

Enrolled 157-76
~~PROPOSED ORDINANCE 157-78~~

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2
3 AGREEMENT FOR SALE AND DEVELOPMENT
4 OF THE OLD COURTHOUSE
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7 WHEREAS the Waukesha County Historical Society, Inc. has been operating the Museum for
8 two and one-half years under an operational grant from the County, and
9

10 WHEREAS the Waukesha County Historical Society has evidenced an intent to develop and
11 acquire title to the old Courthouse in the City of Waukesha, and
12

13 WHEREAS the Waukesha County Historical Society has indicated that it is only through
14 acquisition and development that it can jump-start its fund raising activities and, thereby, reach
15 self-sufficiency in the operation of the Museum, and
16

17 WHEREAS the County is desirous of both transferring title to the old Courthouse to the
18 Historical Society and contributing to the re-development and remodeling of the facility, and
19

20 WHEREAS the County is further interested in subsidizing the operation of the facility for the
21 foreseeable future and then gradually reducing said subsidy, and
22

23 WHEREAS the Agreement on file with the Waukesha County Clerk accurately reflects and
24 achieves all of the above goals, and
25

26 WHEREAS the City of Waukesha has prominently stepped forward to be a partner in this re-
27 development by underwriting funding for the development.
28

29 THE COUNTY BOARD OF SUPERVISORS FOR THE COUNTY OF WAUKESHA DOES
30 ORDAIN that the Agreement on file with the County Clerk entitled, "Agreement of Purchase
31 Sale and Development of Real Property," which provides for the transfer of title to the old
32 Courthouse to the Waukesha County Historical Society and provides for the County's
33 commitment to certain future payments to the Society provided the Society provides minimum
34 services at minimum levels to the citizens of Waukesha County is hereby approved and the
35 appropriate County officials are hereby authorized to execute any documents that are necessary
36 to accomplish the goals set forth therein.

APPROVE AGREEMENT FOR SALE AND DEVELOPMENT OF THE OLD COURTHOUSE

Presented by:
Executive Committee

Approved by:
Public Works Committee

Approved by:
Land Use Committee

James T. Dwyer
James T. Dwyer, Chair

Richard L. Manke
Richard L. Manke, Chair

Walter L. Kolb NO
Walter L. Kolb, Chair

Patricia A. Haukohl
Patricia A. Haukohl

Absent
James R. Behrend

Pauline T. Jaske
Pauline T. Jaske

Kenneth C. Herro (NO)
Kenneth C. Herro

Genia C. Bruce (NO)
Genia C. Bruce

James Jeskewitz
James Jeskewitz

Walter L. Kolb NO
Walter L. Kolb

Hank Carlson
Hank Carlson

Scott J. Klein
Scott J. Klein

Richard L. Manke
Richard L. Manke

Karl Nilson
Karl Nilson

Daniel Pavelko (NO)
Daniel Pavelko

Duane E. Paulson
Duane E. Paulson

Rodell L. Singert (NO)
Rodell L. Singert

Vera Stroud
Vera Stroud

Duane Stamsta
Duane Stamsta

David W. Swan
David W. Swan

Matt Thomas (NO)
Matt Thomas

The foregoing legislation adopted ^{as twice amended} by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: November 15, 2002, Patricia E. Madden
Patricia E. Madden, County Clerk

The foregoing legislation adopted ^{as twice amended} by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: ✓
Vetoed: _____

Date: 11-18-02, Daniel M. Finley
Daniel M. Finley, County Executive

APPROVE AGREEMENT FOR SALE AND DEVELOPMENT OF THE OLD COURTHOUSE

Approved by:
Finance Committee

Patricia A. Haukohl
Patricia A. Haukohl, Chair

James R. Behrend
James R. Behrend

absent
Donald M. Broesch

Genia C. Bruce (ND)
Genia C. Bruce

Joseph F. Griffin
Joseph F. Griffin

Joe C. Marchese
Joe C. Marchese

Michael Sonntag (No)
Michael Sonntag

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: _____, _____
Patricia E. Madden, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: _____
Vetoed: _____

Date: _____, _____
Daniel M. Finley, County Executive

FISCAL NOTE

Sale of Old Courthouse Facility to Waukesha County Historical Society and authorize a Ten Year Agreement for Museum, Arts and Cultural Center Operation by the Waukesha County Historical Society

The ordinance authorizes an agreement to sell the Annex building to the Historical Society for \$1.00 and provide grant funding over ten years that would allow the Historical Society to expand the museum and develop an arts and cultural center. The County will pay closing costs not to exceed \$3,500 included in the 2003 proposed budget including title transfer costs and a certified survey.

The agreement continues the annual museum operating grant of \$215,000. A building operations grant will be provided for an initial amount of \$225,000 in 2003. This grant will be reduced \$12,000 each year thereafter through 2012 to \$117,000.

The agreement identifies building improvements, estimated to cost \$1,339,400, to be funded with a capital loan of \$900,000, issued and secured by the City of Waukesha and one-time funding from Waukesha County of \$435,000 over three years (\$195,000 in 2003; \$190,000 in 2004; and \$50,000 in 2005). These include ADA upgrades, building system upgrades, roof repair, asbestos removal and lead paint abatement. The County will assume no liability for the loan, but will provide an annual capital grant (including interest only in 2003) and level capital grant payments to the Historical Society matching the principal and interest schedule of bonds issued by the city. Total payments over the ten-year period will not exceed \$900,000 plus interest costs amortized at an assumed 5.5% rate indicated in the table below (not to exceed City of Waukesha tax exempt debt issue rate). The agreement anticipates a January 2003 closing date. However, final closing is contingent upon a guarantee by the City of Waukesha providing the \$900,000 in funding in 2003.

Annual payment of these grants will be contingent on performance standards beginning with performance of 2003 from data analyzed in the first quarter of 2004 and each year following. Attendance in calendar years 2003, 2004, 2005 can not be less than 13,000 each year and in 2006 (the first full year after improvements) can not be less than 13,130 and increased 200 visitors per year in 2007 and each year thereafter to the contract year end 2012. Days of operation cannot be less than 200 days in any calendar year during the agreement. A day of operation is defined as open to the general public at least 6 hours in a 24 hour period or 4 hours in a 24 hour period as a one-half day of operation.

If standards are determined not to be met in any year based on data analyzed in the first quarter of the next year, all payments will terminate that are scheduled to be made in the second quarter of that year and all future years payments scheduled in this agreement. Attendance verification will be conducted by a third party using statistically valid sampling techniques agreeable by both parties.

The 2002 base budget includes \$405,000 for museum and annex building operations costs. The proposed grants are projected to increase museum funding needs in 2003 by \$75,000 and an additional \$48,000 in 2004 when the first full year loan repayment is scheduled. Additional tax levy dollars have been included in the County Executive's proposed 2003 budget.

Annual Amounts	2002 Base	2003	2004	2005	2006-11 By 2012	
Building Operations Grant	\$190,000	\$225,000	\$213,000	\$201,000	\$189,000-	\$117,000
Museum Program Operating Grant	\$215,000	\$215,000	\$215,000	\$215,000	\$215,000	\$215,000
City Capital Grant *	\$0	\$40,000	\$129,500	\$129,500	\$129,500	\$129,500
Total County Base Operating Expenditures	\$405,000	\$480,000	\$557,500	\$545,500	\$535,500-	\$461,500

County One time Capital Expenditures	\$0	\$195,000	\$190,000	\$50,000		\$435,000
Capital Loan Proceeds to Historical Society	\$0	\$900,000	\$0	\$0		\$900,000

* This is an example of a payment schedule. The actual payment schedule will depend upon actual events to occur which are not known at the time.

Lawrence M. Dahl

Lawrence M. Dahl
Accounting Services Manager
LGW 10/04/02

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157-0-080

FINAL
10/18/02

AGREEMENT OF PURCHASE, SALE AND DEVELOPMENT OF REAL PROPERTY

1. **Parties.** This Agreement of Purchase, Sale and Development of Real Property ("Agreement") dated for identification purposes November 12, 2002, is made and entered into by and between Waukesha County, a governmental corporation ("Seller") and Waukesha County Historical Society, Inc., a non-profit, non-stock corporation ("Buyer").

2. **Recitals.**

2.1 Seller is the owner of that certain real property (the "Land") which is located at 101 West Main Street, Waukesha, Wisconsin, and is more particularly described on Exhibit "A" attached hereto. The Land is improved with a five-story building commonly known as The Old Courthouse (the "Improvements").

2.2 The Land and the Improvements, and all fixtures which have attached to the land and the Improvements are collectively referred to as the "Property." The term "Property" shall also include all right, title and interest of Seller in and to (i) all streets, alleys, easements, and rights of way in, on, across, in front of, abutting or adjoining the Property; (ii) all rights as landlord under any leases (the "Leases") for the Property; (iii) all licenses, permits, approvals, dedications and entitlements issued, approved or granted by governmental authorities or otherwise in connection with the Improvements; and (iv) all furniture, apparatus, equipment and machinery, if any, owned by Seller and which is attached to or appurtenant to the Improvements (the "Personal Property").

2.3 Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property from Seller upon and subject to the terms and conditions set forth in this Agreement, which includes Seller providing to Buyer certain grant funding for Buyer's obligation to develop the Property into a facility whose primary purpose will be a museum and arts and cultural center.

2.4 Additional consideration for the sale of the Property includes Buyer's agreement to undertake certain improvements to the Property and to develop and remodel the existing facility as more specifically set forth in this Agreement.

2.5 Additional consideration for the sale of the Property also includes Seller's commitment to provide Buyer with certain grant funding for the development and remodeling of the existing facility as more specifically set forth in this Agreement.

2.6 Seller's commitment to Buyer for grant funding will be contingent upon and subject to certain performance standards as more specifically set forth in this Agreement.

3. **Agreement to Purchase and Sell Property.** In consideration of the above recitals, the truth, adequacy and sufficiency of which are acknowledged, Seller hereby agrees to sell the Property to Buyer and Buyer hereby agrees to purchase the Property from Seller on the terms and conditions of this Agreement.

4. **Purchase Price and Terms.**

4.1 **Payment of Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be one dollars (\$1.00) and shall be payable at closing.

157-0-080

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5. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants the following to Seller for the purpose of inducing Seller to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and as of the Closing Date and shall survive the Close of Escrow and conveyance of title to the Property hereunder:

(a) Buyer is a duly organized, validly existing corporation in good standing under the laws of the State of Wisconsin. Buyer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer hereby represent and warrant that they have the power, right and authority to bind Buyer.

(b) All requisite action has been taken by Buyer and all requisite consents have been obtained in connection with the entering into this Agreement and the instruments and documents referenced herein, and the consummation of the transaction contemplated hereby, and no consent of any other party is required.

(c) This Agreement is, and all agreements, instruments and documents to be executed by Buyer pursuant to this Agreement shall be duly executed by and are, or shall be, valid and legally binding upon Buyer and enforceable in accordance with their respective terms.

(d) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any agreement, document, instrument or any other obligation to which Buyer is a party or to which Buyer may be bound or affected, or under any law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body, applicable to Buyer or to the Property.

6. **Representations and Warranties of Seller.**

6.1 **Seller's Representations.** Seller hereby represents and warrants the following to Buyer for the purpose of inducing Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and as of the Closing Date and shall survive the closing and conveyance of title to the Property hereunder:

(a) Seller is a duly organized, validly existing municipal corporation in good standing under the laws of the State of Wisconsin. Seller has the legal power, right and authority to enter into this Agreement, and to consummate this transaction. The individuals executing this Agreement and the instruments referenced on behalf of Seller represent and warrant that they have the power, right and authority to bind Seller.

(b) All requisite action has been taken by Seller and all requisite consents have been obtained in connection with the entering into this Agreement.

(c) This Agreement is, and all agreements, instruments and documents to be executed by Seller pursuant to this Agreement shall be duly executed by and are, or shall be, valid and legally binding upon Seller and enforceable in accordance with their respective terms.

(d) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any agreement, document, instrument, or other obligation to which Seller is a party or by which Seller may be bound, or under any law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body, applicable to Seller or to the Property.

6.2 AS-IS Conveyance. Buyer expressly acknowledges and agrees: (a) Seller has (or will have by Closing Date) made available to Buyer and Buyer's representatives for their review and inspection all plans, drawings, reports and other documents with respect to the Property which Buyer has requested. Seller is not making, has not made and expressly disclaims any representation or warranty, express or implied, that such documents delivered by Seller or made available for Buyer's review and inspection constitute all of the documents and information in Seller's files relating to the Property; (c) Buyer has made (or by the Closing Date will make) such independent factual, physical and legal examinations and inquiries as Buyer deems necessary and desirable with respect to the Property and the transaction contemplated by this Agreement; (d) Buyer is specifically purchasing the Property on an "AS-IS WITH ALL FAULTS BASIS" and is relying solely upon Buyer's own independent factual, physical and legal investigations, examinations and inquiries and the materials and information prepared by Buyer or by third parties at Buyer's request in determining that the Property and each portion thereof is suitable and adequate in all respects for any and all activities and uses which Buyer may elect to conduct there; (e) Seller is not making, has not made and expressly disclaims any representation, whatsoever with respect to the Property or any condition or feature, including without limitation, any representation, warranty or assurance regarding the validity or accuracy of any documents (or the date contained therein) delivered by Seller to Buyer or made available for Buyer's review and inspection; (f) Buyer shall verify the accuracy and reliability of such documents and date with the third parties who prepared the same; and (g) Buyer is (or by the Closing Date will be) fully acquainted with the nature and condition, in all respects, of the Property, including the existence or availability of all permits and approvals from governmental authorities and the soil and geology. The provisions of this Paragraph shall survive the Closing.

6.3 No Additional Representations by Seller. Neither Seller nor any of its agents or employees has made and does not make any representations or warranties, whether oral or written, expressed or implied, with respect to: (i) any physical or environmental aspect or condition of the Property or any part thereof including, without limitation, the presence of any hazardous materials; (ii) any dimension or specifications of the Property or any part thereof, including, without limitation, the square footage or rentable area of the improvements or the number or sufficiency of parking spaces on or about the Property; (iii) feasibility, desirability, suitability, habitability or convertibility of the Property and any part thereof into or for any particular use or purpose; (iv) the zoning, building or land use restrictions applicable to the Property or any part thereof; (v) the leases, the tenants, or the project income or expenses, if any, for the Property; (vi) soil, seismic or other geological conditions affecting the Property or any part thereof with any applicable laws, rules or regulations, including, without limitation, use permits, building codes, fire and safety codes and handicapped access codes and regulations (including, without limitation, the Americans With Disabilities Act); (vii) the truth, accuracy or completeness of any of the materials or documents delivered to Buyer; (viii) the availability or unavailability of governmental, quasi-governmental or other permits, approvals, licenses, or entitlements, if any, in any way relating to the Property or any part thereof, (ix) the availability or unavailability of water, sewer, electric, telephone or other utility services, if any, for the Property or any part thereof; (x) the operability, adequacy, state of repair or useful life of any fixture, equipment, machinery or other apparatus of the Property; (xi) restrictions on hours of operation, parking, types of tenants and uses, signage, architectural and other limitations imposed by zoning, use permits and other restrictions affecting the Property; and (xii) any other matter of any nature whatsoever relating in any way to the Property or to any of the documents delivered by Seller to Buyer.

6.4 Release. Except as otherwise set forth in this Agreement, as of the Closing, Buyer fully releases and discharges Seller from and relinquishes all rights, claims and actions that Buyer may have against Seller which arise out of or are in any way connected with the Property at Closing, including but not limited to the existence or presence on the Property of (i) construction, design or natural defects of any kind or nature, whether patent or latent, (ii) hazardous materials, and (iii) violations of any federal, state or local law or regulation applicable to the physical condition of the Property. This release applies to all described rights, claims and actions, whether known or unknown, foreseen or unforeseen, present or future.

BUYER'S INITIALS:

7. **Financing.** Buyer's obligation to close this transaction and purchase the Property is subject to the City of Waukesha providing a binding commitment to the Buyer to provide funding to adequately finance the repairs and changes set forth in Exhibit B in conjunction with the County's contribution, or this Agreement shall be null and void. The City's obligation shall be provided to Buyer before Closing, tentatively set for January 3, 2003. Closing may occur thereafter, within ten (10) days of City's providing the above-stated obligation but, in no event, later than January 31, 2003.

8. **Maintenance of the Property.** From and after the date of this Agreement until the Closing, Seller shall (a) maintain and operate the Property in its present condition, normal wear and tear and damage or destruction excepted; (b) not remove any Personal Property (other than in the ordinary course of business) unless the same is replaced with substantially similar personal property; and (c) not extend, renew, modify or replace any of the Service Contracts without the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed). Additionally, from and after the date hereof until the Closing, Seller shall not modify, extend, terminate or otherwise change any of the terms, covenants or conditions of the Leases or enter into new leases or any other obligations or agreements affecting the Property without the prior written consent of Buyer, which consent shall not be unreasonably withheld, delayed or conditioned. In the event Buyer has not responded to Seller's written request for consent within three (3) days after Seller's delivery to Buyer of all pertinent information concerning such Lease, Buyer shall be deemed to have consented.

9. **Covenant to Convey; Title Insurance.**

9.1 **Conveyance of Title.** At the Closing, Seller shall convey title to the Property to Buyer by Quit Claim Deed, without any warranties.

10. **Conditions Precedent.** This agreement shall provide for Closing to occur on January 2, 2003, or at such other time as the parties shall agree provided said Agreement is entered into on or before January 3, 2003, but in no event later than January 15, 2003.

11. **Buyer's Obligations and Conditions of Funding.** Buyer agrees to remodel and expand the existing facility pursuant to the specifications and standards set forth in Exhibit B. Buyer agrees to operate the old Courthouse facility in compliance with Exhibit C all of which shall be a pre-condition for Seller to be obligated as set forth in Exhibit D.

12. **Seller's Obligations.** Seller agrees to financial remuneration set forth in Exhibit D provided Buyer complies with Paragraphs 10 and 11 above. Seller will order and pay for title insurance upon acceptance of this Agreement by the Waukesha County Board and provide a survey of the property to be transferred.

13. **Seller Not Liable for Any of Borrower's Loans.**

13.1 **Reversion of Title and Loan Liability.** Seller shall under no circumstances be liable for any of Buyers loans and no reversion of title shall occur to Seller after closing.

14. **Casualty: Condemnation.**

14.1 **Partial Damage** In the event of the occurrence of any casualty to the Property prior to the Closing of less than 40% of the building and contents, the obligations of the parties hereunder shall be unaffected and the parties shall proceed to closing without reduction of the Purchase Price. In such case, Seller shall assign to Buyer any available insurance proceeds.

14.2 Material Damage or Condemnation. In the event of the occurrence of a casualty, wherein the amount of money payable as actual cash value to the County as determined by the insurance company, exceeds the cost to demolish the building, the County reserves the right to accept the actual cash value, demolish the building, and terminate this Agreement. In the event the County does not exercise the option within thirty (30) days of actual cash value being determined by the insurance company and the cost to demolish being determined by the County, then the parties shall proceed to the Closing and Seller shall assign to Buyer at Closing all insurance or condemnation proceeds.

SELLER'S INITIALS:

15. Notices. Any notice, demand or document which any party is required or may desire to give, deliver or make to any other party shall be in writing, and may be personally delivered or given or made by United States registered or certified mail, return receipt requested, by overnight delivery service (e.g., Federal Express), or by telecopied transmission addressed as follows:

To Seller: Norman A. Cummings
Director of Administration
1320 Pewaukee Road
Waukesha, WI 53188

With copy to: Thomas P. Farley
Corporation Counsel
1320 Pewaukee Road
Waukesha, WI 53188

To Buyer: Curtis A. Manke, President
Waukesha County Historical Society, Inc.
107 Arcadian Avenue
Waukesha, WI 53188

With copy to: Susan Baker, Executive Director
Waukesha County Museum
101 West Main Street
Waukesha, WI 53186

Any party may designate a different address for itself by notice similarly given. Any notice, demand or document so given, delivered or made by United States mail shall be deemed to have been given three (3) business days after the same is deposited in the United States mail as registered or certified matter, addressed as above provided, with postage thereon fully prepaid. Any notice, demand or document delivered by overnight delivery service shall be deemed complete upon actual delivery or attempted delivery, provided such attempted delivery is made on a business day. Any such notice, demand or document given by facsimile shall be deemed to be given, delivered or made upon receipt of the same by the party to whom the same is sent by facsimile transmission (as verified by facsimile confirmation).

16. Further Assurances. Seller and Buyer agree that at any time or from time to time after the execution of this Agreement and whether before or after the closing they shall, upon request of each other, execute and deliver such further documents and do such further acts and things as such party may reasonably request in order to fully effect the purpose of this Agreement.

17. **Indemnification.** Buyer hereby saves, indemnifies, defends and holds harmless Seller and its successors and assigns from and against any and all loss, cost, damage, liability and expenses (including without limitation attorneys' fees and costs) resulting from or arising solely out of any failure or breach of any of Buyer's warranties, representations, covenants, agreements or obligations set forth in this Agreement or arising with respect to the Property from and after the Closing. Seller shall notify Buyer of any such claim within ten (10) days after Seller has notice of such claim, but failure to notify Buyer shall in no case prejudice the rights of Seller under this Agreement unless Buyer shall be prejudiced by such failure and then only to the extent of such prejudice. Buyer shall have the right to defend such claim with counsel of its own choice, subject to the reasonable written approval of such counsel by Seller. Should Buyer fail to discharge or undertake to defend Seller against such claim upon learning of the same, then Seller may settle such claim and Buyer's liability to Seller shall be conclusively established by such settlement, the amount of such liability to include both the settlement consideration and the reasonable costs and expenses, including attorneys' fees, incurred by Seller in effecting such settlement.

18. **Attorneys' Fees.** In the event of any action for breach of, to enforce the provisions of, or otherwise involving this Agreement, the court in such action shall award a reasonable sum as attorneys' fees to the party who, in the light of the issues litigated and the court's decision on those issues, was more successful in the action. The more successful party need not be the party who recovers a judgment in the action. If a party voluntarily dismisses an action, a reasonable sum as attorneys' fees shall be awarded to the other party.

19. **Miscellaneous Provisions.**

19.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, oral or written, express or implied, and all understandings, negotiations or discussions of the parties, whether oral or written, and there are no warranties, representations or agreements between the parties in connection with the subject matter hereof except as are set forth herein.

19.2 **Partial Invalidity.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.

19.3 **No Waiver of Breach.** No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

19.4. **Amendments.** This Agreement may not be altered, amended, changed, waived, terminated or modified in any respect or particular unless the same shall be in writing and signed by or on behalf of the party to be charged therewith.

19.5 **Waiver of Conditions.** Either party may, at any time or times, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by such party. No waiver shall reduce the rights and remedies of such party by reason of any breach of the other party.

19.6 **Assignments; Successors and Assigns.** Buyer shall not assign this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld; provided, however, Buyer shall have the right, without Seller's consent (but with written notice to Seller at least ten (10) days prior to the scheduled Closing Date) to assign this Agreement to an entity owned or controlled by Buyer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns.

19.7 Survival. Except as specifically provided to the contrary in this Agreement, each and every agreement, obligation, warranty, representation, covenant and indemnification of Seller and Buyer contained herein shall survive the closing hereunder and the transfer and conveyance of the Property and any and all performances hereunder.

19.8 Time. Time is of the essence of this Agreement.

19.9 Remedies. Except as otherwise specifically provided herein, no remedy conferred upon a party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Buyer shall have the right to sue Seller for specific performance of this Agreement.

19.10 Meaning of Certain Words. Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.

19.11 Wisconsin Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

19.12 Headings and Labels. All article and paragraph titles or captions are for convenience only and shall not be deemed a part of this Agreement.

19.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

19.14 Exhibits. All of the Exhibits attached to this Agreement are incorporated herein as if set forth in full.

Exhibit A	Legal Description (to be provided with title policy)
Exhibit B	Capital Improvements
Exhibit C	Performance Standards
Exhibit D	County Financial Arrangements

19.15 Construction. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

19.16 Performance. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement occurs on a Saturday, Sunday, or Federal or State Holiday, then the action shall be taken on the next succeeding business day.

19.17 No Third Party Beneficiaries. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties to this Agreement.

19.18 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19.19 Limitation of Liability of Seller. Notwithstanding any other provision of this Agreement to the contrary, in no event shall Seller have any liability for speculative, special, consequential, punitive, or any other damages than actual damages under any provision of this Agreement.

BUYER:

SELLER:

EXHIBIT B

Waukesha County Historical Capital Improvements to Old Courthouse

ADA Upgrades	Estimated Costs
Upgrade east elevator at lobby Remove existing elevators Install new Roped Hydraulic elevator	\$ 194,000.00
Install new west elevator adjacent to stairway	\$ 238,000.00
Install new ADA toilets on three floors	\$ 273,000.00
Electrical Power Upgrade 2500 Amp Service New WEPCO Transformer Remove existing 1200 Amp service New 800 Amp feeder to old switch	\$ 70,000.00
Estimated WEPCO charges	\$ 15,000.00
Mechanical Hot water converter from steam boiler	\$ 24,000.00
Upgrade central HVAC Infrastructure	\$ 242,000.00
Fire System New Sprinkler System	\$ 25,000.00
Fire Alarm Main Panel	\$ 10,000.00
Security Security Main Panel	\$ 15,000.00
Roof Repair Roof	\$ 75,000.00
Asbestos Removal Asbestos Removal Floor Tile Estimate	\$ 74,300.00
Ceiling Tile Estimate	\$ 47,600.00
Pipe Estimate	\$ 5,000.00
Lead Paint Abatement	\$ 16,500.00
Misc. Exterior Repair at Entries	\$ 15,000.00
TOTAL	\$ 1,339,400.00

Buyer, Waukesha County Historical Society, Inc. will provide quarterly reports to Waukesha County detailing the capital improvements on Exhibit B and others which may be being accomplished.

The estimated cost will be about \$1,339,400.00 but may not be exactly as provided in Exhibit B.

EXHIBIT C

1. Performance Standards – The Historical Society must annually meet the following Performance Standards beginning with performance of 2003 and data analyzed in the first quarter of 2004 and each year following. If standards are determined by the County not to be met in any year based on data analyzed in the first quarter of the next year, all payments will terminate that are scheduled to be made in the second quarter of that year and all future years payments scheduled in this agreement.

Performance Standards

- A. Attendance in calendar years 2003, 2004, and 2005 shall not be less than 13,000 each year. Attendance in calendar year 2006 to 2012 the end of the contract shall be not less than 13,130 in 2006 and increased 200 visitors per year in 2007 and in each year thereafter to the end of the contract.

Attendance verification will be conducted by a third party using statistically valid sampling techniques agreeable by both parties.

- B. Days of operation will not be less than 200 days in any calendar year during this agreement. A day of operation is defined as open to the general public at least 6 hours in a 24 hour period or 4 hours in a 24 hour period will constitute one-half day of operation.

2. Waukesha County Records Held by the Waukesha County Historical Society

- A. All Waukesha County records currently held must be retained by the Waukesha County Historical Society and cannot be removed, discarded or transferred from the Research Center collection, except for records returned to the County.
- B. The records must be maintained, stored and made accessible according to current archival standards and standard library procedures.
- C. Restrictions on records must be enforced, especially those of the confidentiality of the original records of the Waukesha County Poor Farm and Asylum.
- D. Records must be made available to researchers during normal business hours. The Waukesha County Historical Society must answer all reasonable requests for access, record searches and photocopies of the County records.
- E. Only reasonable copying fees may be charged for reproductions in compliance with the Open Records Law, Wisconsin Statutes §19.35, or its successors.
- F. In the event of the disbanding of the Waukesha County Historical Society or if they are unable to retain the records, custody of the records will revert to Waukesha County.

Exhibit C -- (2.)(D.) was amended to read as follows:

2. D. Records must be made available to researchers during normal business hours which, at a minimum, shall not be less than the current hours of Tuesday, Friday, Saturday 10:00 a.m. to 4:30 p.m., and Thursday 12:30 p.m. to 4:30 p.m.

Pat

MEMO

To: County Board Supervisors
From: Supervisor Manke
Subject: Amendments to Ordinance 157-O-080: Approve Agreement for Sale and Development of the Old Courthouse
Date: November 11, 2002

Supvr. Manke:

I move to amend Proposed Ordinance 157-O-080 entitled "Approve Agreement for Sale and Development of the Old Courthouse" as follows:

BE IT FURTHER ORDAINED that the "Agreement of Purchase, Sale and Development of Real Property" shall include the County "Right to Audit" clause which is standard in service contracts.

Second Supervisor Herri 33-0 adopted

I move to amend Proposed Ordinance 157-O-080, Exhibit C (2.)(D.), so that the first sentence reads as follows:

Supvr. Manke

"Records must be made available to researchers during normal business hours which, at a minimum, shall not be less than the current hours of Tuesday, Friday, Saturday 10:00 a.m. to 4:30 p.m., and Thursday 12:30 p.m. to 4:30 p.m.

Second Supervisor Paulson 33-0 Adopted

Exhibit C – (2.)(D.) was amended to read as follows:

2. D. Records must be made available to researchers during normal business hours which, at a minimum, shall not be less than the current hours of Tuesday, Friday, Saturday 10:00 a.m. to 4:30 p.m., and Thursday 12:30 p.m. to 4:30 p.m.

EXHIBIT D

1. County agrees to make the following annual payments beginning in 2003 and ending in 2012. The County shall not be required to make any payments unless the requirements stated in Exhibit B and Exhibit C have been met by Buyer to the satisfaction of the County.

- A. Program grant for museum operations - \$215,000 per year paid per invoice, \$115,000 in January and \$100,000 in June.
- B. Building Operations grant to fund building maintenance, repairs, utilities and related expenses, \$117,000 to \$225,000 per year paid per invoice, 60% in January and the remaining grant for the year in June. Annual grant will be the following:

2003 - \$225,000	2008 - \$165,000
2004 - \$213,000	2009 - \$153,000
2005 - \$201,000	2010 - \$141,000
2006 - \$189,000	2011 - \$129,000
2007 - \$177,000	2012 - \$117,000

- C. Capital grant to fund infrastructure, equipment and remodeling – the County will provide a direct grant to fund construction costs in January for the following years;

2003 - \$195,000
 2004 - \$190,000
 2005 - \$ 50,000

In addition, the County will provide annual capital grant payments to the Historical Society to repay a loan from the City of Waukesha. Total payment over the ten-year period will not exceed \$900,000 plus interest costs (not to exceed City of Waukesha tax exempt debt issue rate). The payment schedule is estimated to be interest only in 2003 and level capital grants payment to the Historical Society to match a level repayment of Principal and Interest schedule to the City of Waukesha. An example of the payment schedule with a rate of 5.5% follows. The actual payment schedule will depend upon actual events to occur which are not known at this time.

		Rate	5.5%		
Year	Balance	Interest	Principal	Total Payment	Total
2003	900,000	40,000	-		
2004	900,000	49,500	80,000	129,500	
2005	820,000	45,100	84,400	129,500	
2006	735,600	40,458	89,042	129,500	
2007	646,558	35,561	93,939	129,500	
2008	552,619	30,394	99,106	129,500	
2009	453,513	24,943	104,557	129,500	
2010	348,956	19,193	110,307	129,500	
2011	238,648	13,126	116,374	129,500	
2012	122,274	6,725	122,274	128,999	
Total		215,499	900,000	1,115,499	

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-11/12/02

(ORD) NUMBER-1570080
as twice amended

- 1 K. HERRO.....NAY
- 3 D. STAMSTA.....AYE
- 5 J. MARCHESE.....AYE
- 7 J. JESKEWITZ.....AYE
- 9 P. HAUKOHL.....AYE
- 11 K. HARENDA.....
- 13 J. MORRIS.....NAY
- 15 D. SWAN.....AYE
- 17 J. BEHREND.....AYE
- 19 M. SONNENTAG.....NAY
- 21 W. KOLB.....NAY
- 23 P. PRONOLD.....AYE
- 25 K. CUMMINGS.....AYE
- 27 D. PAULSON.....AYE
- 29 M. THOMAS.....NAY
- 31 V. STROUD.....AYE
- 33 D. PAVELKO.....NAY
- 35 C. SEITZ.....NAY

- 2 R. THELEN.....AYE
- 4 H. CARLSON.....AYE
- 6 D. BROESCH.....AYE
- 8 J. DWYER.....AYE
- 10 S. WOLFF.....AYE
- 12 J. GRIFFIN.....AYE
- 14 J. LA PORTE.....AYE
- 16 R. MANKE.....AYE
- 18 D. FANFELLE.....NAY
- 20 M. KIPP.....AYE
- 22 G. BRUCE.....NAY
- 24 A. SILVA.....AYE
- 26 S. KLEIN.....AYE
- 28 P. JASKE.....AYE
- 30 K. NILSON.....AYE
- 32 P. GUNDRUM.....NAY
- 34 R. SINGERT.....NAY

TOTAL AYES-23

TOTAL NAYS-11

CARRIED X as
twice amended

DEFEATED _____

UNANIMOUS _____

TOTAL VOTES-34