



AGENDA

Port Authority Regular Meeting

Tuesday, January 21, 2025

6:00 PM

Council Chambers, City Hall

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE**
- 2. ADDITIONS OR CORRECTIONS TO AGENDA**
- 3. CONSENT AGENDA**
 - a. Minutes of the December 17, 2024 Port Authority meeting
- 4. CHAIRPERSON'S REPORT**
- 5. REPORTS FROM PORT AUTHORITY COMMISSIONERS**
- 6. NEW BUSINESS**
 - a. Omni Public Hearing
 - b. Willy McCoy's Amendment to the Contract for Private Development
- 7. OLD BUSINESS**
 - a. Project Updates
- 8. DISCUSSION**
- 9. ADJOURNMENT**

**ROSEMOUNT PORT AUTHORITY
REGULAR MEETING PROCEEDINGS
DECEMBER 17, 2024**

TOUR 14701 BLAINE AVE ROSEMOUNT, MN

- a. **Port Authority will be leaving City Hall at 4:15 p.m. and taking a bus to tour 14701 Blaine Avenue, Rosemount, MN**

Port Authority took a tour of the Meta Facility.

CALL TO ORDER/PLEDGE OF ALLEGIANCE

- a. **Port Authority will arrive at City Hall at approximately 6:00 p.m. to call the meeting to order**

Pursuant to due call and notice thereof, a regular meeting of the Rosemount Port Authority was held on Tuesday, December 17, 2024, at 6:00 PM. in Rosemount Council Chambers, 2875 145th Street West.

Chairperson Essler called the meeting to order with Commissioners Theisen, Beaudette and Ober. Commissioner Klimpel and Freske were absent.

ADDITIONS OR CORRECTIONS TO AGENDA

None.

CONSENT AGENDA

Motion by Theisen Second by Ober

Motion to approve consent agenda

Ayes: 5.

Nays: None. Motion carried.

- a. **Minutes of October 15, 2024 Regular Meeting**
- b. **Minutes of November 19, 2024 Regular Meeting**

CHAIRPERSON'S REPORT

None.

REPORTS FROM PORT AUTHORITY COMMISSIONERS

None.

NEW BUSINESS

a. Willy McCoy's Development Contract

Economic Development Coordinator, Van Oss, provided an overview of the Willy McCoy project. Mr. Van Oss noted this item would be moved to the January Port Authority meeting. The additional time will allow the Willy McCoy team to finalize bids as the previous bids were not favorable. The project timeline is still planned for a closing date on April 1st and a mid-March construction start date.

b. OMNI Business Subsidy Request

Economic Development Coordinator, Van Oss, presented the plans for Omni to expand their current location. The Developer requested \$500,000 in excess, unobligated tax increment assistance to pay for site improvement costs to offset the high costs of construction.

Omni representatives further provided an overview of the project. The additional space will be a separate building which will be used as more of an event space. Per state statute, there is a requirement that the private development is to commence no later than December 31, 2025 and the proposed development fits within the requirements of the spending plan and aligns with the City's long vision and strategic goals.

Rebecca Kurtz, Ehlers, was present and discussed the financial impact of the project.

Motion by Theisen Second by Ober

Motion to approve the grant request and direct staff to move forward with a Business Subsidy Agreement.

Ayes: 5.

Nays: None. Motion carried.

c. 2025 Community Development Block Grant (CDBG) Allocation

Community Development Director, Kienberger, discussed the Community Development Block Grant (CDBG). The estimated allocation for Rosemount for Program Year 2025 is \$41,778.

Staff proposes the funds be allocated across two activities for 2025, Home Improvement Grant Program and the Downtown Framework Update. The Downtown Framework will be used as a more in-depth look at Rosemount's downtown development opportunities and improvements ahead of the 2050 Comp Plan.

Motion by Theisen Second by Beaudette

Motion to recommend City Council adopt a resolution approving Rosemount's 2025 CDBG application as presented.

Ayes: 4.

Nays: Ober. Motion Carried.

OLD BUSINESS

a. Project Updates

Economic Development Coordinator, Van Oss, discussed the latest Speedway updates and expects to have further discussions after the new year.

Commissioner Ober questioned the status of streetlights that are missing on Highway 3. Van Oss noted the opening of Lifetime on the 27th.

DISCUSSION

None.

ADJOURNMENT

There being no further business to come before the Port Authority at the regular council meeting and upon a motion by Essler and a second by Weisensel the meeting was adjourned at 6:55 p.m.

Respectfully submitted,

Erin Fasbender
City Clerk

Port Authority Regular Meeting: January 21, 2025

AGENDA ITEM: Omni Public Hearing	AGENDA SECTION: NEW BUSINESS
PREPARED BY: Eric Van Oss, Economic Development Coordinator	AGENDA NO. 6.a.
ATTACHMENTS: DOCSOPEN-#997770-v3	APPROVED BY: LJM
RECOMMENDED ACTION: Motion to open the public hearing and take public comment. Motion to close the public hearing. Motion to approve the Contact for Private Development By and Between Rosemount Port Authority and Riveter Real Estate, LLC.	

BACKGROUND

Staff has been working with Omni Farm Winery on a new expansion project adjacent to their existing Rosemount location. The Developer requested \$500,000 in excess, unobligated tax increment assistance to pay for site improvement costs to offset the high costs of construction. In December the Port Authority directed staff to begin work on a Contract for Private Development between the Rosemount Port Authority and Omni (legally referred to in the document as Riveter Real Estate, LLC). The attached Contract outlines the terms and conditions that Omni will need to fulfill in order to receive the business subsidy from the city. Key items include the building of approximately 9,500 sq. ft winery and events venue, and to show substantial completion of the building by Dec 31, 2025.

The proposed development by Omni Farm Winery fits within the requirements of the spending plan and aligns with the City's vision and strategic goals. The Port identified this spending plan as a unique and timely tool the City can use to foster new business growth and investment in the community. The spending plan has been largely used to attract new restaurant and entertainment venues and staff finds this project aligns with those goals.

Because the requested subsidy is over \$150,000, the Port is required to hold a public hearing. A representative from Omni will be in attendance to brief the Port on the project proposal and answer questions. The City's financial consultant has conducted a financial analysis of the request and will be in attendance to present the findings to the Port.

RECOMMENDATION

Staff supports the approval of the Contact for Private Development By and Between Rosemount Port Authority and Riveter Real Estate, LLC.

CONTRACT
FOR
PRIVATE DEVELOPMENT
BY AND BETWEEN
ROSEMOUNT PORT AUTHORITY
AND
RIVETER REAL ESTATE, LLC

This document was drafted by:

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SIGNATURES

EXHIBIT A	Legal Description of the Property
EXHIBIT B	List of Preliminary Plans
EXHIBIT C	Form of Certificate of Satisfactory Progress to Completion
EXHIBIT D	Form of Notice and Assignment

CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT (the “Agreement”) is made as of the _____ day of _____, 2025, by and between the Rosemount Port Authority, a body politic and corporate under the laws of Minnesota, having its principal office at 2875 145th Street W., Rosemount, Minnesota 55068-4941 (the “Port”), and Riveter Real Estate, LLC, a limited liability company under the laws of Minnesota, having its office at 14962 64th Avenue North, Maple Grove, MN 55311 (the “Developer”).

RECITALS

WHEREAS, the Port has established and administers various tax increment financing districts (the “TIF Districts”) in Rosemount ; and

WHEREAS Minnesota Statutes, section 469.176, subd. 4n authorizes the Port to spend available tax increment from existing tax increment districts, notwithstanding any other law to the contrary, to provide improvements, loans, interest rate subsidies or assistance in any form to private development consisting of construction or substantial rehabilitation of buildings and ancillary facilities, if the following conditions exist: (1) such assistance will create jobs in the state, including construction jobs; (2) construction commences before December 31, 2025; (3) the construction would not have commenced before December 31, 2025 without the assistance; (4) tax increment under the Spending Plan (as hereinafter defined) is spent by December 31, 2025; and (5) the city council approves the authority’s Spending Plan after a duly noticed public hearing that specifically authorizes the Port to take such actions; and

WHEREAS, the Port adopted a Spending Plan for the TIF Districts, which Spending Plan was approved by the city council on November 1, 2022 following a public hearing; and

WHEREAS, the Spending Plan authorizes assistance in amounts between \$25,000 and \$500,000 in connection with private development consisting of the construction or substantial rehabilitation of commercial, industrial, residential and/or mixed use buildings and ancillary facilities and which will result in the creation or retention of jobs in the state, including construction jobs; and

WHEREAS, the Developer has proposed to construct on the Property (as hereinafter defined) a new building of approximately 9,500 sq. ft. to be used for a winery and events venue (the “Project”); and

WHEREAS the Developer has stated in writing that the cost of constructing the Project exceeds available funding and that the Project would not be undertaken without the assistance offered by the Port in this Agreement; and

WHEREAS, the Project will create temporary construction jobs and community amenities; and

WHEREAS, to achieve the objectives of the Spending Plan, the Port is prepared to offer financial assistance to the Developer to bring about development of the Project on the Property in accordance with this Agreement; and

WHEREAS, the Port believes that the fulfillment generally of this Agreement is in the vital and best interests of Rosemount and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Spending Plan was adopted.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Port and the Developer, each party does hereby represent, covenant and agree with the other as follows:

ARTICLE I

Definitions

Section 1.1. Definitions. This Agreement, unless a different meaning clearly appears from the context:

“Agreement” means this Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Benefit Date” has the meaning given to the term in Minnesota Statutes, section 116J.993, subd. 2.

“Business Subsidy Act” means Minnesota Statutes, sections 116J.993 through 116J.995, as amended.

“Certificate of Substantial Progress to Completion” means the certificate, in the general form attached hereto as Exhibit C, which will be provided by the Port to the Developer upon achieving Substantial Progress to Completion of the Minimum Improvements or the City’s issuance of the Certificate of Occupancy, whichever occurs first.

“City” means the city of Rosemount, Minnesota.

“City Approvals” means, collectively, the land use approvals which have been granted or will be required by the City prior to the Developer being authorized to construct the Minimum Improvements.

“Construction Plans” means, collectively, the plans, drawings and specifications for the Minimum Improvements which are consistent with the Preliminary Plans and submitted by the Developer pursuant to Article IV of this Agreement and approved by the City as confirmed by the issuance of a building permit or similar approval mechanism.

“County” means Dakota County, Minnesota.

“Developer” means Riveter Real Estate, LLC, a limited liability company under the laws of Minnesota.

“Event of Default” means an action listed in Article X of this Agreement.

“Financial Assistance” means the \$500,000.00 in Spending Plan TIF to be offered to the Developer by the Port.

“Material Change” means a change in the Construction Plans regarding the Minimum Improvements which requires revised or additional City Approvals.

“Minimum Improvements” means demolition of existing buildings and the construction of an approximately 9,500 sq. ft. building for use as a winery and events venue consistent with the Construction Plans on the Property. After completion of the Minimum Improvements, the term shall mean the Property as improved by the Minimum Improvements.

“Port Authority” or “Port” means the Rosemount Port Authority, a body politic and corporate under the laws of Minnesota.

“Preliminary Plans” means, collectively, the plans, drawings, and specifications for the Minimum Improvements which are listed on Exhibit B attached hereto.

“Property” means the real property described in Exhibit A attached hereto.

“Qualifying Costs” means up to \$500,000.00 in costs associated with acquisition or preparation of the Property or construction of the Minimum Improvements..

“Satisfactory Progress to Completion” means the certification to be made by the City’s building official after all rough-in inspections for plumbing, utilities, framing and electrical work on the Minimum Improvements have been completed and passed and the building shell is completed and the roofing structure and membrane installed.

“Spending Plan” means the Spending Plan for the TIF Districts which was adopted by the Port and approved by the City on November 1, 2022 and which authorizes the use of Spending Plan TIF for projects which will create or retain jobs in the State and which would not otherwise have occurred prior to December 31, 2025.

“Spending Plan TIF” means tax increment which has been received and retained by the Port from the TIF Districts in accordance with the TIF Act and not otherwise pledged to other obligations of the TIF Districts and which, pursuant to Subd. 4n, may be used under the Spending Plan to provide assistance for qualifying private developments.

“State” means the state of Minnesota.

“Subd. 4n” means Minnesota Statutes, section 469.176, subd. 4n.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal court.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of a pandemic, strikes, other labor troubles, delays and/or unavailability of any construction materials, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, State or local governmental unit (other than the Port in exercising its rights under this Agreement) which directly result in delays.

Section 1.2. Exhibits. The following exhibits are attached to and by reference made a part of this Agreement:

- Exhibit A. Legal Description of the Property
- Exhibit B. List of Preliminary Plans
- Exhibit C. Form of Certificate of Substantial Progress to Completion
- Exhibit D. Form of Notice and Assignment

Section 1.3. Rules of Interpretation. (a) This Agreement shall be interpreted in accordance with and governed by the laws of Minnesota.

(b) The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(c) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

(d) Any titles of the several parts, articles and sections of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the Port. The Port makes the following representations as the basis for the undertaking on its part herein contained:

(a) The Port is a body politic and corporate under the laws of Minnesota and has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The individuals executing this Agreement and related documents on behalf of the Port have the authority to do so and bind the Port by their actions.

(c) The activities of the Port authorized herein are undertaken to facilitate the construction of a project which will create jobs in the State.

(d) The Financial Assistance is being offered pursuant to the Spending Plan adopted by the Port and approved by the City in accordance with Subd. 4n.

Section 2.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited liability company under the laws of Minnesota in good standing and has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The persons executing this Agreement and related agreements on behalf of the Developer have the authority to bind the Developer by their actions.

(c) The Developer has received no notice or communication from any local, State, or federal official that the activities of the Developer, the Port or the City on the Property may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause the Developer to be in violation of or give any person a valid claim under any local, State, or federal environmental law, regulation, or review procedure.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with or results in a breach of the terms, conditions, or provisions of any organizational document or other restriction of the Developer or any evidence of indebtedness, agreement, or instrument of whatever nature to which the Developer is now a party or by which it is bound, or to which it will be bound to finance construction of the Minimum Improvements or constitutes a default under any of the foregoing.

(e) The Developer is not ineligible under the Business Subsidy Act to receive the Financial Assistance provided for in this Agreement.

(f) The Developer will construct the Minimum Improvements in accordance with the terms of this Agreement, the Spending Plan, all local, State and federal laws and regulations including, but not limited to, environmental, zoning, building code, public health laws and regulations.

(g) The Developer has analyzed the economics of the Project and has determined that acquisition of all of the Property and construction of the Minimum Improvements described in this Agreement would not occur and, specifically, would not have been commenced before December 31, 2025, without the Financial Assistance being provided hereunder.

(h) The Developer will apply for and use all reasonable efforts to obtain in a timely manner all permits, licenses and approvals required by the City or other governmental entities and will meet requirements of all applicable City, State and other laws and regulations which must be met before the Minimum Improvements may be lawfully constructed and used for their intended purpose.

(i) The Developer shall promptly advise the Port in writing of all litigation or claims affecting any part of the Property or the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Property or the Minimum Improvements or materially affecting the Developer or its business which may delay or require changes in construction of the Minimum Improvements.

ARTICLE III

Acquisition of Property

Section 3.1. Acquisition of the Property. The Developer has entered into a purchase agreement regarding the Property and agrees to close on the transaction and obtain fee title and possession of the Property by no later than March 31, 2025.

ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Property in accordance with the Construction Plans. The Developer recognizes that it is because the Developer has agreed to construct the Minimum Improvements that the Port is willing to offer the Financial Assistance outlined in this Agreement. The Developer acknowledges that, in addition to the requirements of this Agreement, construction of the Minimum Improvements will necessitate compliance with other reviews and approvals by the City and possibly other governmental entities and agrees to submit all applications for and pursue to their conclusion all other approvals needed prior to constructing the Minimum Improvements.

Section 4.2. Preliminary and Construction Plans. (a) The Developer has submitted and the Port has approved the Preliminary Plans. After execution of this Agreement, but at least 15 days prior to initiation of construction, the Developer shall submit dated Construction Plans to the Port for approval. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in substantial conformity with the Preliminary Plans and this Agreement. The Port will approve the Construction Plans if they (1) substantially conform to the Preliminary Plans; (2) conform to all applicable federal, State and City laws, ordinances, rules and regulations; (3) are adequate to provide for the construction of the Minimum Improvements; (4) conform to the State building code; and (5) if there has occurred no uncured Event of Default on the part of the Developer. No approval by the Port shall relieve the Developer of the obligation to comply with the terms of this Agreement, the City Approvals and the terms of any applicable federal, State and City laws, ordinances, rules and regulations in the construction of the Minimum Improvements. The Port shall not unreasonably delay, condition or withhold approvals necessary for Developer to comply with this Agreement. No approval by the Port shall constitute a waiver of an Event of Default. It will be necessary for the City

to issue a building permit prior to the Developer being authorized to construct the Minimum Improvements. Approval of the Construction Plans by the Port is only for the purpose of ensuring compliance with the terms and conditions of this Agreement and may occur prior to or after issuance of the building permit by the City.

(b) If the Developer desires to make a material change in the Construction Plans after their approval by the Port, including any change to the exterior design or visible construction materials of the Minimum Improvements or any other change which would also require review or reauthorization of the City Approvals or under any other applicable code, ordinance or regulation, the Developer shall submit the proposed change to the Port for its approval. If the proposed change conforms to the requirements of this section 4.2 with respect to the original Construction Plans or is otherwise acceptable to the Port, the Port shall approve the proposed change. Such change in the Construction Plans shall be deemed approved by the Port unless rejected, in whole or in part, by written notice by the Port to the Developer setting forth in detail the reasons therefor. Such rejection shall be made within 15 business days after receipt of the written notice of such change from the Developer.

Section 4.3. Commencement and Satisfactory Progress to Completion. Subject to Unavoidable Delays and the Port's timely approval of the Construction Plans, and any delays in the Developer's receipt of the City's approvals, the Developer shall commence construction of the Minimum Improvements by no later than May 1, 2025. Subject to Unavoidable Delays, the Developer shall achieve Substantial Progress to Completion of the Minimum Improvements by no later than November 30, 2025. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Property shall be in conformity with the Construction Plans. The Developer shall make such reports to the Port regarding construction of the Minimum Improvements as the Port deems necessary or helpful in order to monitor progress on construction of the Minimum Improvements.

Section 4.4. Certificate of Substantial Progress to Completion. (a) After achieving Substantial Progress to Completion of the Minimum Improvements in accordance with the Construction Plans and all terms of this Agreement, the Port will furnish the Developer with a Certificate of Substantial Progress to Completion in the form of Exhibit C attached hereto. Such certification by the Port shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Developer to achieve Substantial Progress to Completion of the Minimum Improvements and the dates for the beginning and completion thereof.

(b) The Certificate of Substantial Progress to Completion provided for in this section 4.4 shall be in such form as will enable it to be recorded in the proper County office for the recordation of deeds and other instruments pertaining to the Property. If the Port shall refuse or fail to provide such certification in accordance with the provisions of this section 4.4, the Port shall, within 15 business days after written request by the Developer, provide the Developer with a written statement, indicating in specific detail in what respects the Developer has failed to achieve Substantial Progress to Completion of the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default of a material term of this Agreement, and what measures or acts will be

necessary, in the opinion of the Port, for the Developer to take or perform in order to obtain such Certificate of Substantial Progress to Completion.

Section 4.5. Completion of Minimum Improvements. Notwithstanding anything herein to the contrary or the issuance of the Certificate of Substantial Progress to Completion, the Developer must complete the Minimum Improvements and obtain a certificate of occupancy from the City's building official. The Port agrees and acknowledges that completion of the Minimum Improvements may occur after Developer's receipt of the Financial Assistance.

Section 4.6. Restrictions on Use; Land Use Approvals. The Developer, for itself and its successors and assigns, agrees to devote the Property and the Minimum Improvements only to such use or uses as may be permissible under the City's land use regulations.

Section 4.7. City Approvals. The Developer acknowledges that the City Approvals must be granted by the City for the Developer to implement its plans to construct the Minimum Improvements on the Property. The Developer agrees to pursue at its expense such approvals and permits as are necessary to construct the Minimum Improvements in accordance with the City Approvals, all land use approvals, restrictions and other regulations of the City related to the Property and the Minimum Improvements as indicated in the issued building permit and the approved Construction Plans.

ARTICLE V

Financial Assistance

Section 5.1. Total Development Costs. Based on the Developer's representation that the total development costs are approximately \$2,531,000, that the sources of revenue available to pay such costs, excluding the tax Financial Assistance contemplated herein is \$2,031,000, and that the Developer is unable to obtain additional private financing for the total estimated total development costs, the Port has agreed to provide to the Developer the Financial Assistance, subject to the terms and conditions as hereinafter set forth.

Section 5.2. Qualifying Costs. As of the date of this Agreement, the possibility for any development on the Property is greatly limited. The Developer has represented that the Project would not be economically feasible within the reasonably foreseeable future, and more specifically, the Developer would not have commenced construction of the Minimum Improvements before December 31, 2025 if the Developer were required to pay all of the total development costs without assistance. Consequently, subject to the terms and conditions of this Agreement, to assist the Developer in making the development of the Project feasible, the Port agrees to apply Spending Plan TIF in the amount of the Financial Assistance to Developer. Other than the Financial Assistance, the Port neither pledges nor provides any other financial assistance to the Developer for the costs of the construction of the Minimum Improvements.

Section 5.3. Conditions Precedent to Financial Assistance. Notwithstanding anything in this Agreement to the contrary, the Port shall not be obligated to pay the Financial Assistance to Developer until all of the following conditions precedent have been satisfied:

- (a) The Developer has acquired the Property;
- (b) The Developer and the Port have executed this Agreement and it has been recorded in the County land records;
- (c) The Developer has demonstrated to the Port that it has incurred Qualified Costs in at least the amount of \$500,000;
- (d) The Certificate of Substantial Progress to Completion has been issued;
- (e) The Developer remains eligible for receiving a business subsidy under the Business Subsidy Act; and
- (f) There has been no Event of Default on the part of the Developer which has not been cured.

When the above conditions have been satisfied, the Port will disperse the Financial Assistance to the Developer. Within 30 days of the date the above conditions are satisfied, the Port will wire, in immediately available funds and to an account designated by the Developer, the Financial Assistance to the Developer. The Developer understands and agrees that all Spending Plan TIF must be spent by December 31, 2025. To the extent the Spending Plan TIF is not spent by December 31, 2025, the Port shall have no further obligation to make any additional payments under this Agreement.

ARTICLE VI

Insurance

Section 6.1. Required Insurance. The Developer agrees to provide and maintain insurance as follows and at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the Port, furnish the Port with proof of a certificate of insurance for:

- (a) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy;
- (b) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$1,000,000 for each occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and
- (c) Workers' compensation insurance, with statutory coverage.

The policies of insurance required above shall be in form and content reasonably satisfactory to the Port. They shall be placed with financially sound and reputable insurers licensed to transact business in Minnesota and shall contain an agreement of the insurer to give not less than 30 days' advance written notice to the Port in the event of cancellation of such policy or change affecting the coverage thereunder.

Section 6.2. Evidence of Insurance. All insurance required in this Article VI shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of Minnesota to assume the risks covered thereby. Upon written request by the Port, the Developer agrees to deposit with the Port a certificate of insurance evidencing all such insurance of the respective insurers stating that such insurance is in force and effect. Each policy shall contain a provision that the insurer shall not cancel nor materially modify it without giving written notice to the Developer and the Port at least 30 days before the cancellation or modification becomes effective. Not less than 15 days prior to the expiration of any policy, the Developer shall furnish the Port a certificate of insurance that has been renewed or replaced by another policy conforming to the provisions of this Article VI, or that there is no necessity therefor under the terms of this Agreement. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the Port a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

ARTICLE VII

Business Subsidy Act Requirements

Section 7.1. Compliance with Business Subsidy Provisions. The Port and the Developer agree and represent to each other as follows:

(a) The subsidy provided to the Developer consists of the Financial Assistance provided by the Port under this Agreement. The total value of the business subsidy provided by the Port is \$500,000.00.

(b) The public purposes of the subsidy are to promote construction of the Minimum Improvements on the Property, provide construction jobs in Rosemount and the State, and increase the tax base of the City and the State.

(c) The goals for the subsidy are to secure construction of the Minimum Improvements on the Property; to maintain the Minimum Improvements for at least five years as described in clause (f) below; and to create construction jobs.

(d) If the goals described in clause (c) above are not met, the Developer must make the payments to the Port described in section 7.3.

(e) The subsidy is needed because the cost of construction of the Minimum Improvements makes development of the Property with the Minimum Improvements financially infeasible without the Financial Assistance.

(f) The Developer, or its successors, assigns, or transferees, must continue operation of the Minimum Improvements as a winery and events venue for at least 5 years after the Benefit Date. This provision does not prevent, prohibit, or otherwise forbid the Developer from selling the business, transferring the business or otherwise assigning the Developer's interest in the operation provided the Developer submits the assignment form that is substantially similar to that form found in Exhibit D and it is accepted and approved by the Port.

(g) The Developer does not have a parent entity. The Developer may assign its interest in this Property to a related entity provided Developer submits the assignment form that is substantially similar to that form found in Exhibit D and it is accepted and approved by the Port.

(h) The Developer has not received, and does not expect to receive financial assistance from any other grantor as defined in the Business Subsidy Act in connection with acquisition or site preparation of the Property or construction of the Minimum Improvements.

(i) Developer may, upon completion of the Minimum Improvements, lease the Minimum Improvements to a tenant or tenants (the "Tenant") who will operate the winery and the events venue. The Port understands and agrees that continuation of the facility as a winery and events venue for five years after the Benefit Date by the Tenant on the Property and reporting of same by the Tenant will satisfy the requirements of Section 7.1(f). Any obligations of the Developer under this Section may also be satisfied by performance and reporting of the Tenant. Notwithstanding the foregoing, the Developer shall at all times remain obligated to the Port to ensure the performance requirements set forth herein are met and to repay to the Port any amounts required under this Agreement.

Section 7.2. Job and Wage Goals. The goal of the Spending Plan is to facilitate the construction of new or rehabilitation of existing buildings to expand the amenities available in the community and to provide construction jobs associated with such work. The creation of new or retention of existing jobs is not a goal. Accordingly, the jobs and wages for the project is set at zero.

Section 7.3. Remedies. If the Developer fails, directly or through performance of the Tenant, successors, assigns, or transferee, to meet the goals described in Section 7.1, the Developer shall repay to the Port upon written demand from the Port a pro rata share of the business subsidy authorized under this Agreement, and interest on the subsidy at the implicit price deflator as defined in Minnesota Statutes, section 275.50, subd. 2, accrued from the date of issuance of the Certificate of Substantial Completion to the date of payment. The term pro rata share means if the failure relates to maintenance of the Minimum Improvements in accordance with Section 7.1(f), 60 less the number of months of operation as the Minimum Improvements (where any month in which the Minimum Improvements are in operation for at least 15 days constitutes a month of operation), commencing on the Benefit Date and ending with the date the Minimum Improvements cease operation as determined by the Port, divided by 60.

Nothing in this Section 7.3 shall be construed to limit the Port's remedies under Article X hereof. In addition to the remedy described in this Section 7.3 and any other remedy available to the Port for failure to meet the goals stated in Section 7.1, the Developer agrees and understands that it may not receive a business subsidy from the Port or any grantor as defined in the Business Subsidy Act for a period of five years from the date of the failure or until the Developer satisfies its repayment obligation under this Section 7.3, whichever occurs first.

Section 7.4. Reports. The Developer, either directly or through the Tenant, must submit to the Port a written report regarding business subsidy goals and results by no later than March 1 of each year, commencing March 1, 2026 and continuing until the later of (i) 30 days after expiration of the five-year period described in Section 7.1(f); or (ii) if the goals are not met, the date the subsidy is repaid in accordance with Section 7.3. The report must comply with section 116J.994, subdivision 7 of the Business Subsidy Act. The Port will provide information to the Developer regarding the required forms. If the Developer fails to timely file, or cause Tenant to timely file any report required under this Section 7.4, the Port will mail the Developer a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, the Developer and/or Tenant fails to provide a report, the Developer must pay to the Port a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this Section 7.4 is \$1,000.

ARTICLE VIII

Use of Spending Plan TIF; Collection of Taxes

Section 8.1. Use of Spending Plan TIF. The Spending Plan has authorized the Port to have available to it more Spending Plan TIF than it is providing to the Developer under this Agreement. The Port shall be free to use any Spending Plan TIF not committed under this Agreement for any purpose for which such Spending Plan TIF may lawfully be used, pursuant to the provisions of Subd. 4n, and the Port shall have no obligation to the Developer with respect to the use of such additional Spending Plan TIF.

Section 8.2. Right to Collect Delinquent Taxes. The Developer acknowledges that the Port is providing substantial aid and assistance in furtherance of the development of the Property. The Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Port or the City to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the Port shall also be entitled to recover its costs, expenses, and attorney fees.

Section 8.3. Payment of Fees. The Developer agrees to pay all fees and expenses incurred by the Port in connection with preparation of this Agreement, including but not limited to the fees of the Port's legal counsel.

ARTICLE IX

Restrictions on Sale or Encumbrance of Minimum Improvements

Section 9.1. Sale of Minimum Improvements. The Developer represents and agrees that its use of the Property and its other undertakings pursuant to the Agreement, are, and will be, used for the purpose of construction of the Minimum Improvements on the Property and not for speculation in land holding. The Developer represents and agrees that should the Property be sold prior to the issuance of a Certificate of Substantial Progress to Completion regarding the Minimum Improvements, the Developer shall notify the Port and the Developer shall remain responsible for all the Developer's obligations under this Agreement until receipt of a Certificate of Substantial Progress to Completion, at which point Developer shall be released from any further obligations hereunder if the Developer and its transferee have entered into an agreement substantially in the form of Exhibit D attached hereto. Should the Property be sold after receipt of a Certificate of Substantial Progress to Completion, the Developer shall notify the Port and the proposed transferee shall have entered into an agreement substantially in the form of Exhibit D hereto, whereby the transferee expressly assumes all of the Developer's obligations under this Agreement, including compliance with the Business Subsidy Act and the obligation to complete construction of the Minimum Improvements and receive a certificate of occupancy from the City's building official. The Port has approved Exhibit D and agrees that upon execution of the same by the Developer and a transferee of the Property, such transferee shall be recognized as the assignee of the Developer for all purposes hereunder and the Developer shall be released from any further obligations under this Agreement.

Section 9.2. Limitation Upon Encumbrance of Property. With the exception of the type of encumbrances placed in the ordinary course of lending and development of the Property, prior to issuance of the Certificate of Substantial Progress to Completion, the Developer agrees not to engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property or Minimum Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property or Minimum Improvements other than the liens or encumbrances approved by the Port, which approval shall not be unreasonably withheld or delayed if the Port determines that such lien or encumbrance will not threaten its security under this Agreement.

ARTICLE X

Events of Default

Section 10.1. Events of Default Defined. Subject at all times to Unavoidable delays, each and every one of the following shall be an Event of Default under this Agreement in the event that such failure is not cured by the defaulting party within 30 days of written notice from the non-defaulting party, or, in the event that the failure cannot be reasonably cured within 30 day period, the defaulting party fails to commence such cure within 30 days or fails to diligently pursue such a cure to completion:

(a) Failure by the Developer to acquire the Property in fee by March 31, 2025 or failure to satisfy any other condition precedent specified in section 5.3 of this Agreement;

(b) Failure by the Developer to obtain all approvals and permits from the City and other entities necessary in order to construct the Minimum Improvements;

(c) Failure by the Developer to commence construction and achieve Substantial Progress to Completion of the Minimum Improvements pursuant to the terms, conditions and limitations of Article IV of this Agreement, including the timing thereof, unless such failure is caused by an Unavoidable Delay or waived by the Developer and the Port;

(d) Failure of the Developer to pay real estate taxes or special assessments on the Property or Minimum Improvements as they become due;

(e) Failure by the Developer to comply with the requirements of this Agreement regarding the Business Subsidy Act;

(f) Sale of the Property or the Minimum Improvements, or any portion thereof, by the Developer in violation of Article IX of this Agreement;

(g) If the Developer shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors or shall consent to the appointment of a receiver; or

(h) Failure by the Port or Developer to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in section 10.1 of this Agreement occurs, the non-defaulting party may take any one or more of the following actions:

(a) Suspend its performance under this Agreement until it receives assurances from the defaulting party, deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement;

(b) Terminate or rescind further performance pursuant to this Agreement;

(c) If the default occurs prior to achieving Substantial Progress to Completion of the Minimum Improvements, the Port may withhold the Certificate of Substantial Progress to Completion;

(d) Seek repayment of some or all of the Financial Assistance pursuant to Article VII of this Agreement and the Business Subsidy Act; and

(e) Take whatever legal or administrative action which may appear necessary or desirable to the non-defaulting party to collect any payments due under this Agreement, including reimbursement of the Financial Assistance previously granted, or to enforce performance and observance of any obligation, agreement, or covenant of the defaulting party under this Agreement.

Section 10.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the either party in this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle the Port or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in Article XI of this Agreement.

Section 10.4. No Additional Waiver Implied by One Waiver. In the event any covenant or obligation contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE XI

Additional Provisions

Section 11.1. Conflict of Interests; Representatives Not Individually Liable. The Port and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Port has or shall have any personal interest, direct or indirect, in this Agreement, nor has or shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official, or employee of the Port shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Port, or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement. No employee, officer, shareholder or agent of Developer shall be personally liable to the Port, or any successor in interest, in the event of any default or breach by the Developer, or for any amount which may become due to the Port or successor or on any obligations under the terms of this Agreement.

Section 11.2. Release and Indemnification Covenants. (a) Except for any negligent act of the following named parties, the Developer hereby releases from and covenants and agrees that the Port and its governing body members, officers, agents, servants, and employees shall not be liable for, and hereby agree to indemnify and hold harmless the Port, and its governing body members, officers, agents, servants, and employees against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence or breach of this Agreement of the following named parties, the Developer hereby agrees to protect and defend the Port and its governing body members, officers, agents, servants, and employees, now or forever, and hereby further agree to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever

arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Property or Minimum Improvements.

(c) Except for any negligent act of the following named parties, the Port and its governing body members, officers, agents, servants, and employees shall not be liable for any damage or injury to the persons or property of the Developer or its partners, officers, agents, servants or employees or any other person who may be about the Property or Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements, and obligations of the Port contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the Port, and not of any governing body member, officer, agent, servant, or employee of the Port in his or her individual capacity.

Section 11.3. Titles of Articles and Sections. Any titles of the several parts, articles, and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by United States registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

- | | |
|-----------------------------------|---|
| (a) in the case of the Port: | Rosemount Port Authority
2875 145 th Street W.
Rosemount, MN 55068-4941
Attn: Executive Director |
| with a copy to: | Ron Batty
Kennedy & Graven, Chartered
150 South Fifth Street
Suite 700
Minneapolis, MN 55402 |
| (b) in the case of the Developer: | Riveter Real Estate, LLC
14962 64 th Avenue North
Maple Grove, MN 55311
Attn: _____ |
| with a copy to: | Erin Johnsen
Garner, Ginsburg and Johnsen, P.A.
333 Washington Avenue North, Suite 300
Minneapolis, MN 55401 |

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section 11.4.

Section 11.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11.6. Recording. The Port may record this Agreement and any amendments thereto among the County land records. The Developer shall pay for the cost of such recording.

Section 11.7. Attorney Fees. Whenever any Event of Default occurs on the part of the Developer or the Port and if the non-defaulting party brings a legal action for the collection of payments due or to become due, or for the enforcement of performance or observance of any obligation or agreement on the part of the parties under this Agreement, the non-prevailing party in any such action shall, within 10 days of written demand by the non-defaulting party, pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-prevailing party.

Section 11.8. Governing Law; Venue. This Agreement shall be construed in accordance with the laws of Minnesota. Any dispute arising from this Agreement shall be heard in the State or federal courts of Minnesota, and all parties waive any objection to the jurisdiction thereof, whether based on convenience or otherwise.

Section 11.9. Disclaimer of Relationship. The Developer acknowledges that nothing in this Agreement nor any act of the Port shall be deemed or construed by the Developer or by any third party to create any relationship of third-party beneficiary, principal and agent, limited or general partner or joint venture between the Port and the Developer.

Section 11.10. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Agreement. This Agreement may be modified, amended, terminated, or waived, in whole or in part, only by a writing signed by both parties. Notwithstanding the above, nothing herein shall supersede the City's land use regulations applicable to the Property and Minimum Improvements or any agreement, permit or approval by or between the Developer and the City regarding the land use regulations applicable to the Property and the Minimum Improvements.

Section 11.11. Release. If the Developer satisfies all of its obligations under this Agreement prior to sale of the Property, the Port agrees to execute and deliver to the Developer within 30 days a release in the form of Exhibit D attached hereto so certifying.

ROSEMOUNT PORT AUTHORITY

By: _____

By: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, the _____ of the Rosemount Port Authority, a body politic and corporate under the laws of Minnesota, on behalf of the authority.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, the _____ of the Rosemount Port Authority, a body politic and corporate under the laws of Minnesota, on behalf of the authority.

Notary Public

RIVETER REAL ESTATE, LLC

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, the _____ of Riveter Real Estate, LLC, a limited liability company under the laws of _____, on behalf of the company.

Notary Public

**EXHIBIT A TO
CONTRACT FOR PRIVATE DEVELOPMENT
LEGAL DESCRIPTION OF THE PROPERTY**

Real property located in the County of Dakota, State of Minnesota, legally described as follows:

[to be completed]

**EXHIBIT B TO
CONTRACT FOR PRIVATE DEVELOPMENT
LIST OF PRELIMINARY PLANS**

The Preliminary Plans consist of the following:

[to be completed]

**EXHIBIT C TO
CONTRACT FOR PRIVATE DEVELOPMENT
FORM OF
CERTIFICATE OF SUBSTANTIAL PROGRESS TO COMPLETION**

WHEREAS, the Rosemount Port Authority, a body politic and corporate under the laws of Minnesota (the "Port") and Riveter Real Estate, LLC, a limited liability company under the laws of _____ (the "Developer"), have entered into that certain Contract for Private Development by and between the Port and the Developer dated the ____ day of _____, 2025, and recorded in the office of the Dakota County _____, on _____ as Document No. _____, which Contract for Private Development contained certain covenants and restrictions regarding achieving Substantial Progress to Completion of the Minimum Improvements; and

WHEREAS, the land to which the Contract for Private Development applies (the "Property") is legally described on Exhibit A attached hereto; and

WHEREAS, said Developer has performed said covenants and conditions in a manner deemed sufficient by the Port to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that, with respect to the Property, Substantial Progress to Completion of all building construction and other physical improvements specified to be done and made by the Developer has been completed and the above covenants and conditions in said Contract for Private Development have been performed by the Developer therein, and the Dakota County _____ is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions relating to achieving Substantial Progress to Completion of the Minimum Improvements with respect to the Property.

Dated: _____, 202__.

ROSEMOUNT PORT AUTHORITY

By: _____

By: _____

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 202__, by _____, the _____ of the Rosemount Port Authority, a body politic and corporate under the laws of Minnesota, on behalf of the authority.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 202__, by _____, the _____ of the Rosemount Port Authority, a body politic and corporate under the laws of Minnesota, on behalf of the authority.

Notary Public

This instrument was drafted by:
Kennedy & Graven, Chartered (RHB)
150 South Fifth Street
Suite 700
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

Legal Description of Property

[to be completed]

**EXHIBIT D TO
CONTRACT FOR PRIVATE DEVELOPMENT
FORM OF NOTICE AND ASSIGNMENT**

Date _____

To: Rosemount Port Authority
Attn Executive Director
2875 145th Street
Rosemount, MN 55068

Re: Notice of sale pursuant to section 9.1 of the Contract for Private Development dated _____, 2025 by and between the Rosemount Port Authority and Riveter Real Estate, LLC (the "Spending Plan Agreement").

Transferee: _____.

NOTICE

To Rosemount Port Authority:

Riveter Real Estate, LLC gives notice pursuant to Section 9.1 of the Spending Plan Agreement that the Property as defined therein has been sold to the above named Transferee, and the Transferee has accepted assignment of the Developer's obligations under the Spending Plan Agreement as follows:

ASSIGNMENT

Riveter Real Estate, LLC, Developer under the Spending Plan Agreement does hereby assign, sell, and transfer all of its interests, rights, and obligations under the Spending Plan Agreement to Transferee. Transferee acknowledges receipt of a copy of the Spending Plan Agreement, and states and agrees that it expressly assumes all of the Developer's obligations under the Spending Plan Agreement, including compliance with the Business Subsidy Act, as well as all other provisions of the Spending Plan Agreement. Transferee shall defend and indemnify Riveter Real Estate, LLC against any claims by the Rosemount Port Authority, or others, arising under the Spending Plan Agreement.

Developer:

Transferee:

Riveter Real Estate, LLC

By _____
Its _____

By _____
Its _____

Port Authority Regular Meeting: January 21, 2025

AGENDA ITEM: Willy McCoy's Amendment to the Contract for Private Development	AGENDA SECTION: NEW BUSINESS
PREPARED BY: Eric Van Oss, Economic Development Coordinator	AGENDA NO. 6.b.
ATTACHMENTS: DOCSOPEN-#967219-v5	APPROVED BY: LJM
RECOMMENDED ACTION: Motion to Approve the Amendment to the Contract for Private Development By and Between Rosemount Port Authority and Willy McCoy's of Shakopee, LLC	

BACKGROUND

Earlier this year, the Rosemount Port Authority approved a contract for private development with Willy McCoy's of Shakopee, LLC to construct a new restaurant near the Life Time development. The agreement outlined the minimum requirements of the project, and the requirements Willy McCoy's of Shakopee, LLC needed to complete in order to be eligible for a business subsidy from the city. Due to a delay in the purchase agreement between the private parties, the contract for private development needs to be updated to reflect a new project timeline.

Staff and the city's legal counsel decided it would be appropriate to add a new definition, "Satisfactory Progress to Completion." This new definition would allow the business subsidy to be granted prior to gaining a Certificate of Occupancy, but after the majority of the building has been constructed. This change is to provide some flexibility to disburse the business subsidy, while still meeting the statutory deadline of the TIF Spending Plan on December 31, 2025. Representatives from Willy McCoy's of Shakopee, LLC are present to give an update on the project, and Ehlers, the City's financial consultant, is present to answer any questions on the TIF Spending Plan.

RECOMMENDATION

Staff recommends the Port Authority approve the First Amendment for Private Development Between Rosemount Port Authority and Willy McCoy's of Shakopee, LLC.

**FIRST AMENDMENT TO
CONTRACT FOR PRIVATE DEVELOPMENT
BY AND BETWEEN
ROSEMOUNT PORT AUTHORITY
AND
WILLY MCCOY'S OF SHAKOPEE, LLC**

This Document Was Drafted By:

KENNEDY & GRAVEN, CHARTERED (RHB)
150 South Fifth Street
Suite 700
Minneapolis, MN 55402
(612) 337-9300

FIRST AMENDMENT TO CONTRACT FOR PRIVATE DEVELOPMENT

This First Amendment to Contract for Private Development (the “First Amendment”), is made as of the _____ day of _____, 2024, between the Rosemount Port Authority, a public body corporate and politic under the laws of Minnesota, having its principal office at 2875 145th Street W., Rosemount, Minnesota 55068-4941 (the “Port”), and Willy McCoy’s of Shakopee LLC, a limited liability company under the laws of Delaware, having its principal offices at 515 165th Avenue, NW, Andover, Minnesota 55304 (the “Developer”).

Witnesseth:

WHEREAS, on January 16, 2024, the Port approved a Contract for Private Development with the Developer for the development of a 7,500 sq. ft. restaurant and tavern with a rooftop patio and upstairs bar and banquet area (the “Project”); and

WHEREAS, the Port and the Developer desire to amend the Contract for Private Development in recognition of certain delays and other changes in the project.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual obligations set forth in this First Amendment, the Port and the Developer hereby agree as follows:

1. In this First Amendment, unless otherwise noted, underline and strike-through text shall be used to indicate amendments to the Contract for Private Development. Underline text shall indicate new language, and ~~strike-through text~~ shall indicate removed language.

2. Section 1.1 Definitions of the Contract for Private Development is amended as follows:

“Minimum Improvements” means the construction of a 7,500 sq ft. restaurant and tavern with a rooftop level patio consistent with the Construction Plans on the Property (the “Project”). After completion of the Minimum Improvements, the term shall mean the Property as improved by the Minimum Improvements.

“Satisfactory Progress to Completion” means the certification to be made by the City’s building official after all rough-in inspections for plumbing, utilities, framing and electrical work on the Minimum Improvements have been completed and passed, and the building shell is completed, and the roofing structure and membrane are installed.

3. Section 3.1 of the Contract for Private Development is amended as follows:

Section 3.1. Acquisition of the Property. The Developer has entered into a purchase agreement regarding the Property and agrees to close on the transaction and obtain fee title and possession of the Property by no later than ~~July 30, 2024~~ April 30, 2025.

4. Section 4.3 of the Contract for Private Development are amended as follows:

Section 4.3 Commencement and ~~Completion of Construction~~ Satisfactory Progress to Completion. Subject to Unavoidable Delays and the Port’s timely approval of the Construction Plans,

and any delays in the Developer's receipt of the City's approvals, the Developer shall commence construction of the Minimum Improvements by no later than ~~August 30, 2024~~ April 30, 2025. Subject to Unavoidable Delays, the Developer shall have achieved ~~Substantial Completion~~ Satisfactory Progress to Completion of the Minimum Improvements by no later than December 20, 2025. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Property shall be in conformity with the Construction Plans. Following written report thereof from the Port, the Developer shall make such reports to the Port regarding construction of the Minimum Improvements as the Port deems necessary or helpful in order to monitor progress on construction of the Minimum Improvements.

5. Section 5.3 of the Contract for Private Development is amended as follows:

Section 5.3. Conditions Precedent to Financial Assistance. Notwithstanding anything in this Agreement to the contrary, the Port shall not be obligated to pay the Financial Assistance to Developer until all of the following conditions precedent have been satisfied:

- (a) The Developer has acquired the Property as of ~~August 30, 2024~~ April 30, 2025;
- (b) The Developer and the Port have executed this Agreement and it has been recorded in the County land records;
- (c) The Developer has demonstrated to the Port that it has incurred Qualified Costs in at least the amount of \$500,000;
- (d) ~~The Certificate of Substantial Completion has been issued~~ Satisfactory Progress to Completion has been achieved by December 20, 2025;
- (e) The Developer remains eligible for receiving a business subsidy under the Business Subsidy Act; and
- (f) There has been no Event of Default on the part of the Developer which has not been cured.

When the above conditions have been satisfied, the Port will disperse the Financial Assistance to the Developer. The Developer understands and agrees that all Spending Plan TIF must be spent by December 31, 2025. To the extent the Spending Plan TIF is not spent by December 31, 2025, the Port shall have no further obligation to make any additional payments under this Agreement.

6. Section 10.1(a) of the Contract for Private Development is amended as follows:

- (a) Failure by the Developer to acquire the Property in fee by ~~August 30, 2024~~ April 30, 2025 or failure to satisfy any other condition precedent specified in section 5.3 of this Agreement.

7. Except as amended in this First Amendment, all of the provisions, covenants, terms and conditions of the Contract for Private Development shall remain unaltered and in full force and effect.

* * * * *

By _____

IN WITNESS WHEREOF, I have set my hand and my official seal this ____ day of _____, 2024.

Page 39 of 42

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the date first above written.

ROSEMOUNT PORT AUTHORITY

By _____

By _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2024, by _____, the _____ of the Rosemount Port Authority, a public body corporate and politic under the laws of Minnesota, on behalf of the Authority.

IN WITNESS WHEREOF, I have set my hand and my official seal this ____ day of _____, 2024.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2024, by _____, the _____ of the Rosemount Port Authority, a public body corporate and politic under the laws of Minnesota, on behalf of the Authority.

IN WITNESS WHEREOF, I have set my hand and my official seal this ____ day of _____, 2024.

Notary Public

EXHIBIT A

The property subject to the foregoing First Amendment to Contract for Private Development is as follows:

[add platted legal description]

4865-3537-5316, v. 1

Port Authority Regular Meeting: January 21, 2025

AGENDA ITEM: Project Updates	AGENDA SECTION: OLD BUSINESS
PREPARED BY: Eric Van Oss, Economic Development Coordinator	AGENDA NO. 7.a.
ATTACHMENTS:	APPROVED BY: LJM
RECOMMENDED ACTION: None	

BACKGROUND

Project Falcon: Project Falcon submitted applications for a preliminary plat, final plat, and rezone of a property directly south of the Meta project in UMore. This will be considered at the January PC meeting. Applications for building and site plan review are anticipated in the upcoming months. Staff is also working with the project team to secure County and State grant funds related to redevelopment and infrastructure activities.

Akron Ridge: The city received an application for a rezone and preliminary plat for 58 townhomes north of the Flint Hills Athletic Fields.

Beirut Restaurant: A ribbon cutting for the new Beirut location is planned for January 31 at 2pm.

New Horizons Academy: A ribbon cutting is planned for February 27th at 3pm.

EDAM Winter Conference: Staff will be attending the Economic Development Association of Minnesota's winter conference on January 23 and 24.

ULI Panel: Staff will be on a site selection panel hosted by the Urban Land Institute on February 5.

RECOMMENDATION

Information item