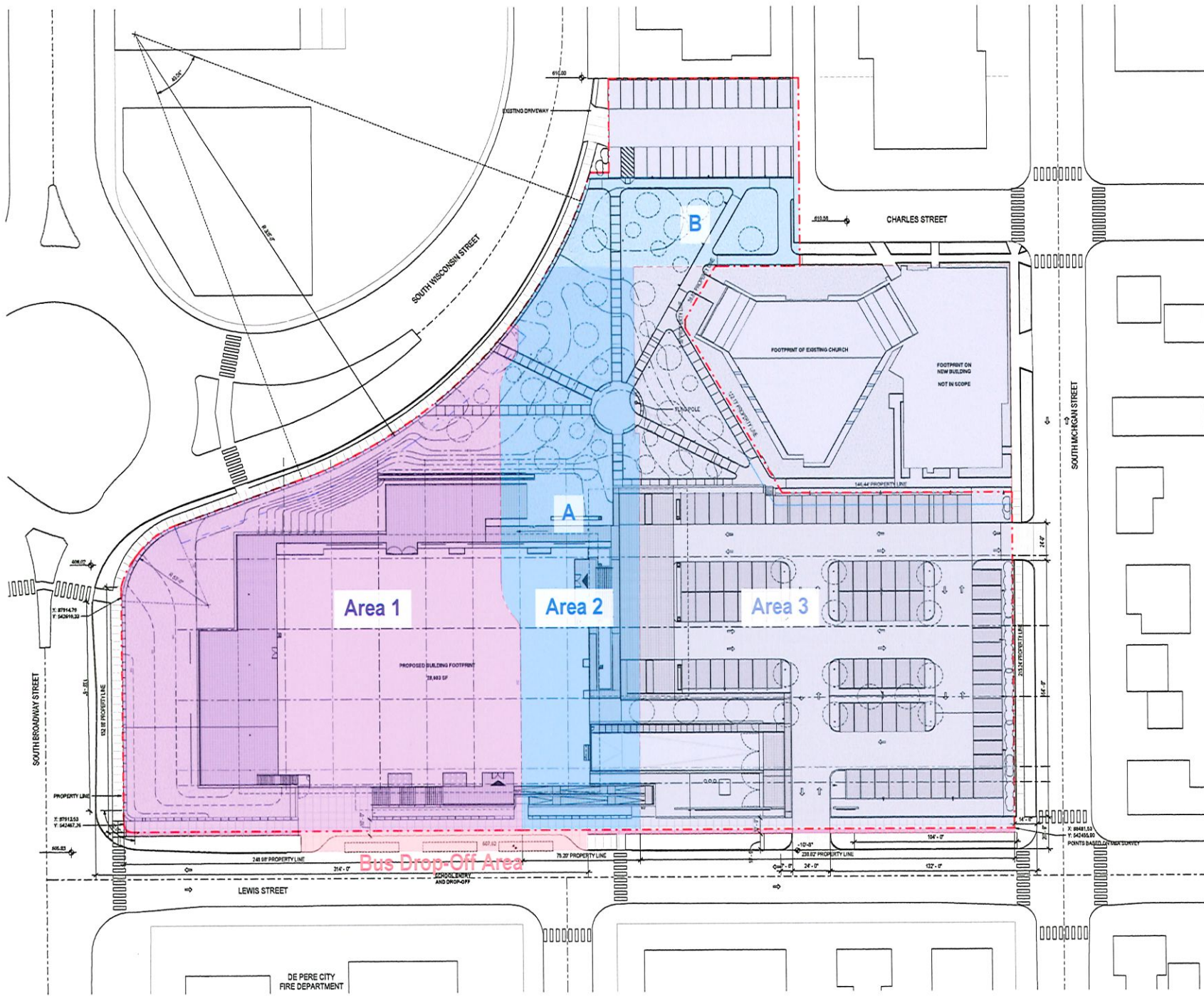
**REDEVELOPMENT AUTHORITY OF  
THE CITY OF DE PERE**

**STATE OF WISCONSIN  
BROWN COUNTY**

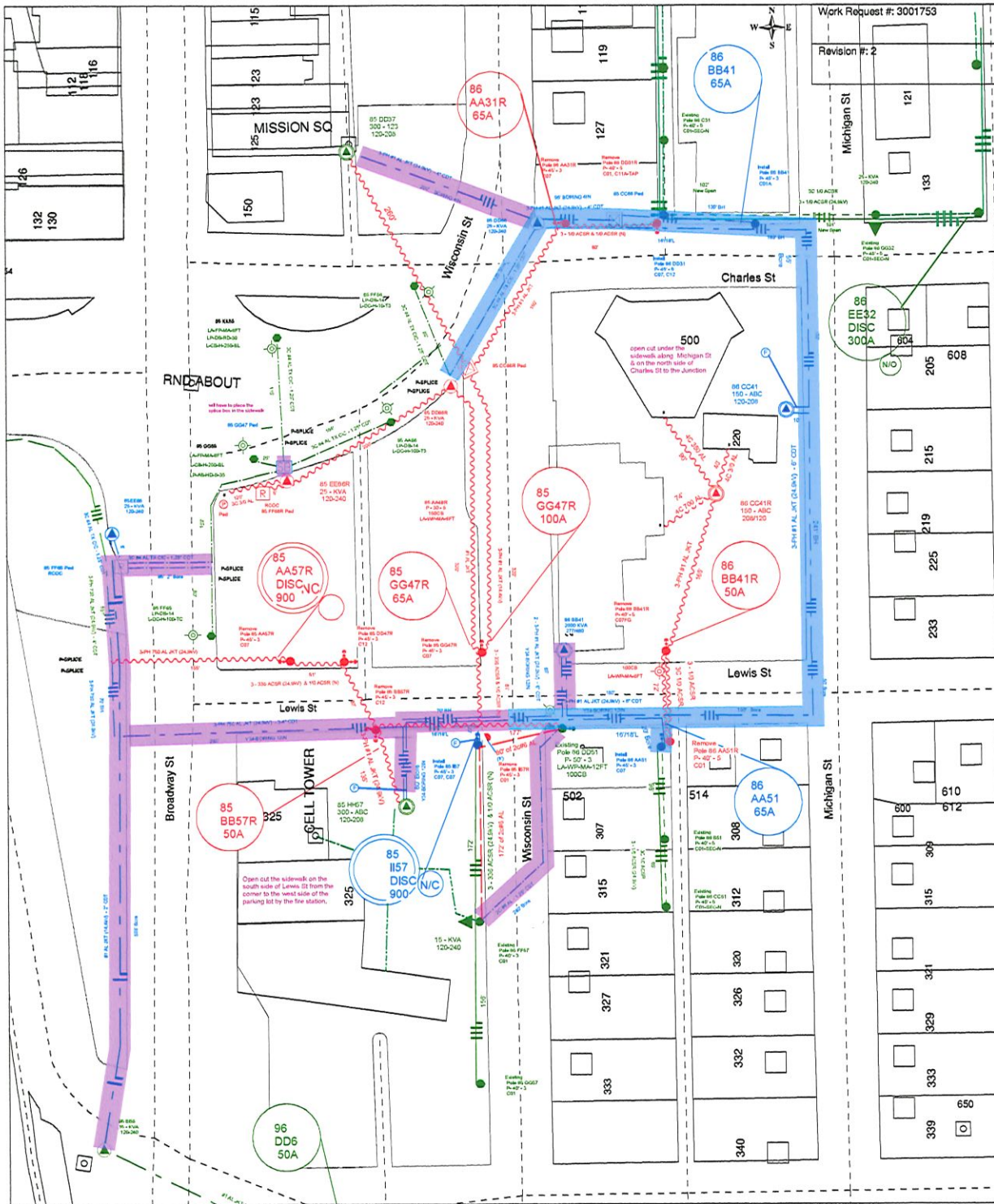
By: \_\_\_\_\_  
Theodore J. Penn  
Chair

Personally came before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2020, the above- named  
Theodore J. Penn, RDA Chair, known as the  
person who executed the foregoing instrument  
and acknowledged the same.

\_\_\_\_\_  
Notary Public:  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_



- Area 1
- Area 2 - A
- Area 2 - B
- Area 3
- Bus Drop-Off

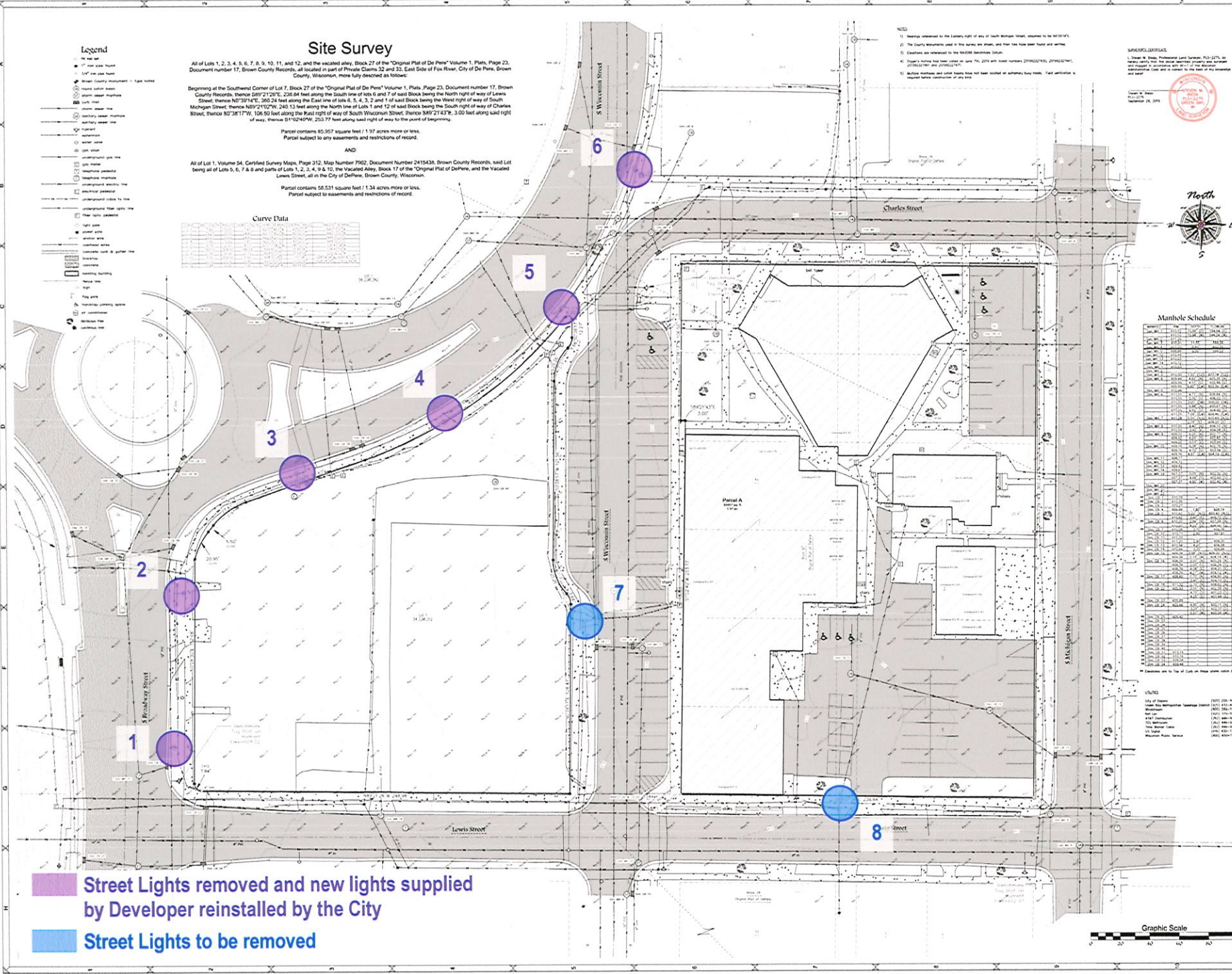


**Exhibit B: Redevelopment Agreement  
De Pere Cultural Foundation**

**EXHIBIT C**

**SITE PLAN DOCUMENTS, AS SUBMITTED FOR APPROVAL**

Redevelopment Agreement  
De Pere Cultural Foundation



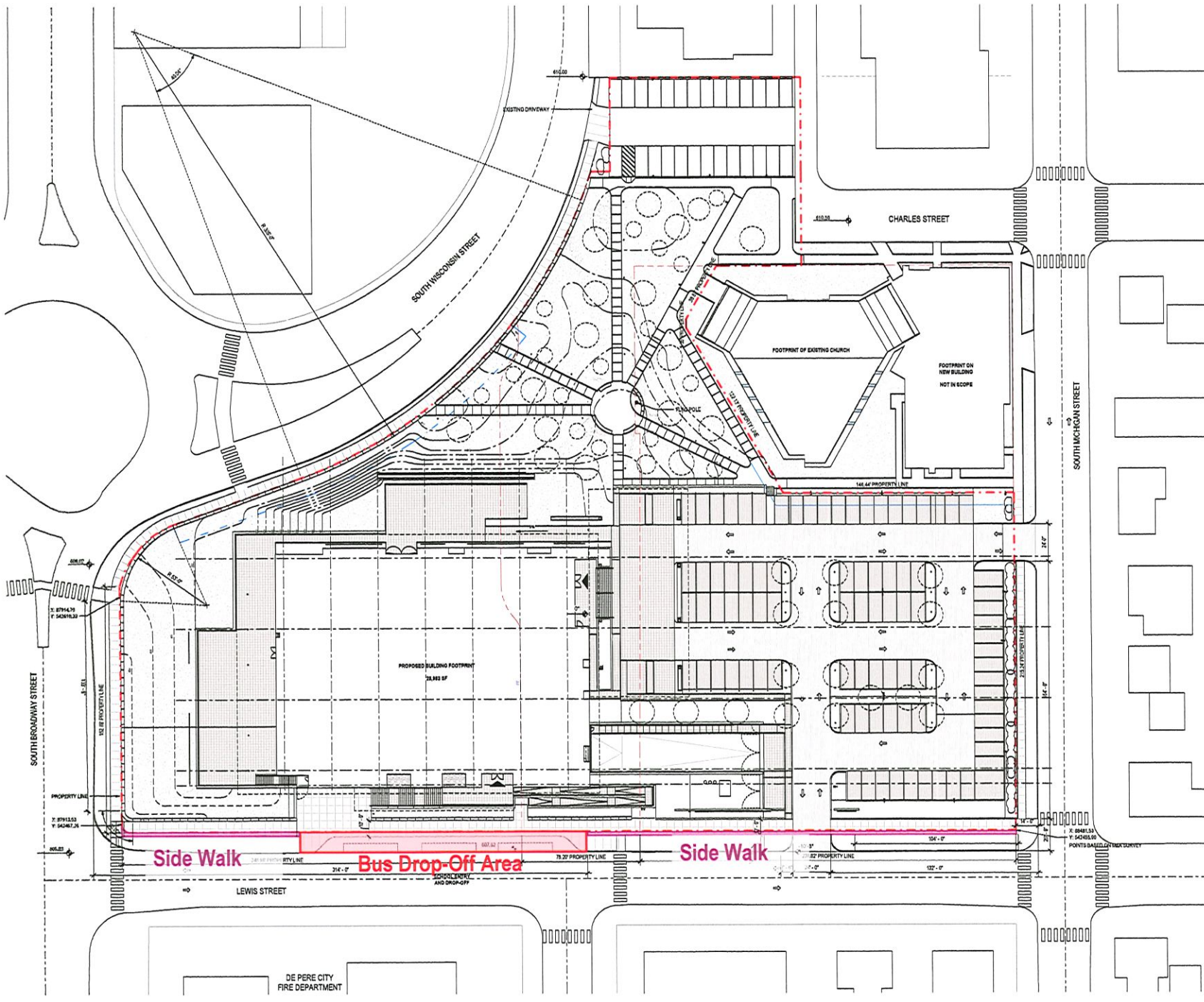
**Street Lights removed and new lights supplied by Developer reinstalled by the City**  
**Street Lights to be removed**

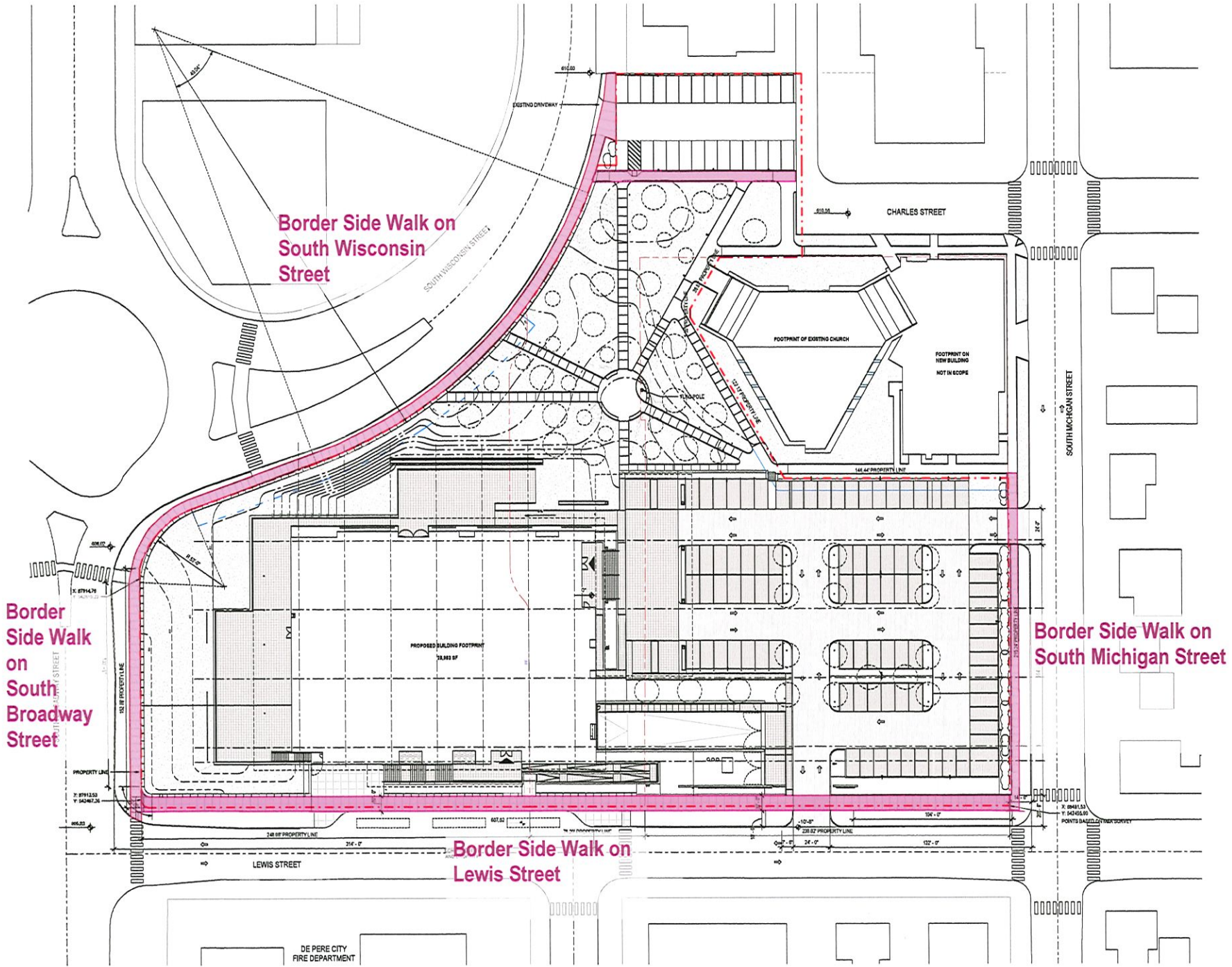
**Manhole Schedule**

Manhole No.	Location	Depth	Notes
1	...	...	...
2	...	...	...
3	...	...	...
4	...	...	...
5	...	...	...
6	...	...	...
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50	...	...	...

**EXHIBIT E**

**LISTING OF AREAS WHERE PROJECT OR PROJECT SITE DOES NOT CONFORM TO  
APPLICABLE ZONING, LAND DIVISION LAWS, RULES, REGULATIONS OR ORDINANCES, IF  
ANY**





**DE PERE CULTURAL FOUNDATION, INC.**

November 20, 2020

Larry Delo, Administrator  
 City of De Pere  
 335 S. Broadway  
 De Pere, WI 54115

Re: Redevelopment Agreement, Mulva Cultural Center


Dear Larry,

Enclosed, please find a copy of the above referenced agreement (the "Agreement") setting forth the terms and conditions upon which De Pere Cultural Foundation, Inc. ("DPCF") would construct the Mulva Cultural Center (the "Center") in downtown De Pere. Under the Agreement, in exchange for the development of the Center, the City would, *inter alia*:

1. Transfer the RDA Property to DPCF;
2. Rezone the Project Site to B-1;
3. Vacate the right of way covering identified portions of Wisconsin Street and Charles Street;
4. Terminate certain easements and abandon and/or reroute certain existing utilities;
5. Modify the westbound movement of traffic on Lewis Street to "right-in/right-out";
6. Replace existing light poles and light fixtures bordering the property with light poles and fixtures supplied by DPCF;
7. Construct (or replace where currently existing) sidewalks bordering the project site and, in certain areas, place (or replace where currently existing) new stamped concrete in a red brick pattern to match existing on Broadway; and
8. Grant an occupancy permit for the use of what is labeled on the site plan as a "Bus Drop-Off Area" on Lewis Street for so long as such area is used as vehicular drops off area.

The City's satisfaction of each of these conditions is important to the Project and our development plan and project budget assume each of these conditions will be satisfied by the City. As a result, with the exception of any timing issues related to the discontinuance of the right-of-way on Charles Street, we neither seek nor request approval of the Agreement subject to any change with respect to the above items but, rather, respectfully request the Common Council to approve the Redevelopment Agreement as submitted or not at all.

You and I can only begin to imagine the economic benefits the Mulva Cultural Center will have on DePere. Add to this the enhanced quality of life for residents, which correlates to the ability of a city to attract businesses, investment, talent and tourists. Through our collective leadership, we have a rare opportunity to make a positive impact on our community for generations.

Sincerely,  


Mike Van Asten  
 Chief Executive Officer

cc: Mayor James Boyd



City of De Pere, Wisconsin

**Request For Common Council and Redevelopment Authority  
Action**

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**MEETING DATE:** December 1, 2020

**DEPARTMENT:** City Attorney

**FROM:** Angela Zills

**SUBJECT:** Resolution #20-122 Authorizing and Approving the Redevelopment Agreement Between the City of De Pere, the Redevelopment Authority of the City of De Pere and the De Pere Cultural Foundation, Inc.

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**ATTACHMENTS:**

- Reso Revised 20-122 Approving Redevelopment Agreement (PDF)
- Final Agreement from Cultural Foundation 11-20-2020(PDF)
- Redevelopment Agreement Transmittal Letter 11-20-20 (PDF)

REVISED  
RESOLUTION #20-122

AUTHORIZING AND APPROVING THE REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF DE PERE, THE REDEVELOPMENT AUTHORITY OF THE CITY OF DE PERE, AND THE DE PERE CULTURAL FOUNDATION, INC.

WHEREAS, in October 2006, the Redevelopment Authority for the City of De Pere (“RDA”) and City of De Pere (“City”) adopted the East Side Redevelopment Project Plan and designated such area as blighted and in need of redevelopment; and

WHEREAS, also in October 2006, the City created Tax Incremental Financing District No. 7, as amended in 2014 and 2016 (TID #7) for the area comprising the East Side Redevelopment Project Plan, finding that not less than 50% of the area included in the East Side Redevelopment Project District was in need of rehabilitation or conservation work; and

WHEREAS, §66.1337 and §66.1331 Wis. Stats. empowers cities to assist redevelopment projects by lending or contributing funds and performing other actions of a character which the City is authorized to perform for other purposes; and

WHEREAS, the De Pere Cultural Foundation, Inc. (“Foundation”) proposes to construct a cultural destination and community focal point that will be open to the public and feature various exhibitions, an auditorium with classrooms for educational and intellectual programming, and other amenities; and

WHEREAS, RDA and City have determined that such development will have not only a significant, positive educational/cultural impact in De Pere but also a significant and positive economic impact in De Pere, through increased tourism, along with the

Resolution Revised #20-122

Page 2 of 3

direct and indirect impact of added employment, business openings, construction investment and the like, likely to exceed \$3.1 million annually; and

WHEREAS, the RDA and City have also determined that Foundation is uniquely qualified to undertake this redevelopment project; and

WHEREAS, as such, this desirable development will assist the RDA and City in their efforts to promote revitalization and economic stability in TID #7; and

WHEREAS, Wis. Stats. §66.1105, provides the authority and establishes procedures by which the City of De Pere may undertake redevelopment projects within blighted areas of the city and finance such projects through the use of tax incremental financing; and

WHEREAS, allowable project costs include, among other things, real property assembly costs and payments made in the discretion of the RDA and City which are found to be necessary and convenient to the implementation of the TID #7 project plan; and

WHEREAS, the RDA and City have reviewed such redevelopment project and Redevelopment Agreement therefore, attached and incorporated as Addendum 1, and, subject to revision of any timing issues related to the Charles Street discontinuance identified therein, recommends approval thereof.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

The Mayor and City Clerk are authorized and directed to execute the attached Redevelopment Agreement Between the City of De Pere, the Redevelopment Authority for the City of De Pere and De Pere Cultural Foundation, Inc. (Addendum A), subject to (1) revision or resolution of any timing issues related to the Charles Street discontinuance; and (2) Wisconsin Street utility easements not being vacated and abandoned

Resolution Revised #20-122

Page 3 of 3

until the utilities therein are removed; and (3) any other changes deemed necessary by the City Attorney.

BE IT FURTHER RESOLVED:

That all City officials, officers, and employees are authorized and directed to take such steps as are lawful and necessary in furtherance thereof.

Adopted by the Common Council of the City of De Pere, Wisconsin, this 1<sup>st</sup> day of December, 2020.

APPROVED:

\_\_\_\_\_  
James G. Boyd, Mayor

ATTEST:

\_\_\_\_\_  
Carey E. Danen, City Clerk

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

**REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF DE PERE,  
THE REDEVELOPMENT AUTHORITY OF THE CITY OF DE PERE,  
AND THE DE PERE CULTURAL FOUNDATION, INC.**

THIS AGREEMENT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of De Pere, a Wisconsin municipal corporation ("City"), the Redevelopment Authority of the City of De Pere, Wisconsin, a public body corporate and politic ("RDA") and the De Pere Cultural Foundation, Inc., a Wisconsin non-stock, non-profit corporation ("Developer"), individually and collectively referred to as "Party" or "Parties".

**RECITALS**

WHEREAS, in October 2006, the RDA and City adopted the East Side Redevelopment Project Plan and designated such area as blighted and in need of redevelopment; and

WHEREAS, also in October 2006, the City created Tax Incremental Financing District No. 7, (TID #7) for the area comprising the East Side Redevelopment Project Plan, finding that not less than 50% of the area included in the East Side Redevelopment Project District was in need of rehabilitation or conservation work; and

WHEREAS, §66.1337 and §66.1331 Wis. Stats. empowers cities to assist redevelopment projects by lending or contributing funds and performing other actions of a character which the City is authorized to perform for other purposes; and

WHEREAS, Developer proposes to construct a cultural destination and community focal point that will be open to the public and feature various exhibitions, an auditorium with classrooms for educational and intellectual programming, and other amenities; and

WHEREAS, RDA and City have determined that such development will have not only a significant, positive educational/cultural impact in De Pere but also a significant and positive economic impact in De Pere, through increased tourism, along with the direct and indirect impact of added employment, business openings, construction investment and the like, likely to exceed \$3.1 million annually; and

WHEREAS, the RDA and City have also determined that Developer is uniquely qualified to undertake this redevelopment project; and

WHEREAS, as such, this desirable development will assist the RDA and City in their efforts to promote revitalization and economic stability in TID #7; and

WHEREAS, Wis. Stats. §66.1105, provides the authority and establishes procedures by which the City of De Pere may undertake redevelopment projects within blighted areas of the city and finance such projects through the use of tax incremental financing; and

WHEREAS, allowable project costs include, among other things, Real Property Assembly Costs as defined herein.

NOW, THEREFORE, upon the mutual obligations, benefits and other consideration contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1. The following terms as used herein shall have the following meanings:

- A. "City" means the City of De Pere.
- B. "Certificate of Occupancy" means the certificate issued by the Development Services Department upon Substantial Completion of the Project.
- C. "Closing" means the RDA's conveyance of the RDA Property to Developer.
- D. "Commence Construction" or "Commencement of Construction" means physical work at the Project Site has occurred such that the site is excavated, and footing and foundation installation is underway.
- E. "Developer" means De Pere Cultural Foundation, Inc., a Wisconsin non-stock, non-profit corporation, or any assignee of same.
- F. "Effective Date" means the date the last of all of the following events has occurred: (a) the Parties have each signed this Agreement; and (b) the Developer's Board of Directors has approved this Agreement by its written Resolution.
- G. "Municipal Property" means the RDA Property and the Vacated Right-of-Way Property.
- H. "Project" or "Development" means the real estate and building improvements contemplated by the Parties as finally approved by the City Plan Commission and City Council. "Project" and "Development" can be/are used interchangeably in this Agreement.
- I. "Project Cost" has the meaning set forth in Wis. Stats. §66.1105(2)(f), including, without limitation, any Real Property Assembly Costs associated with the conveyance of RDA Property to Developer pursuant to Article II Section 1.A.

J. "Project Site" means that property depicted in Exhibit A, which includes the Municipal Property and other property under the control of Developer.

K. "RDA Property" means the 1.343-acre parcel of real property known as Tax Parcel ED-812 and depicted as Area 1 in Exhibit A.

L. "Real Property Assembly Costs" has the meaning set forth in Wis. Stats. §66.1105(2)(f)1.c, defining such term as any deficit incurred resulting from the sale by a municipality of real property within a tax incremental district for consideration less than cost.

M. "Substantially Improve," means the actual pursuit of construction of the permanent structures comprising the Development consistent with the approvals obtained in accordance with Article III, Section 2.A of this Agreement, taking into consideration the customary industry standards for the type and complexity of construction involved.

N. "Substantial Completion" means the Project is sufficiently complete so that it can be used for its intended purpose and a Certificate of Occupancy has been issued by the Development Services Department.

O. "Term of this Agreement" means that period from the Effective Date of this Agreement to Substantial Completion.

P. "Vacated Right of Way" means those portions of Wisconsin Street and Charles Street depicted as Area 2 in Exhibit A that are to be vacated by City under Article II, Section 1.C.2 of this Agreement.

## **ARTICLE II** **CITY AND RDA OBLIGATIONS**

Section 1. Real Property Assembly; RDA Property. At Closing, the RDA and/or City, as the case may be, shall convey to Developer the RDA Property, which is legally described as:

*Lot 1 of 54 CSM 312 being all of Lots 5-8 and part of Lots 1-4, 9 and 10 BLK 17 of the Original Plat of De Pere and being part of Dickinson's Addition to the Original Plat of De Pere;*

under the following terms and conditions:

A. Consideration. The consideration for the City and RDA obligations undertaken hereunder, including without limitation, the conveyance of the RDA Property, which the parties mutually agree is sufficient and binding upon them, is comprised of the considerable community and economic benefits the Project will generate in the City of De Pere as set forth in the Recitals. Should there be a determination by a Court of competent jurisdiction that such consideration is less than the

cost associated with the conveyance of the RDA Property to Developer, such deficit shall be treated as Real Property Assembly Costs and deemed a Project Cost of the Development under Wis. Stats. §66.1105(2)(f), with the remainder comprising the consideration for the transfer.

B. The Closing. The Closing shall take place at De Pere City Hall, 2d Floor Administrative Offices on December 15, 2020 or, at Developer's option, at such other date as determined by Developer within six (6) months following the date upon which the last condition precedent specified in subsection C, below, has occurred. If the Closing has not been completed on or before July 31, 2021, this Agreement shall terminate.

C. Conditions Precedent. Developer's obligations under this Agreement shall arise only upon the RDA's conveyance of the RDA Property to Developer at the Closing. Developer's obligation to close and take title to and possession of the RDA Property is expressly subject to the following conditions precedent:

1. Transfer of RDA Property.

a. Title Insurance. The RDA shall, at its own expense, provide title insurance for the property to be conveyed and shall forward a copy of the commitment of such title insurance to Developer at least fourteen (14) calendar days prior to closing. The commitment shall be for an owner's policy of title insurance in the amount of one million five-hundred thousand dollars (\$1,500,000), naming Developer as the intended insured, written by a responsible title insurance company licensed in the State of Wisconsin with an extended coverage and gap endorsement showing title to the property to be marketable. The RDA shall, at its cost and expense, cause the deletion of all standard title insurance exceptions to such title insurance policy, except for those exceptions which would be removed by an ALTA/ACSM Minimum Survey. If Developer gives the RDA notice of any title defects prior to the closing which are not acceptable or if the commitment does not contain the extended coverage endorsement, the RDA shall use its best effort to cure such defects. If any such defects are not cured by the date of closing, Developer may terminate this Agreement or reschedule the closing at its option.

b. Closing Costs. The RDA shall pay all closing costs usually and customarily paid by sellers, including the cost of the title insurance as provided herein and deed recording fees.

c. Conveyance of Title. The City shall convey good title to Developer by good and sufficient warranty deed as of the date of closing, free and clear of liens and encumbrances except the following:

(i) Municipal and zoning ordinances, provided the same do not restrict or interfere with the intended use of the property.

(ii) Easements of record, provided the same do not restrict or interfere with the intended use of the property.

(iii) Obligations contained in this Agreement.

d. Environmental Condition of Property. Except as otherwise provided in this Agreement, after the closing, as between the Developer and the RDA and the City, the risk or expense for undertaking or performing any environmental remediation tasks or efforts upon the RDA Property that are required under Wisconsin Law will be the sole responsibility of the Developer.

e. Soil and Geotechnical Condition of Property. Developer has obtained and tested (or will, before closing, obtain and test) such soil samples of the RDA Property as Developer deems sufficient. Neither the RDA nor the City shall have any obligation to undertake or perform any task or provide any funding for geotechnical efforts upon the RDA Property, it being the intent of the Parties that Developer shall bear any such costs or efforts to determine if the Project Site soils and geography are suitable for the Development.

2. Vacated Rights of Way. The right of way covering those portions of Wisconsin Street and Charles Street depicted as Area 2 in Exhibit A shall have been vacated and discontinued by the City no later than December 15, 2020. City shall convey unencumbered title to the land, excepting existing utility easements in the Charles Street right-of-way, to Developer or, with the conveyance of the RDA Parcel, the same shall transfer to and vest in Developer.

3. Utility Easements. The City shall have terminated, modified or relocated all utility easements within the Vacated Right of Way described in subsection 2, above, in order to accommodate the Project and any new easements required to accommodate the Project shall have been agreed upon no later than December 15, 2020.

4. Utility Changes. The City, at its sole cost and expense, shall have caused or agreed to cause the:

a. abandonment and relocation of the utility services within the right of way covering those portions of Wisconsin Street that is to be vacated and discontinued, with electrical lines, the relocation of which is shown as being the responsibility of the City on Exhibit B, to be relocated as shown in such Exhibit and other utilities to be capped and/or relocated, if necessary to maintain service in areas other than the Project Site, with all such work to be completed as follows:

(i) Relocation of electrical lines to be completed no later than ninety (90) calendar days following the Effective Date of this Agreement, or at such later date as agreed in writing by the parties; and

(ii) Relocation of other utilities (e.g., fiber optics, water, sewer, storm sewer), to be completed within six (6) months following the Closing; and

b. replacement of the sidewalk on the West side of Michigan Street from Charles Street to Lewis Street with commencement and ultimate completion of this work to be coordinated with Developer to accommodate the construction schedule of the Project.

5. Rezoning. The Project Site shall have been rezoned to B-1 to accommodate the Project no later than December 15, 2020. The City shall cooperate with Developer to obtain any amendment or modification of any law, regulation, or ordinance required to permit (or to avoid the restriction or interference with) either the Development or the intended use of the Project or the Project Site.

6. Implement Recommendations – Traffic Impact Study. The City shall have agreed to implement within twelve (12) months following the Commencement of Construction, at its sole cost and expense, all traffic recommendations set forth in the Traffic Impact Analysis dated April, 2020 that was prepared by JT Engineering, Inc. for The Boldt Company, including, without limitation, the recommendation to modify the westbound movement of traffic on Lewis Street to “right-in/right out.”

7. Light Poles. The City shall have caused or agreed to cause within twelve (12) months following the Commencement of Construction (or at such later date as agreed in writing by the parties) the removal of all light poles identified for removal in Exhibit D and the replacement of such light poles and installation of any additional light poles where indicated in Exhibit D. All light poles required to be installed under this section shall:

- a. meet applicable state requirements;
  - b. be supplied by Developer at Developer’s sole cost and expense;
  - c. be installed and maintained by the City at the City’s sole cost and expense;
- and
- d. be connected via a separate meter such that the electrical cost of operating lights affixed to such poles will be at the City’s sole cost and expense.

As used in this section, the term Light Poles means the light poles and any light fixtures affixed thereto.

8. Sidewalks. The City, at its sole cost and expense, shall have caused or agreed to cause:

a. the demolition and replacement of existing sidewalks and the construction of new sidewalks bordering the Project Site where indicated in Exhibit G. All such sidewalks shall be:

(i) constructed to comply with the rules and regulations applicable to public sidewalks, and

(ii) of a width determined solely by Developer, provided only that such width meets or exceeds any applicable minimum width requirements under the Americans with Disabilities Act.

b. the placement of new stamped concrete in red brick pattern to match existing on Broadway in areas adjacent to new sidewalks constructed by the City in accordance with section 8.a, above, where indicated by Developer.

9. Approval of Project. Excepting required State and building permit approvals, all other required approvals for the Project have been obtained no later than December 15, 2020.

10. Occupancy Permit – Bus Drop-Off Area. The City shall have caused or agreed to cause the issuance of an occupancy permit granting the Developer the right to utilize the area adjacent to Lewis Street that extends into the Lewis Street right-of-way that is described and depicted in Exhibit F as the “Bus Drop-Off Area” for so long as such area is used for vehicular drop-offs.

Section 2. Access Prior to Closing. The RDA shall permit Developer access to the RDA Parcel prior to Closing at no cost to Developer for the purpose of site examination and testing as deemed reasonable by Developer. Developer agrees to hold the RDA and City harmless for any and all injury that may occur to Developer, its agents or employees, City’s agents, employees or third parties, or any properties or interest of any of the above-referenced persons occasioned as a result of Developer’s site examination and testing activities as contemplated by this section. The hold harmless provision of this paragraph is intended to include all costs of defense, including reasonable attorney fees.

Section 3. Developer May Terminate Agreement. Notwithstanding anything contained in this Agreement to the contrary, if at any time prior to Closing, the Developer determines, in its sole discretion, that: (a) the RDA Property, or any portion thereof, is not satisfactory to Developer, or (b) any of the conditions precedent to closing set forth in this Article II are not completable to the satisfaction of

Developer, then Developer may terminate this Agreement upon written notice thereof given to RDA or City not less than five (5) business days before the Closing.

Section 4. Satisfaction of Conditions Precedent and Cooperation. The RDA and City shall:

A. Use their respective best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth in Section 1.C, above, including, without limiting the generality of the foregoing, obtaining all consents, authorizations and approvals that may be necessary or reasonably required to satisfy each of them; and

B. Cooperate in and take all necessary steps to facilitate the timely prosecution and granting of applications made by Developer for any certifications, permits or approvals appropriate or necessary for the Development, including, without, limitation, any building permits and certificates of occupancy, and/or the intended use of the Project or the Project Site.

### ARTICLE III DEVELOPER OBLIGATIONS

Section 1. Project Description. The Project contemplates the following features and characteristics (all numbers are approximations and are subject to change pending final design): A 77,400 square foot structure to be primarily used as a cultural destination and community focal point that will be open to the public and feature a 10,000 square foot space for national exhibitions, a 200 seat auditorium with classrooms for educational and intellectual programming, a restaurant or café and other amenities. The Parties acknowledge and agree that the preceding description of the Project is preliminary and the Developer warrants only that the actual Development shall be of a size and contain such spaces, parking, landscaping and other site features and amenities as is set forth in the design, site and landscape plans for the Project, including revisions ("design drawings or construction documents") finally submitted by Developer to the City and Plan Commission for approval in accordance with Section 2.A, below.

Section 2. Plan Approval and Construction.

A. Plan Approval. Developer shall, prior to the Commencement of Construction, submit such plans and drawings as required for approval of the Project in accordance with the requirements of Sections 14-23 and 14-60, Municipal Code, City of De Pere. A copy of the final approved design drawings or construction documents submitted for such approval, which shall include any subsequent revisions, will be incorporated herein as Exhibit C.

B. De Pere Cultural Center Bus Drop-Off Area. Plans for the Development show a bus drop-off area (such area being described and depicted in Exhibit F) adjacent to Lewis Street that extends into the Lewis Street right-of-way. The Parties acknowledge that usual and customary City snow removal activities will be difficult to perform without snow from Lewis Street being plowed into

the bus drop-off area (the "Impacted Area-A"). Developer therefore agrees that, in consideration of said drop-off area being approved by the Plan Commission and City Council, it shall not object in such event to snow from Lewis Street ending up within the Impacted Area-A; provided that the amount of such snow does not exceed an amount reasonably to be expected to end up in such area given the amount of snowfall and the employment of the usual and customary snow removal procedures utilized by the City. Under no circumstances shall such area be used by the City for snow storage or to accumulate snow from other parts of Lewis Street. Developer further agrees that, in connection with its own snow removal activities for the Development, it shall remove such snow from the Impacted Area-A as may be required to utilize such area in conjunction with the bus drop-off.

C. Sidewalk-Lewis Street from Michigan Street to Broadway Street. As depicted in Exhibit F, preliminary plans for the Development show the sidewalk from Michigan Street to Broadway Street being located both on Developer's property and the public right-of-way. Developer shall provide a Public Sidewalk Easement for the benefit of the public encompassing the sidewalk area. Such sidewalk shall be constructed by the City and considered a public sidewalk for purposes of federal, state, and local laws and regulations.

D. Snow Removal – Charles Street. Preliminary plans for the Development show there will be no City right-of-way where Charles Street dead ends into Developer's property. The Parties acknowledge that usual and customary City snow removal activities will be difficult to perform without snow from Charles Street ending up on such portion of Developer's property (the "Impacted Area-B"). Developer therefore agrees that it shall not object in such event to snow from Charles Street ending up within Impacted Area-B; provided that the amount of such snow does not exceed an amount reasonably to be expected to end up in such area given the amount of snowfall and the employment of usual and customary snow removal procedures utilized by the City. Under no circumstances shall Impacted Area-B be used by the City for snow storage or to accumulate snow from other areas, including without limitation, other parts of Charles Street.

E. Sidewalk-Vacated Charles Street East to Wisconsin Street. After the vacation of the westerly portion of Charles Street to be discontinued (such area being depicted as Area 2B in Exhibit A), the parties acknowledge and agree that the existing public sidewalk in such area shall be replaced by City. To that end, Developer shall provide a Public Sidewalk Easement for the benefit of the public encompassing the sidewalk area. Such sidewalk shall be considered a public sidewalk for purposes of federal, state, and local laws and regulations.

### Section 3. Project Prosecution and Progress.

A. Commence Construction. Subject to Enforced Delays, Developer shall Commence Construction on the Project within ninety (90) days of the issuance of a building permit and all other permits or licenses required to commence construction. If Developer fails to Commence Construction on the Project within such time for any reason other than an Enforced Delay, the RDA shall be entitled to the return of the RDA Parcel under Article VI, Section 2.B.

B. Project Site to be Substantially Improved. Following Commencement of Construction, Developer shall Substantially improve the Project Site consistent with the design drawings or construction documents finally approved in accordance with Section 2.A, above. Subject to Enforced Delays, Developer shall achieve Substantial Completion no later than ninety (90) days following the date specified for Substantial Completion in Developer's agreement with the General Contractor engaged to construct the Development. If Developer fails to achieve Substantial Completion within this time, the RDA may elect to invoke the remedy provided in Article VI, Section 2.C.

C. Certificate of Occupancy. Developer shall obtain a Certificate of Occupancy from the Development Services Department prior to occupancy of the building improvements contemplated by the Parties herein.

#### **ARTICLE IV INDEMNIFICATION**

Developer agrees to protect, defend, indemnify, and hold City and RDA, its officers, agents, and employees, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, attorney fees, or other expenses or liabilities of every kind and character in connection with, or arising directly or indirectly out of, this Agreement and/or arising out of the construction of the Development. Developer agrees that City will, if City deems appropriate, provide any additional reasonable defense to any claim hereunto, the full cost of which shall be borne by City.

#### **ARTICLE V NOT FOR SPECULATION**

Developer represents and agrees that its acquisition of the Municipal Property, as well as its undertakings pursuant to this Agreement, will be for the sole and express purpose of the developing the property consistent with the Plan Commission and Council approvals and the terms and conditions of this Agreement and are not for the speculation in land holdings. Accordingly, Developer agrees for itself, its successors and assigns that, except only by way of security for and only for the purpose of obtaining the financing necessary to perform its obligations with respect to making the improvements on the property under this Agreement, Developer has not made and will not make or suffer, cause or permit to be made prior to the Substantial Completion of the Project, any total or partial sale, assignment, conveyance or lease, or any trust or power or transfer in any other mode or form of or with respect to this Agreement, the RDA Parcel, the Redevelopment, or any interest of Developer therein or in this Agreement or any other agreement related to the Development without the prior written approval of the City.

**ARTICLE VI**  
**DEFAULT AND REMEDIES**

Section 1. Notice and Right to Cure. Except for defaults specified in Section 2.B.1, below, a party shall be in default under this Agreement if such party shall fails to carry out or fulfill one or more of its obligations hereunder for any reason other than an Enforced Delay and such failure shall continue for a period of thirty (30) days following receipt of written notice from the other party specifying such failure; provided, however, that if the nature of the default is such that it cannot be cured within thirty (30) days, a party shall not be in default if it immediately undertakes steps to cure the default after receipt of notice and then diligently and in good faith prosecutes the curing of such default to its conclusion.

Section 2. Remedies.

A. General. If a party does not cure or undertake to cure a default within the time periods set forth in Section 1, above, the non-defaulting party may pursue the remedies provided for in this Agreement.

B. Failure to Commence Construction.

1 This Section B.1, shall be the sole remedy available to the RDA and City for Developer's failure to Commence Construction in accordance with Article III, Section 3.A. In such event, the RDA shall send Developer notice of its default and right to cure the same. Developer shall have ten (10) business days from receipt of such notice to Commence Construction. If Developer has still not cured the default by Commencing Construction, the RDA shall be entitled to compel Developer to convey the RDA Parcel to it without consideration, it being agreed that Developer has not performed sufficient acts to constitute consideration for its purchase of the same. In such event, Developer shall be responsible for all usual and customary closing costs of a seller of property in Wisconsin and shall reimburse City for costs reasonably incurred to relocate utilities under Article II, Section 1.C.4; pay to RDA all sums due for special assessments, real property taxes properly imposable and due, if any, as well as any liens or judgments of record that arose during the time Developer held title to the RDA Parcel that are owing and remain unpaid.

2 Upon Developer's conveyance of the RDA Property to the RDA and payment of any amounts properly due and owing to the RDA and City under Section B.1, above, this Agreement shall terminate, any obligation, risk or responsibility of Developer under Article II, Section 1.C.1.d, with respect to the risk or expense for undertaking or performing any environmental remediation tasks or efforts upon the RDA Property that are required under Wisconsin Law, shall cease and revert to the RDA and City in toto, and the Parties shall have no further obligations to each other.

C. Failure to Substantially Improve.

1. This Section C.1, shall be the sole remedy available to the RDA and City for Developer's failure to achieve Substantially Completion of the Project in accordance with Article III, Section 3.B. In such event, the RDA shall be entitled to payment by Developer in the amount equal to the sum of one million five-hundred thousand dollars (\$1,500,000.00) as agreed upon damages, said sum representing the actual costs the City and RDA have incurred in acquiring the RDA Property.

2. Upon Developer's payment to the City of the agreed damages provided for in in Section C.1, above, this Agreement shall terminate, and the Parties shall have no further obligations to each other.

Section 3. Enforced Delay in Performance for Causes Beyond the Control of the Parties. Whether stated or not, all periods of time in this Agreement applicable to the Parties are subject to this Section 3. No Party nor any successor in interest thereof shall be considered to be in breach of, or to have caused an event of default with respect to, its obligations under this Agreement with respect to the commencement, progress or completion of the Development or of any phase of construction or progress in respect thereto in the event of Enforced Delay, as herein defined, in the performance of such obligations. For purposes of this Agreement, the term "Enforced Delay" shall mean any delay due to unforeseeable causes, whether actual or threatened, beyond any Party's actual and reasonable control and without its fault, or negligence including, but not restricted to, acts of God, force majeure, acts of the Federal, state and local governments, acts of any other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby, fires, floods, pandemics, epidemics, quarantine restrictions, labor disputes or strikes or interruptions, embargoes, unavailability of supplies or materials or labor, breach of contract by contractors or subcontractors or materialmen, unusually severe weather or delays of contractors or subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of a national emergency or national alert, blockade, insurrection, riot, extortion, sabotage, or similar occurrence or any exercise of a power of eminent domain, condemnation, or other taking by the action of any government body on behalf of any public, quasi-public, or private entity, or declaration of a moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public, or private entity, it being the purpose and intent of this Section 3 that in the event of the occurrence of an Enforced Delay, the time or times of performance of any of the obligations of Developer under this Agreement shall be extended for the period of the Enforced Delay; provided that the Developer, in seeking the benefit of the provisions of this Section 3 shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other Parties thereof and of the cause or causes thereof and requested an extension for the period of the Enforced Delay. The Parties acknowledge and agree that any delay permitted or extension of time allowable under Developer's agreement with the General Contractor engaged to construct the Development shall be deemed an Enforced Delay for purposes of this Agreement.

Section 4. Rights and Remedies Cumulative. Except with respect to the exclusive remedies set forth in Sections 2.B, and 2.C above, the rights and remedies of the Parties, whether provided by law, in equity or by this Agreement shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same time or different times of any such other remedies for the same event of default or breach or of any remedies for any other event of default or breach. No waiver made by a Party with respect to the performance or manner or time of any obligation under this Agreement shall be considered a waiver of any rights to enforce any other obligations hereunder.

**ARTICLE VII**  
**REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Section 1. City and RDA Representations. The City and RDA represent and warrant to the Developer that:

A. The City and RDA have the authority to enter into and perform this Agreement and each of the City's and RDA's obligations and undertakings under this Agreement, and the City's and RDA's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City's Code and Wisconsin law.

B. All consents and approvals necessary to the execution, delivery and performance of this Agreement by the City and RDA have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

C. The City and RDA will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. The City and RDA believe that this Agreement (and each undertaking of the City and RDA contained herein), constitutes a valid, binding and enforceable obligation of the City and RDA, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Notwithstanding any contrary provision of this Agreement, the City and RDA will defend, through final, non-appealable order, the validity and enforceability of this Agreement in the event of any proceeding or litigation against the City or RDA which challenges the authority of the City or RDA to enter into or perform any of its obligations hereunder and will cooperate with Developer in connection with any action by a third party in which Developer is a party and the benefits or any other aspect of this Agreement to Developer are challenged.

E. The execution, delivery and performance of this Agreement by the City and RDA is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City or RDA is a party.

F. The TID #7 is in effect and in good standing certified by the Wisconsin Department of Revenue.

G. Except as otherwise explicitly set forth in Exhibit E, the property comprising the Project Site and the Project contemplated herein conforms in all respects with the applicable zoning and land division laws, rules, regulations, and ordinances.

Section 2. Developer Representations. The Developer represents and warrants to the City and RDA that:

A. Developer has the authority to enter into and perform this Agreement and each of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer have been duly authorized and agreed to in compliance with the organizational documents of Developer.

B. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

C. Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. Developer believes that this Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer will defend, through final, non-appealable order, the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with the City and RDA in connection with any action by a third party in which the City or RDA is a party and the benefits of this Agreement to the City and RDA are challenged. Notwithstanding the foregoing, a determination by a court of competent jurisdiction that this Agreement is invalid or unenforceable shall not constitute a breach of, or default under, this Agreement by Developer.

E. The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments, or decrees to which Developer is a party or to which Developer is otherwise subject.

**ARTICLE VIII**  
**OTHER PROVISIONS**

Section 1. Changes. The Parties to this Agreement may, from time to time, require changes in the scope of the Agreement. Such changes, which are mutually agreed upon by and between Developer and RDA or City shall be incorporated in written amendments to this Agreement.

Section 2. Approvals in Writing. Whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized officer of the RDA and/or City and delivered to the party to whom it is directed at the address specified in Section 3 hereunder. Whenever under this Agreement the consent, approval or waiver of City or RDA is required or the discretion of City or RDA may be exercised, the Mayor and/or the Chair of the RDA shall have the authority to act, as the case may be. Whenever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld, conditioned or delayed.

Section 3. Notices and Demands. A notice, demand, or other communication under this Agreement by any party to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, to the party to whom such notice, demand or communication is directed, or delivered personally to such party, as follows:

A. In the case of Developer to:

De Pere Cultural Foundation  
Attention: Chief Executive Officer  
P.O. Box 5426  
De Pere, WI 54115

B. In the case of the RDA to:

Redevelopment Authority for the City of De Pere  
Attention: Chair  
De Pere City Hall  
335 S. Broadway De  
Pere, WI 54115

C. In the case of the City to:

City of De Pere  
 Attention: City Administrator  
 De Pere City Hall  
 335 S. Broadway De  
 Pere, WI 54115

Section 4. No Liability of City. Neither RDA nor City shall have any obligation or liability to the lending institution, architect, contractor, or subcontractor, or any other party retained by Developer in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Developer specifically agrees that no representations, statements, assurances, or guarantees will be made by Developer to any third party or by any third party which are contrary to this provision.

Section 5. Completeness of Agreement. This Agreement, and any addition or supplementary documents or documentation incorporated herein by specific reference, contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part hereof shall have any validity or bind any of the parties hereto.

Section 6. Matters to be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarding in construing or interpreting any of the provisions of this Agreement.

Section 7. Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws and the Project Plan.

Section 8. Recording of Agreement. The Agreement and any and all subsequent modifications thereof or additions thereto shall, upon being duly executed, be recorded by Developer with the Register of Deeds for Brown County, Wisconsin.

Section 9. Successors and Assigns. The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective successors, transferees, and assigns. Any transfer of any party's interest under this Agreement or real property described as Area 1 in Exhibit A shall not release the transferor from its obligations hereunder.

Section 10. Covenant Running with the Land. This Agreement, which will be attached to the deed as part of the conveyance and deemed to be, and interpreted as a covenant running with the land depicted in Exhibit A as Area 1, shall terminate upon the date a Certificate of Occupancy is issued by the Development Services Department for the building improvements contemplated by the Parties herein.

Section 11. Exhibits Incorporated by Reference. Each of the exhibits referenced herein and attached hereto are expressly incorporated by reference and are so incorporated for all purposes.

Section 12. Developer Board Approval. The parties acknowledge and agree that Developer's obligations under this Agreement shall be subject to Developer obtaining the approval of the Developer's Board of Directors ("Developer Board Approval"). Developer shall provide written notice to the City promptly upon obtaining such approval ("Developer Board Approval Notice"). If Developer does not provide the Developer Board Approval Notice on or before 5:00 p.m. on December 14, 2020, the Developer shall be deemed not to have obtained Developer Board Approval and this Agreement shall terminate and the parties shall have no further rights or obligations under this Agreement.

Dated this 20th day of November, 2020.

**DE PERE CULTURAL FOUNDATION, INC.**

**CITY OF DE PERE**

By: James J. Mulva  
Name: James J. Mulva  
Title: President

By: \_\_\_\_\_  
James G. Boyd  
Mayor

\_\_\_\_\_  
Carey E. Danen  
City Clerk

**STATE OF WISCONSIN  
BROWN COUNTY**

**STATE OF WISCONSIN  
BROWN COUNTY**

Personally came before me this 20th day of November, 2020, the above-named, James J. Mulva, President of De Pere Cultural Foundation, Inc., who is known to me and who executed the foregoing on behalf of such corporation.

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named James G. Boyd, Mayor and Carey E. Danen, City Clerk, known as the instrument and acknowledged the same persons who executed the foregoing instrument and acknowledged the same.

Mark Hill  
Notary Public:  
State of Wisconsin  
My Commission Expires: 01-15-2021

\_\_\_\_\_  
Notary Public:  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_

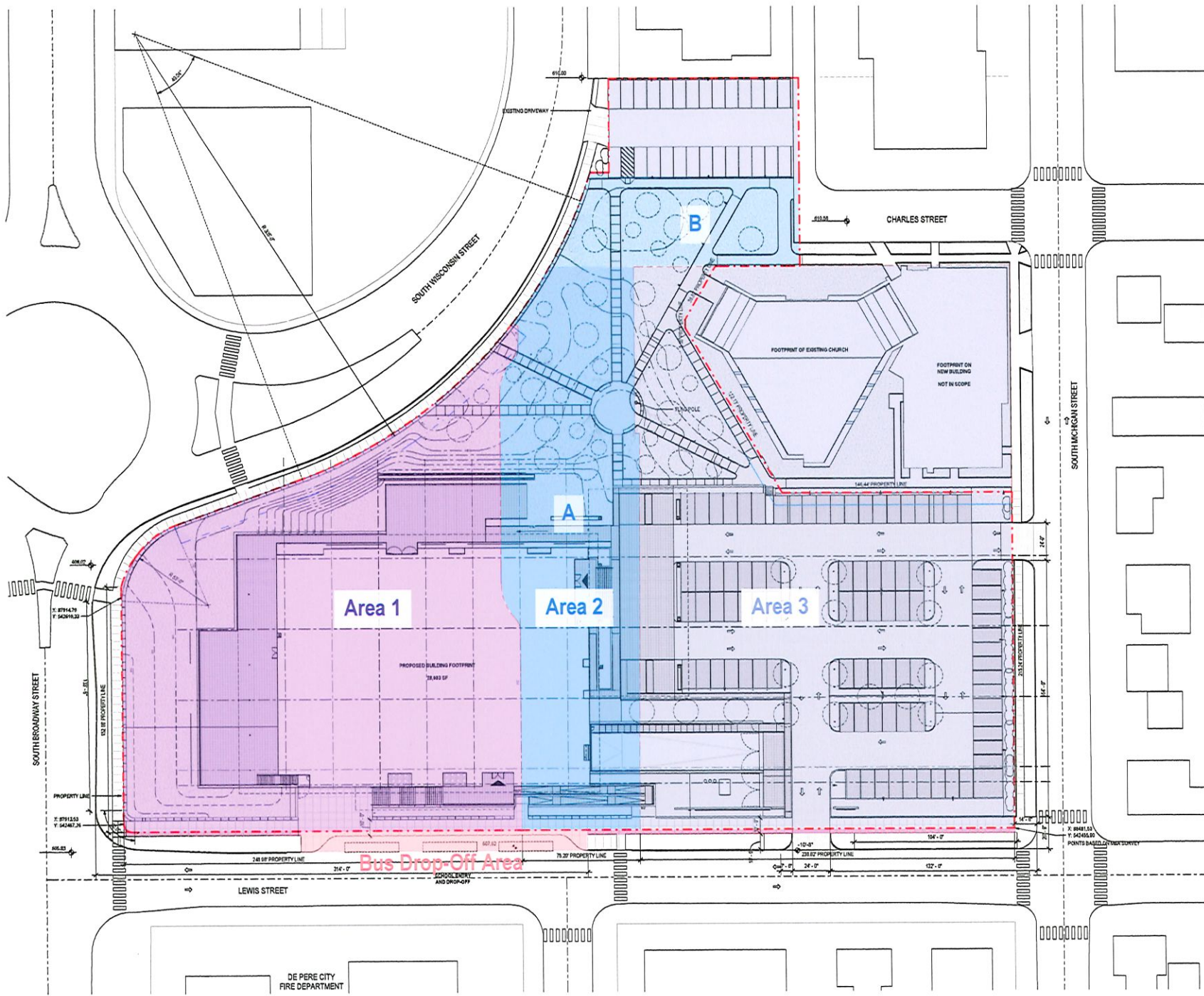
**REDEVELOPMENT AUTHORITY OF  
THE CITY OF DE PERE**

**STATE OF WISCONSIN  
BROWN COUNTY**

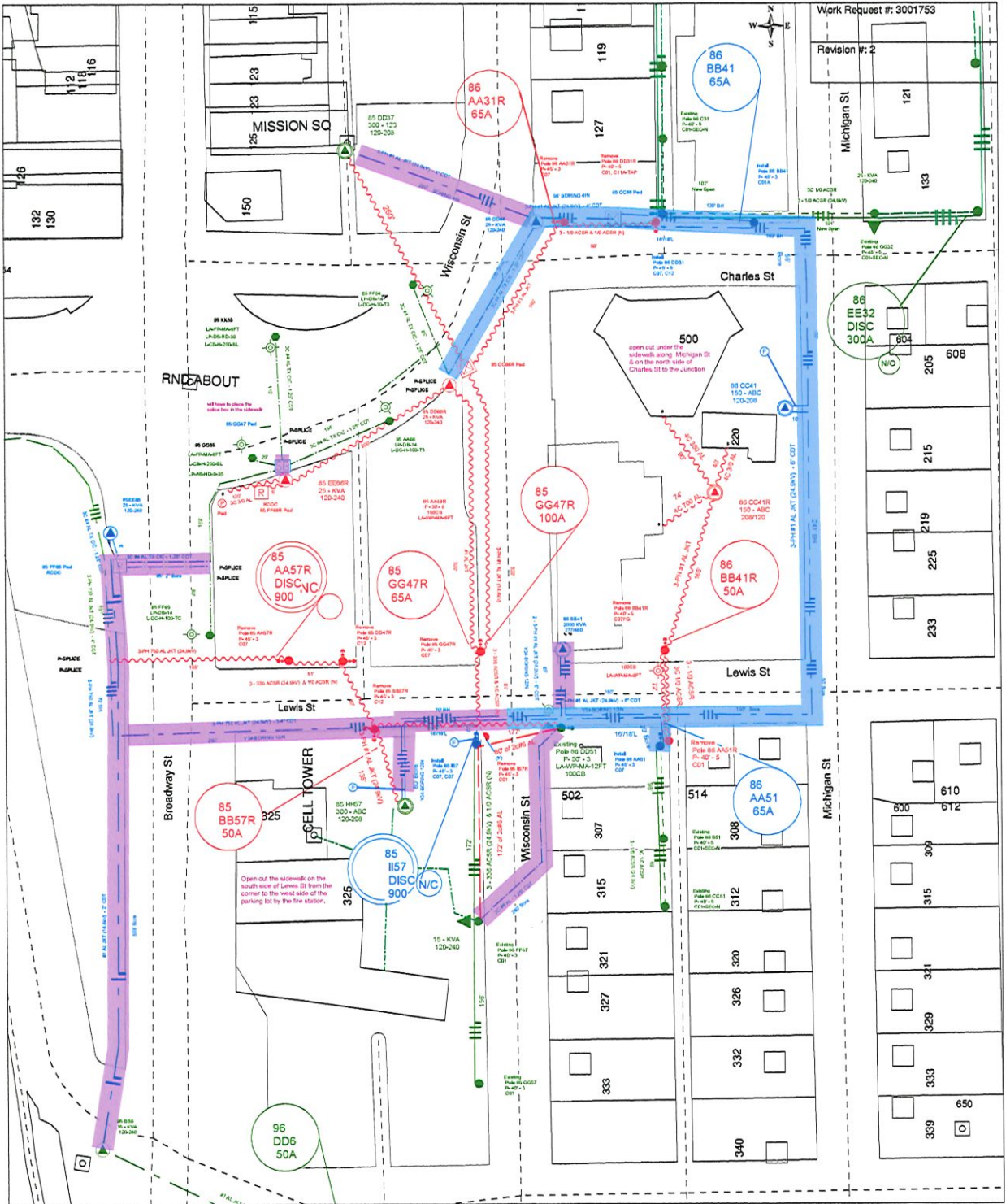
By: \_\_\_\_\_  
Theodore J. Penn  
Chair

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named Theodore J. Penn, RDA Chair, known as the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public:  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_



- Area 1
- Area 2 - A
- Area 2 - B
- Area 3
- Bus Drop-Off



City of De Pere  
 Mulva Cultural Center

**Exhibit B: Redevelopment Agreement  
De Pere Cultural Foundation**

**EXHIBIT C**

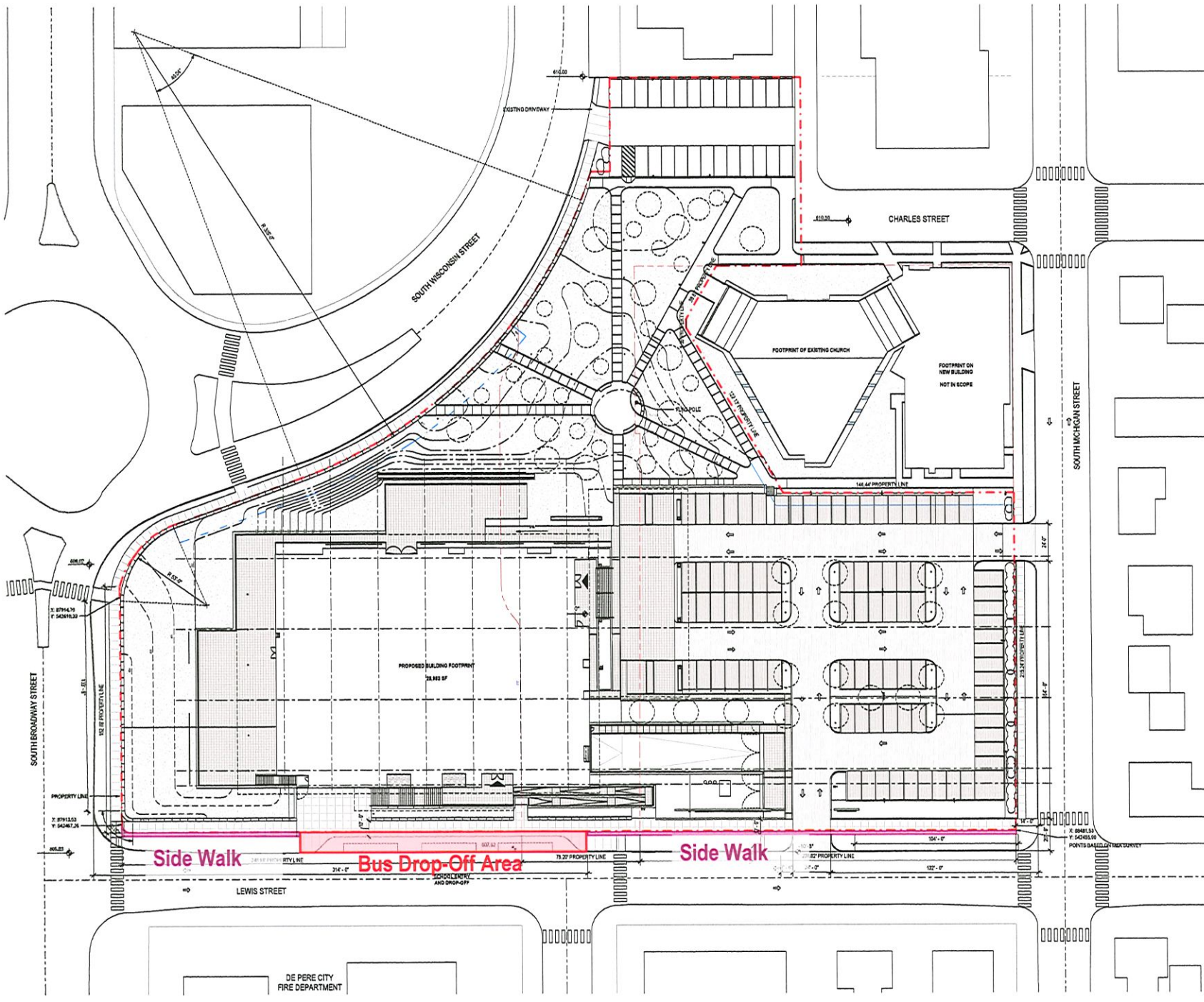
**SITE PLAN DOCUMENTS, AS SUBMITTED FOR APPROVAL**

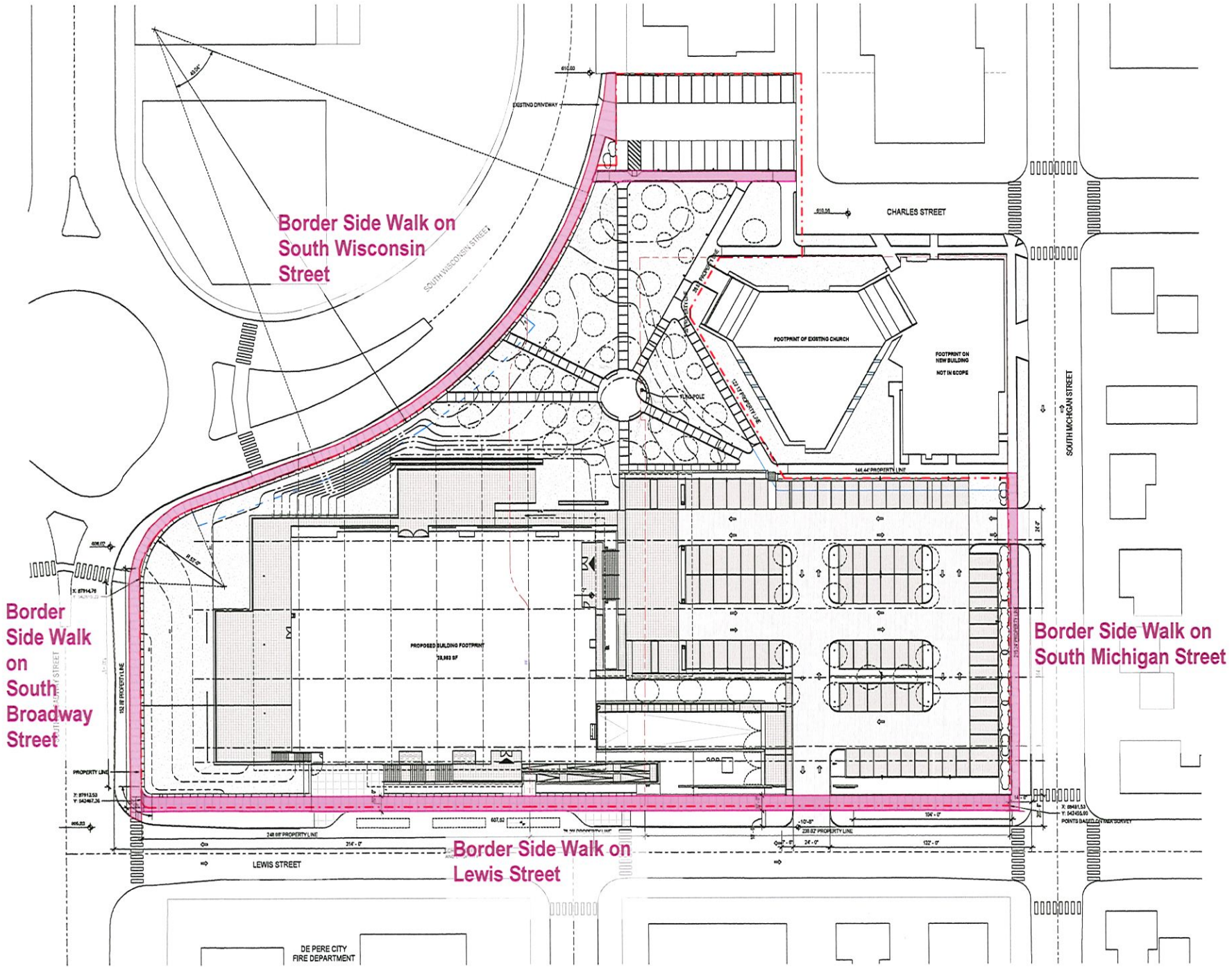
Redevelopment Agreement  
De Pere Cultural Foundation



**EXHIBIT E**

**LISTING OF AREAS WHERE PROJECT OR PROJECT SITE DOES NOT CONFORM TO  
APPLICABLE ZONING, LAND DIVISION LAWS, RULES, REGULATIONS OR ORDINANCES, IF  
ANY**





**DE PERE CULTURAL FOUNDATION, INC.**

November 20, 2020

Larry Delo, Administrator  
 City of De Pere  
 335 S. Broadway  
 De Pere, WI 54115

Re: Redevelopment Agreement, Mulva Cultural Center


Dear Larry,

Enclosed, please find a copy of the above referenced agreement (the "Agreement") setting forth the terms and conditions upon which De Pere Cultural Foundation, Inc. ("DPCF") would construct the Mulva Cultural Center (the "Center") in downtown De Pere. Under the Agreement, in exchange for the development of the Center, the City would, *inter alia*:

1. Transfer the RDA Property to DPCF;
2. Rezone the Project Site to B-1;
3. Vacate the right of way covering identified portions of Wisconsin Street and Charles Street;
4. Terminate certain easements and abandon and/or reroute certain existing utilities;
5. Modify the westbound movement of traffic on Lewis Street to "right-in/right-out";
6. Replace existing light poles and light fixtures bordering the property with light poles and fixtures supplied by DPCF;
7. Construct (or replace where currently existing) sidewalks bordering the project site and, in certain areas, place (or replace where currently existing) new stamped concrete in a red brick pattern to match existing on Broadway; and
8. Grant an occupancy permit for the use of what is labeled on the site plan as a "Bus Drop-Off Area" on Lewis Street for so long as such area is used as vehicular drops off area.

The City's satisfaction of each of these conditions is important to the Project and our development plan and project budget assume each of these conditions will be satisfied by the City. As a result, with the exception of any timing issues related to the discontinuance of the right-of-way on Charles Street, we neither seek nor request approval of the Agreement subject to any change with respect to the above items but, rather, respectfully request the Common Council to approve the Redevelopment Agreement as submitted or not at all.

You and I can only begin to imagine the economic benefits the Mulva Cultural Center will have on DePere. Add to this the enhanced quality of life for residents, which correlates to the ability of a city to attract businesses, investment, talent and tourists. Through our collective leadership, we have a rare opportunity to make a positive impact on our community for generations.

Sincerely,  


Mike Van Asten  
 Chief Executive Officer

cc: Mayor James Boyd