



## OFFICIAL NOTICE AND AGENDA

Notice is hereby given that the Common Council of the City of Wausau, Wisconsin will hold a regular or special meeting on the date, time and location shown below.

Meeting of the:	<b>COMMON COUNCIL OF THE CITY OF WAUSAU</b>
Date/Time:	<b>Tuesday, February 13, 2024 at 6:30 P.M.</b>
Location:	<b>City Hall (407 Grant Street, Wausau WI 54403) - Council Chambers</b>
Members:	Carol Lukens, Michael Martens, Tom Kilian, Doug Diny, Gary Gisselman, Becky McElhaney, Lisa Rasmussen, Sarah Watson, Dawn Herbst, Lou Larson, Chad Henke

### Call to Order

Pledge of Allegiance / Roll Call / Proclamations

Public Comment: Pre-registered citizens for matters appearing on the agenda and other public comment.

Committee Reports: DPW - Insurance Claims - October 2023-December 2023.

File #	CMT	Consent Agenda	ACT
24-0201	COUN	Approve Minutes of a previous meeting (01/23/2024).	Place on file
24-0203	FIN	Resolution Authorizing the redemption of Certain General Obligation Promissory Notes.	Approved 5-0
24-0204	CISM	Resolution Accepting Easement with Wisconsin Public Service to bury electrical facilities at 1211 North 3rd Street and 1213 North 3rd Street.	Approved 5-0
24-0205	CISM	Resolution Approving Agreement for the Management and Maintenance of a Stormwater Facility (Wausau School District – 3101 North 13th Street).	Approved 5-0
24-0206	CISM	Ordinance Amending Section 10.20.080(b) designating loading zone on the east side of N. 2nd Street from a point 180 feet south of the stop bar at Washington Street and extending 80 feet south.	Approved 5-0
24-0207	CISM	Resolution Authorizing staff to petition the State of Wisconsin Office of the Commissioner of Railroads to determine the adequacy of warning devices at the rail-highway crossing located across 17th Avenue south of Stewart Avenue and north of	Approved 5-0
24-0208	FIN	Resolution Approving the First Amendment to the Grant Agreement with the State of Wisconsin for the Neighborhood Investment Fund Grant Program for the Westside Battery Redevelopment project.	Approved 5-0
24-0209	PH&S	Ordinance Amending: Wausau Municipal Code (“WMC”) § 19.08.050 – Records; WMC § 19.12.020 – When required; WMC § 19.12.050 – Restrictions on issuance; WMC § 19.16.060 – Certificate of occupancy. Creating: WMC § 19.12.005 – Plumbing plan submittals. Repealing: WMC § 19.08.030 – Registration of plumbers.	Approved 5-0
24-0212	HR & FIN	Resolution Reclassing the Admin I position in Public Works to Admin II.	Approved 5-0 Approved 5-0
24-0213	HR & FIN	Resolution Approving amendment to the Employee Handbook Section 5.17 – Standby Pay.	Approved 5-0 Approved 5-0
21-0311	FIN	Resolution Approving Small Government Enterprise Agreement with Environmental Systems Research Institute, Inc. (Esri).	Approved 5-0
06-0119	ED	Resolution Approving Consent to Transfer, Waiver of Right of First Refusal, Termination of Recorded Deed Restrictions and Recording Set of Revised Deed Restrictions for 6235 and 6335 Packer Drive (Vandy Enterprises, LLC).	Approved 5-0
24-0108	PH&S	Resolution Approving or Denying Various Licenses as Indicated.	Approved 5-0
File #	CMT	Resolutions and Ordinances	ACT
24-0202	MAYOR	Mayor's Appointments	Placed on file
24-0211	PH&S	Resolution To consider the conceptual idea of partnering with CW Solutions to operate a tailored, two-phase transitional housing pilot program in Wausau.	Approved 5-0
19-0921	ED	Resolution Approving Addendum to Development Agreement with Foundry on 3rd Ph 1, LLC.	Approved 4-1
Suspend Rule 6(B) Filing and 12(A) Referral of Resolutions (2/3 vote required)			
12-1214	FIN	Resolution Approving Termination of Animal Control Services to the Everest Metropolitan Police Department, provided pursuant to an Intergovernmental Humane Officer Services Agreement.	Pending
14-1009	FIN	Resolution Approving Wireless Telecommunications Equipment and Service Agreement with New-Cell, LLC d/b/a Cellcom.	Pending
24-0215	CISM & FIN	Resolution Approving Urban Nonpoint Source and Stormwater Management Planning Grant Agreement.	Approved 5-0 Pending
23-1109	FIN	Resolution Approving 2024 Budget Modification – Short Street Construction.	Pending
23-1215	COUN	Resolution Approving Final Form of Master Partnership Agreement between the City of Wausau, Wausau Water Works and Community Infrastructure Partners LLC, for lead service line replacement and related infrastructure work.	Pending
Public Comment & Suggestions			

Adjournment

Signed by Mayor Katie Rosenberg

Members of the public who do not wish to appear in person may view the meeting live on live on the Internet, by cable TV, Channel 981, and a video is available in its entirety and can be accessed at <https://tinyurl.com/WausauCityCouncil>. Any person wishing to offer public comment who does not appear in person to do so, may e-mail [kaitlyn.bernarde@ci.wausau.wi.us](mailto:kaitlyn.bernarde@ci.wausau.wi.us) with "Common Council public comment" in the subject line prior to the meeting start.

**This Notice was posted at City Hall and transmitted to the Daily Herald newsroom on 02/09/2024 @ 4:00 PM  
Questions regarding this agenda may be directed to the City Clerk.**

*In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), the City of Wausau will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs or activities. If you need assistance or reasonable accommodations in participating in this meeting or event due to a disability as defined under the ADA, please call the ADA Coordinator at (715) 261-6622 or [ADAServices@ci.wausau.wi.us](mailto:ADAServices@ci.wausau.wi.us) to discuss your accessibility needs. We ask your request be provided a minimum of 72 hours before the scheduled event or meeting. If a request is made less than 72 hours before the event the City of Wausau will make a good faith effort to accommodate your request.*

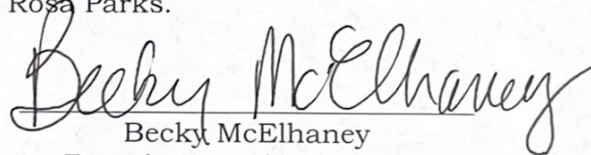
# Proclamation

- WHEREAS,** Transit Equity Day is a national day of action to commemorate the February 4 birthday of Rosa Parks, an iconic figure in the movements for social justice and racial equality, who played a major role in the inception of the Civil Rights movement; and
- WHEREAS,** Transit Equity Day highlights Rosa Parks' 1955 pivotal work and her brave and determined advocacy for safe and reliable public transportation for all people and communities both then and today; and
- WHEREAS,** Transit Equity Day of action is recognized to elevate the message that public transit is a strategy to combat climate change, and that public transit promotes affordable, accessible, clean and safe transportation alternatives for all community members; and
- WHEREAS,** The City of Wausau values equity and sustainability, and desires to provide equal access to safe, efficient, and accessible public transit, that is sustainable and environmentally friendly; now

**THEREFORE,** be it resolved that by the City of Wausau Transit Committee, we do hereby proclaim February 5, 2024 will be observed as

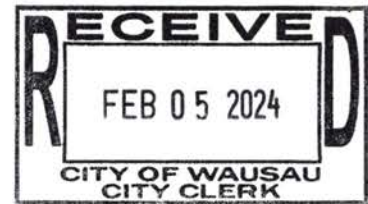
## Transit Equity Day

in the City of Wausau, State of Wisconsin, and it shall be recognized by reserving a seat on every Metro Ride bus to honor and celebrate the invaluable work of Rosa Parks.



Becky McElhane

Becky McElhane  
Transit Commission Chair  
City of Wausau  
January 17, 2024



**To:** Kaitlyn Bernarde, City Clerk

**From:** Board of Public Works

**Date:** January 23, 2024

**Subject:** Insurance Claims – October 2023 – December 2023  
06-1215

The Board of Public Works has settled, compromised, or denied the following claims during the months of October 2023 – December 2023

<b>Date of Incident</b>	<b>Claimant</b>	<b>Claim Details</b>	<b>Amount of claim</b>	<b>Action</b>
9/24/23	Dianna Zank 108 S. 5 <sup>th</sup> Ave.	Hit pothole 3 <sup>rd</sup> Ave. (by Blue Willow Restaurant) – tire popped. Private contractor doing work	\$151.93	Deny 10/17/23
9/25/23	Amy Chang 1014 Chellis St.	Blvd. tree branch fell – broke rear windshield of car	\$478.46	Deny 10/17/23
8/30/23	Jesse Starkey 202 Grand Ave.	Sewer back-up throughout basement	\$17,980.62	Deny 12/8/23
6/20/23	Paul Huey 1727 Lenard St.	Sewer back-up basement	\$6,500.00	Deny 10/17/23
10/2/23	Monica McSwain 2815 N. 12 <sup>th</sup> St.	Hit underground electric fence while fixing underground drain	\$158.25	Deny 12/8/23
7/18/23	John Stolzman 911 Sumner St.	Physically restrained by WPD – injury to wrist	\$50,000.00 per officer	Deny 12/8/23
10/9/23	Wayne Transport subrogated claim	WPD officer merging onto 51 S. struck by the rear by a semi	\$38,827-22	Approved 12/8/23
12/20/22	Greenwood Hills LLC Ruder Ware representing	Dedicating roads for public use 2021 & 2022 property tax bills	\$19,301.84	Deny 12/8/23

**OFFICIAL PROCEEDINGS OF THE WAUSAU COMMON COUNCIL**  
held on Tuesday, January 23, 2024, in Council Chambers, beginning at 6:31 P.M.,  
Mayor Katie Rosenberg presiding.

**Roll Call**

**01/23/2024**

Roll Call indicated 11 members present.

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Lukens, Carol	YES
2	Martens, Michael	YES
3	Kilian, Tom	YES
4	Diny, Doug	YES
5	Gisselman, Gary	YES
6	McElhaney, Becky	YES
7	Rasmussen, Lisa	YES
8	Watson, Sarah	YES
9	Herbst, Dawn	YES
10	Larson, Lou	YES
11	Henke, Chad	YES

**Proclamations**

**01/23/2024**

The Mayor of the City of Wausau Proclaims:

- Black History Month (February 2024)
- Lunar New Year Day (February 10, 2024)
- Four Chaplains Sunday (February 4, 2024)
- National Children's Dental Health Month (February 2024)
- Wisconsin Salt Awareness Week (January 22-26, 2024)

**Public Comment: Pre-registered citizens for matters appearing on the agenda and other public comment**

**01/23/2024**

- 1) Bill Panzigrau, 2708 W. Wausau Avenue – spoke on Open Door continuing services to the unhoused population.
- 2) Christopher Seel, Open Door – spoke on Open Door continuing services to the unhoused population.
- 3) Christine Salm, 3312 N. 11<sup>th</sup> Street – spoke in favor of current lead lateral replacement program.
- 4) Corina Norrbom, Medical College of Wisconsin – spoke in favor of current lead lateral replacement program.
- 5) Debra Ryan, 702 Elm Street – spoke in opposition of current lead lateral replacement program.

**Presentation: Utility Commission Structure**

**01/23/2024**

A policy discussion to determine how best to govern a utility business was held.

Larson stated that the Executive Committee or the Committee of the Whole should discuss how to better regulate the water utility.

Rasmussen stated support of further discussion to make incremental changes to how the utility is overseen.

Gisselman stated support of a joint meeting with the Wausau Water Commission to get their input on how to build a better commission.

Henke stated support of having any discussion prior to April of 2024 so it could be in place for the new term of the Common Council.

Herbst stated support of having more discussions to understand what is expected of the Wausau Water Commission by the Common Council.

Diny stated that there is a need to address the problems at hand with either a joint meeting of the Common Council or a Committee of the Whole and the Wausau Water Commission.

Without objection, a joint meeting of a Committee of the Whole of the Common Council and the Wausau Water Commission will be scheduled to further discuss this matter.

Motion by Watson, second by Henke, to adopt all the items on the Consent Agenda as follows:

**24-0101** from the Common Council to Approve Minutes of a previous meeting (12/19/2023).

**24-0104** Resolution from the Public Health & Safety Committee Approving Automatic Aid Agreement with South Area Fire and Emergency Response District.

**24-0105** Resolution from the Human Resources Committee to Approve Notice of Election to Self-Insure Worker's Compensation Program with CVMIC.

**21-1109** Resolution from the Finance Committee Approving First Amendment American Rescue Plan Act Subrecipient Agreement – Catholic Charities.

**20-0822** Resolution from the Finance Committee Approving the Towing Services Agreement with Joe Rader Towing LLC for primary towing services and with Lightning Towing for secondary towing services.

**24-0106** Resolution from the Finance Committee Approving Nominal Payment Parcel for New Highway Right of Way Fee, Permanent Limited Easement, and Temporary Limited Easement at 7000 Stewart Avenue, Parcel 7, Transportation Project Plat 6999-09-02.

**24-0107** Resolution from the Finance Committee Approving Nominal Payment Parcel for New Highway Right of Way Fee, and Temporary Limited Easement at 6631 Stewart Avenue, Parcel 16, Transportation Project Plat 6999-09-02.

**24-0109** Resolution from the Finance Committee Approving Nominal Payment Parcel for a Temporary Limited Easement and Landscaping at 7500 Stewart Avenue, Parcel 2, Transportation Project Plat 6999-09-02.

**22-0912** Resolution from the Finance Committee Accepting dedication of a portion of 7110 Stewart Avenue and a portion of 6601 Stewart Avenue for public right-of-way.

**24-0111** Resolution from the Capital Improvements and Street Maintenance Committee Approving Agreement for the Management and Maintenance of a Stormwater Facility (Wausau School District – 1200 West Wausau Avenue).

**24-0112** Resolution from the Capital Improvements and Street Maintenance Committee Approving Agreement for the Management and Maintenance of a Stormwater Facility (Green Bay Packaging Inc. – 6845 Packer Drive).

**24-0113** Resolution from the Capital Improvements and Street Maintenance Committee Approving Revised Winter Street Maintenance Policy.

**24-0114** Resolution from the Finance Committee Approving a Lease Agreement with City County Information Technology Commission.

**24-0115** Ordinance from the Plan Commission to Rezone 406 N 28th Avenue from SR-1, Single Residential-1 Zoning District to PUD, Planned Unit Development Zoning District and approve the GDP, General Development Plan.

**24-0116** Ordinance from the Plan Commission to Amend Wausau Municipal Code § 23.02.51 – (NMU) Neighborhood Mixed Use Zoning District; Wausau Municipal Code § 23.02.52 – (SO) Suburban Office Zoning District; Wausau Municipal Code § 23.02.53 – (SMU) Suburban Mixed-Use Zoning District; Wausau Municipal Code § 23.02.54 – (UMU) Urban Mixed-Use Zoning District; Wausau Municipal Code § 23.02.55 – (DPMU) Downtown Periphery Mixed-Use Zoning District; Wausau Municipal Code § 23.02.56 – (DHMU) Downtown Historic Mixed-Use Zoning District; Wausau Municipal Code § 23.02.57 – (DRMU) Downtown High-Rise Mixed-Use Zoning District; Wausau Municipal Code § 23.02.60 – (LI) Light Industrial Zoning District; Wausau Municipal Code § 23.02.61 – (MI) Medium Industrial Zoning District; Wausau Municipal Code § 23.02.62 – (HI) Heavy Industrial Zoning District; Wausau Municipal Code § 23.03.05 – Table of land uses; Wausau Municipal Code § 23.03.10 – Commercial land uses; Wausau Municipal Code § 23.03.28 - Accessory land uses and structures; Wausau Municipal Code § 23.06.20 – Exterior lighting standards; Wausau Municipal Code § 23.09.05 – Definitions and rules related to sign groups, sign categories, and sign types; Wausau Municipal Code § 23.09.11 – permitted sign uses.

**23-1109** Resolution from the Finance Committee Authorizing the modification of fees to the City of Wausau Fees and Licenses Schedule adopted pursuant to Wausau Municipal Code §3.40.010(a) (2024 Comprehensive Fee Schedule).

Yes Votes: 11

No Votes: 0

Abstain: 0

Not Voting: 0

Result: PASSED

**24-0102**

**01/23/2024**

Motion by Henke, seconded by Watson, to confirm the Mayor’s Appointments to the Building Advisory Board.

- Frank Opatik to Building Advisory Board (Reappointment - Term expires 10/31/2025)
- Buckley (Buck) Birkholz to Building Advisory Board (Reappointment - Term expires 10/31/2025)
- Dave Brandenburg to the Building Advisory Board (Reappointment - Term expires 10/31/2025)
- Mark Dillman to the Building Advisory Board (Reappointment - Term expires 10/31/2025)

Yes Votes: 11

No Votes: 0

Abstain: 0

Not Voting: 0

Result: PASSED

**24-0108**

**01/23/2024**

Motion by Lukens, seconded by Diny to adopt the Resolution from the Public Health & Safety Committee Approving or Denying Various Licenses as Indicated.

Yes Votes: 11

No Votes: 0

Abstain: 0

Not Voting: 0

Result: PASSED

**23-1215**

**01/23/2024**

Motion by Watson, seconded by Martens, to call the question to end debate.

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Lukens, Carol	YES
2	Martens, Michael	YES
3	Kilian, Tom	NO
4	Diny, Doug	NO
5	Gisselman, Gary	NO
6	McElhaney, Becky	YES
7	Rasmussen, Lisa	YES
8	Watson, Sarah	YES
9	Herbst, Dawn	YES
10	Larson, Lou	YES
11	Henke, Chad	YES

Yes Votes: 8

No Votes: 3

Abstain: 0

Not Voting: 0

Result: PASSED

Motion by Kilian, seconded by Diny, to Reconsider the Resolution from the Common Council Approving Master Partnership Agreement between the City of Wausau, Wausau Water Works and Community Infrastructure Partners LLC for lead service line replacement and related infrastructure work.

Kilian questioned if the Common Council received the documentation, specifically the statement of qualifications, necessary to decide on the merits of this program. Kilian stated that further vetting should take place with new information coming forward on the previous employer of the current contractor for this program.

Rasmussen stated that the city is in direct competition with other municipalities to secure federal funding to replace lead laterals. There were concerns that the narrative of the former employer of this contractor was being used to slow down the process for political purposes. *Point of order* raised by Kilian against questioning motives. *Point of order was well taken by the chair* and Rasmussen redirected statements to speak about the results a reconsideration would have which would waste the rest of the year’s construction season.

Larson agreed with Rasmussen that the agreement was good for the residents of the city because this is a performance-based contract and stated opposition to the reconsideration.

Diny stated that information on the past activities of the contractor’s former employer was not brought forward until after passage of the resolution. Diny stated that it was unusual for this contractor to have the ability to leave their former employer to start a new company and not be subjected to a noncompete clause of an employment contract. *Diny asked the chair to yield to a question, for which the chair agreed.* Diny asked the chair if there was prior knowledge of the connection between the contractor and their previous employer. The chair stated that the connection was not known until after this information had been made public. Diny further stated that this is a problem with improper vetting.

Kilian outlined the situation of the contractor's previous employer in previous housing construction programs which prompted the motion for this reconsideration. It was also stated that little information was provided during the public roll-out of this program and asked that alders allow those who supported this program originally to change their vote upon new information.

Lukens stated concerns a reconsideration would have on delaying a program to remove lead laterals which could impact the health of children and families.

Martens took issue with the reconsideration as there were ample opportunities to discuss and modify the contract and the details that result in its execution. It was stated that the performance-based contract ensured that verification of the work is being done correctly to code before moving forward for another year.

Diny stated skepticism of the ability for this program to be correctly conducted at the volume of replacement. It was also stated that the business practices of the contractor in the start-up of their business are unusual which cause concern to prompt this reconsideration.

Lukens stated that printing things in the media before the Common Council had a chance to discuss that matter was not comparable to watching the meetings of the Common Council because the full picture of the matter was not being covered. *Point of order* raised by Kilian against making accusations against a particular member of the body. *Point of order was not acted upon by the chair* as Lukens clarified that the comments were not made against a particular member of the body.

Larson shared concerns for reconsideration when the city could utilize funding now when there is not a mandate as opposed to in the future when an unfunded mandate may be imposed upon by the state or federal government.

Watson stated that questions of the contractor are valid, but it is common for principals of a company to leave to start their own company. There were also concerns stated of losing the funding that makes replacing lead laterals in a shorter time period possible.

*Point of order* raised by Larson against Diny speaking for a third time. *Point of order was not well taken by the chair* as Diny's comments were a procedural question.

Rasmussen stated that reconsideration would not only allow alders to revote on a matter decided upon at the previous meeting, it will also hold up the contract over a variety of other matters further delaying the program to replace lead laterals.

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Lukens, Carol	NO
2	Martens, Michael	NO
3	Kilian, Tom	YES
4	Diny, Doug	YES
5	Gisselman, Gary	YES
6	McElhaney, Becky	NO
7	Rasmussen, Lisa	NO
8	Watson, Sarah	NO
9	Herbst, Dawn	NO
10	Larson, Lou	NO
11	Henke, Chad	NO

Yes Votes: 3

No Votes: 8

Abstain: 0

Not Voting: 0

Result: FAILED

Kilian questioned if various committees outlined in the original statement of qualification of the contractor would be subject to open meetings laws and directed staff to mitigate that concern when negotiating the contract. If a contract cannot be agreed upon it will be placed back on the Common Council agenda.

### **Suspend the Rules**

**01/23/2024**

Motion by Watson, second by Rasmussen, to suspend Rule 6(B) Filing and 12(A) Referral of Resolutions.

Yes Votes: 11

No Votes: 0

Abstain: 0

Not Voting: 0

Result: PASSED



**24-0103****01/23/2024**

Motion by Lukens, seconded by Herbst, to approve the Ordinance from the Common Council and Ethics Board Amending Section 2.03.020 Definitions, Section 2.03.030 Standards of conduct, Section 2.03.040 Organization and composition of the board, Section 2.03.090 Findings of fact and conclusions--Orders and recommendation, Section 2.03.100 Removal, suspension and censure, Section 2.03.110 Costs; Repealing and recreating Section 2.03.050 Duties of the board, Section 2.03.060 Investigations of complaints, Section 2.03.070 Probable cause of violation, Section 2.03.080 Hearing procedure; and creating Section 2.03.075 Investigative powers.

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Lukens, Carol	YES
2	Martens, Michael	YES
3	Kilian, Tom	YES
4	Diny, Doug	NO
5	Gisselman, Gary	YES
6	McElhaney, Becky	YES
7	Rasmussen, Lisa	YES
8	Watson, Sarah	YES
9	Herbst, Dawn	YES
10	Larson, Lou	YES
11	Henke, Chad	YES

Yes Votes: 10      No Votes: 1      Abstain: 0      Not Voting: 0      Result: PASSED

**24-0105****01/23/2024**

Motion by Rasmussen, seconded by Lukens, to adopt the Resolution from the Common Council and Airport Committee Recommending that the Common Council authorize staff to send a letter to the City of Schofield regarding the installation of an unauthorized improvement to Radtke Point Park.

Yes Votes: 11      No Votes: 0      Abstain: 0      Not Voting: 0      Result: PASSED

**22-0406****01/23/2024**

Motion by Rasmussen, seconded by Watson, to adopt the Resolution from the Finance Committee Approving Memorandum of Understanding between Marathon County, North Central Health Care and Metro Ride for specialized transportation assistance.

Yes Votes: 11      No Votes: 0      Abstain: 0      Not Voting: 0      Result: PASSED

**24-0110****01/23/2024**

Motion by Lukens, seconded by Rasmussen, to adopt the Resolution from the Finance Committee Approving the alleged claim for recovery of unlawful tax – 901 S. 22nd Avenue (Drake).

Yes Votes: 11      No Votes: 0      Abstain: 0      Not Voting: 0      Result: PASSED

**23-1109****01/23/2024**

Motion by Lukens, seconded by Watson, to adopt the Resolution from the Finance Committee Approving 2024 Budget Modification – Outreach Coordinator Funding.

Yes Votes: 11      No Votes: 0      Abstain: 0      Not Voting: 0      Result: PASSED

**Public Comment and Suggestions****01/23/2024**

- 1) Debra Ryan, 702 Elm Street – spoke on transitional housing for women.

**Adjourn****01/23/2024**

Motion by Lukens, second by Diny, to adjourn the meeting. Motion carried. Meeting adjourned at 9:25 P.M.

Katie Rosenberg, Mayor  
Kody Hart, Deputy City Clerk

RESOLUTION NO. 24-0203

RESOLUTION AUTHORIZING THE REDEMPTION OF CERTAIN  
GENERAL OBLIGATION PROMISSORY NOTES

WHEREAS, the City of Wausau, Marathon County, Wisconsin (the "City") has outstanding its General Obligation Promissory Notes, Series 2016A, dated May 10, 2016; its General Obligation Promissory Notes, Series 2017A, dated July 12, 2017; and its General Obligation Promissory Notes, Series 2018A, dated December 4, 2018 (collectively, the "Prior Issues");

WHEREAS, the Common Council has determined that it is necessary and desirable to call the portions of the Prior Issues issued to finance TID #6 project costs for redemption on April 1, 2024 with funds of the City on hand;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City, that the portions of the Prior Issues shown on Exhibit A-1, Exhibit A-2, and Exhibit A-3 are called for prior payment on April 1, 2024 at the price of par plus accrued interest to the date of redemption.

The City hereby directs the City Clerk to work with Bond Trust Services Corporation to cause timely notice of redemption, in substantially the forms attached hereto as Exhibit A-1, Exhibit A-2 and Exhibit A-3 and incorporated herein by this reference (the "Notices"), to be provided at the times, to the parties and in the manner set forth on the Notices. Further, the City Clerk shall cause the funds necessary to redeem the Prior Issues to be provided to The Depository Trust Company.

Adopted, approved and recorded February 13, 2024.

---

Katie Rosenberg  
Mayor

ATTEST:

---

Kaitlyn Bernarde  
City Clerk

(SEAL)

EXHIBIT A-1

NOTICE OF CALL\*

CITY OF WAUSAU  
MARATHON COUNTY, WISCONSIN  
GENERAL OBLIGATION PROMISSORY NOTES, SERIES 2016A  
DATED MAY 10, 2016

NOTICE IS HEREBY GIVEN that the Notes of the above-referenced issue which mature on the dates and in the amounts; bear interest at the rates; and have CUSIP Nos. as set forth below have been called for prior payment on April 1, 2024 at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the date of prepayment:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
04/01/2025	\$535,000**	2.00%	943334V41

Upon presentation and surrender of said Notes to Bond Trust Services Corporation, Roseville, Minnesota, the registrar and fiscal agent for said Notes, the registered owners thereof will be paid the principal amount of the Notes plus accrued interest to the date of prepayment.

Said Notes will cease to bear interest on April 1, 2024.

By Order of the  
Common Council  
City of Wausau  
City Clerk

Dated \_\_\_\_\_  
\_\_\_\_\_

\* To be provided to Bond Trust Services Corporation at least thirty-five (35) days prior to April 1, 2024. The registrar and fiscal agent shall be directed to give notice of such prepayment by registered or certified mail, overnight express delivery, facsimile transmission, electronic transmission or in any other manner required by The Depository Trust Company, to The Depository Trust Company, Attn: Supervisor, Call Notification Department, 570 Washington Blvd., Jersey City, NJ 07310, not less than thirty (30) days nor more than sixty (60) days prior to April 1, 2024 and to the MSRB electronically through the Electronic Municipal Market Access (EMMA) System website at [www.emma.msrb.org](http://www.emma.msrb.org).

\*\*Represents a portion of the principal amount outstanding of this maturity.

EXHIBIT A-2

NOTICE OF CALL\*

CITY OF WAUSAU  
MARATHON COUNTY, WISCONSIN  
GENERAL OBLIGATION PROMISSORY NOTES, SERIES 2017A  
DATED JULY 12, 2017

NOTICE IS HEREBY GIVEN that the Notes of the above-referenced issue which mature on the dates and in the amounts; bear interest at the rates; and have CUSIP Nos. as set forth below have been called for prior payment on April 1, 2024 at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the date of prepayment:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
04/01/2025	\$485,000**	3.00%	9433342H4

Upon presentation and surrender of said Notes to Bond Trust Services Corporation, Roseville, Minnesota, the registrar and fiscal agent for said Notes, the registered owners thereof will be paid the principal amount of the Notes plus accrued interest to the date of prepayment.

Said Notes will cease to bear interest on April 1, 2024.

By Order of the  
Common Council  
City of Wausau  
City Clerk

Dated \_\_\_\_\_  
\_\_\_\_\_

\* To be provided to Bond Trust Services Corporation at least thirty-five (35) days prior to April 1, 2024. The registrar and fiscal agent shall be directed to give notice of such prepayment by registered or certified mail, overnight express delivery, facsimile transmission, electronic transmission or in any other manner required by The Depository Trust Company, to The Depository Trust Company, Attn: Supervisor, Call Notification Department, 570 Washington Blvd., Jersey City, NJ 07310, not less than thirty (30) days nor more than sixty (60) days prior to April 1, 2024 and to the MSRB electronically through the Electronic Municipal Market Access (EMMA) System website at [www.emma.msrb.org](http://www.emma.msrb.org).

\*\*Represents a portion of the principal amount outstanding of this maturity.

EXHIBIT A-3

NOTICE OF CALL\*

CITY OF WAUSAU  
MARATHON COUNTY, WISCONSIN  
GENERAL OBLIGATION PROMISSORY NOTES, SERIES 2018A  
DATED DECEMBER 4, 2018

NOTICE IS HEREBY GIVEN that the Notes of the above-referenced issue which mature on the dates and in the amounts; bear interest at the rates; and have CUSIP Nos. as set forth below have been called for prior payment on April 1, 2024 at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the date of prepayment:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
04/01/2025	\$525,000**	3.00%	9433343H3

Upon presentation and surrender of said Notes to Bond Trust Services Corporation, Roseville, Minnesota, the registrar and fiscal agent for said Notes, the registered owners thereof will be paid the principal amount of the Notes plus accrued interest to the date of prepayment.

Said Notes will cease to bear interest on April 1, 2024.

By Order of the  
Common Council  
City of Wausau  
City Clerk

Dated \_\_\_\_\_  
\_\_\_\_\_

\* To be provided to Bond Trust Services Corporation at least thirty-five (35) days prior to April 1, 2024. The registrar and fiscal agent shall be directed to give notice of such prepayment by registered or certified mail, overnight express delivery, facsimile transmission, electronic transmission or in any other manner required by The Depository Trust Company, to The Depository Trust Company, Attn: Supervisor, Call Notification Department, 570 Washington Blvd., Jersey City, NJ 07310, not less than thirty (30) days nor more than sixty (60) days prior to April 1, 2024 and to the MSRB electronically through the Electronic Municipal Market Access (EMMA) System website at [www.emma.msrb.org](http://www.emma.msrb.org).

\*\*Represents a portion of the principal amount outstanding of this maturity.

**FINANCE COMMITTEE**

Date and Time: Tuesday, January 23, 2024, at 5:15 P.M., Council Chambers

Members Present: Lisa Rasmussen (C), Michael Martens (VC), Sarah Watson, Doug Diny, Carol Lukens

Others Present: Mayor Rosenberg, MaryAnne Groat, Matthew Barnes, Todd Beaten, Jeremy Kopp, Justin Pluess, Anne Jacobson, Rick Rubow, Eric Lindman, Dustin Kraege, Solomon King, Liz Brodek, Andrew Lynch, Randy Fifrick, James Henderson, Kody Hart, Alder Gisselman

Noting the presence of a quorum, Chairperson Rasmussen called the meeting to order at 5:15 P.M.

**Discussion and possible action on authorizing the redemption of Certain General Obligation Promissory Notes.**

Motion by Diny, seconded by Martens, to approve. Motion carried 5-0.

DRAFT

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE CAPITAL IMPROVEMENTS AND STREET MAINTENANCE COMMITTEE</b>	
Accepting Easement with Wisconsin Public Service to bury electrical facilities at 1211 North 3 <sup>rd</sup> Street and 1213 North 3 <sup>rd</sup> Street.	
Committee Action:	Approved 5-0
Fiscal Impact:	None
<b>File Number:</b>	24-0204
<b>Date Introduced:</b>	February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, the property owner of 1207 North 3<sup>rd</sup> Street would like to upgrade their electrical service; and

**WHEREAS**, in order to complete the upgrade of the electrical service, electrical facilities need to be extended from an existing pole and transformer; and

**WHEREAS**, Wisconsin Public Service has requested an easement on City-owned property at 1211 North 3<sup>rd</sup> Street and 1213 North Street to install underground electrical facilities; and

**WHEREAS**, any disturbed areas would be restored by Wisconsin Public Service; and

**WHEREAS**, your Capital Improvements and Street Maintenance Committee met on January 11, 2024 to review the proposed easement and recommends approval; now therefore

**BE IT RESOLVED** the Common Council of the City of Wausau does hereby approve the easement agreement, a copy of which is attached hereto and incorporated herein by reference, with WPS to have the easement recorded in the office of the Marathon County Register of Deeds.

Approved:

---

Katie Rosenberg, Mayor



12/18/2023

**CITY OF WAUSAU  
407 GRANT ST  
WAUSAU, WI 54403**

Dear Customer:

Wisconsin Public Service Corporation recently received a request to upgrade or provide new *electric service* at **1207 N 3RD ST in the City of Wausau County of Marathon, State of Wisconsin**. This request will require new or upgraded facilities to be installed on property that you own at **1211 & 1213 N 3RD ST in the City of Wausau County of Marathon, State of Wisconsin** in locations shown on the attached easement which, when executed, would grant us the right to install and maintain the necessary facilities.

I have enclosed two copies of the easement for your review. The exhibit is only temporary until the final one can be completed. When the final exhibit is complete we will send it along with a copy of the easement for your review. After you review the exhibit, the document will be recorded with the Office of the Register of Deeds. Signing this document will allow Wisconsin Public Service Corporation to install facilities on your property in the location described in the easement.

Please note that the Public Service Commission entitles you to a minimum of five days to examine the materials provided. However, you have the option to waive the five-day review period and sign and return the easement at any time.

*You will note that the documents **require** you to sign them in the presence of a **Notary Public**. Please make the necessary arrangements to meet with a Notary Public in your vicinity and have the Notary sign the documents where indicated. All signatures and blanks filled in must be completed in **BLACK INK** to be accepted by the Register of Deeds for recording.*

Please return one of the documents to me in the pre-paid envelope provided at your earliest convenience. The second document is for your records. Installation cannot be scheduled until the completed document has been received.

Please contact me if you have any questions regarding the easement. Please refer to Work Request **3386422**.

Lydia Janssen- Right of Way Agent  
Wisconsin Public Service Corporation  
(920) 433-5578  
Lydia.Janssen@wecenergygroup.com

Enclosed



3314727

Easement

THIS INDENTURE is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **CITY OF WAUSAU** ("Grantor") and **WISCONSIN PUBLIC SERVICE CORPORATION**, a Wisconsin Corporation, along with its successors and assigns (collectively, "Grantee") for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor, owner of land, hereby grants and warrants to, Grantee, a permanent easement upon, within, beneath, over and across a part of Grantor's land hereinafter referred to as "easement area" more particularly described as follows:

Part of Lot 1 of Block 11 of the recorded plat of A Warren Jrs Second Addition being part of The Southwest Quarter of the Northwest Quarter (SW 1/4 – NW 1/4) of Section 25 Township 29N, Range 7E in the **City of Wausau, County of Marathon, State of Wisconsin**, as shown on the *attached Exhibit "A"*.

Return to:  
Wisconsin Public Service Corp.  
Real Estate Dept.  
P.O. Box 19001  
Green Bay, WI 54307-9001

Tax Parcel Identification Number  
(PIN)

**29129072520349**  
**29129072520350**

- 1. Purpose: ELECTRIC UNDERGROUND** - The purpose of this easement is to construct, install, operate, maintain, repair, replace and extend underground utility facilities, conduit and cables, electric pad-mounted transformers, manhole, electric pad-mounted switch-fuse units, electric pad-mounted vacuum fault interrupter, concrete slabs, power pedestals, riser equipment, terminals and markers, together with all necessary and appurtenant equipment under and above ground as deemed necessary by Grantee, all to transmit electric energy, signals, television and telecommunication services, including the customary growth and replacement thereof. Trees, bushes, branches and roots may be trimmed or removed so as not to interfere with Grantee's use of the easement area.
- 2. Access:** Grantee shall have the right to enter on and across any of the Grantor's property outside of the easement area as may be reasonably necessary to gain access to the easement area and as may be reasonably necessary for the construction, installation, operation, maintenance, inspection, removal or replacement of the Grantee's facilities.
- 3. Buildings or Other Structures:** Grantor agrees that no structures will be erected in the easement area or in such close proximity to Grantee's facilities as to create a violation of all applicable State of Wisconsin electric and gas codes or any amendments thereto.
- 4. Elevation:** Grantor agrees that the elevation of the ground surface existing as of the date of the initial installation of Grantee's facilities within the easement area will not be altered by more than 4 inches without the written consent of Grantee.

5. **Restoration:** Grantee agrees to restore or cause to have restored Grantor's land, as nearly as is reasonably possible, to the condition existing prior to such entry by Grantee or its agents. This restoration, however, does not apply to any trees, bushes, branches or roots which may interfere with Grantee's use of the easement area.
6. **Exercise of Rights:** It is agreed that the complete exercise of the rights herein conveyed may be gradual and not fully exercised until sometime in the future, and that none of the rights herein granted shall be lost by non-use.
7. **Binding on Future Parties:** This grant of easement shall be binding upon and inure to the benefit of the heirs, successors and assigns of all parties hereto.
8. **Easement Review:** Grantor acknowledges receipt of materials which describe Grantor's rights and options in the easement negotiation process and furthermore acknowledges that Grantor has had at least 5 days to review this easement document *or* voluntarily waives the five day review period.

[REMAINDER OF PAGE LEFT BLANK]

WITNESS the hand and seal of the Grantor the day and year first above written

**CITY OF WAUSAU**

Organization name

Sign Name

Print name & title

Sign Name

Print name & title

STATE )  
OF )

\_\_\_\_\_ )SS

COUNTY )  
OF )

\_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the above-named \_\_\_\_\_ CITY OF WAUSAU, to me known to be the Grantor(s) who executed the foregoing instrument on behalf of said Grantor(s) and acknowledged the same

Sign Name

Print Name

Notary Public, State of

My Commission expires:

This instrument drafted by: Lydia Janssen  
Wisconsin Public Service Corporation

REMS Entity ID	WR Number	Document ID	REMS Formatted Number
1473154	WMIS-3386422	3314727	INT11-473-154

# TEMPORARY EXHIBIT "A"

NOT TO SCALE  
FOR REFERENCE ONLY



**\*\*Temporary Exhibit\*\***

**\*\*Final Exhibit will be sent for approval at a later date\*\***

**\*\* NOT FOR RECORDING\*\***

## CAPITAL IMPROVEMENTS AND STREET MAINTENANCE COMMITTEE

---

Date of Meeting: January 11, 2024, at 5:15 p.m. in the Council Chambers of City Hall.

Members Present: Lou Larson, Lisa Rasmussen, Gary Gisselman, Doug Diny, Chad Henke

Also Present: Mayor Katie Rosenberg, Eric Lindman, Allen Wesolowski, TJ Nicksich, Anne Jacobson, Tara Alfonso, Jill Kurtzhals, Liz Brodek, Tammy Stratz

### **CONSENT AGENDA**

**A. Approve minutes of the December 14, 2023 meeting**

**B. Action on Stormwater Maintenance Agreement with Wausau School District at 3101 North 13<sup>th</sup> Street**

**C. Action on Easement with Wisconsin Public Service for utility facilities at 1211 and 1213 North 3<sup>rd</sup> Street**

---

Item C was removed from the consent agenda. Henke moved to approve consent agenda Items A and B. Diny seconded and the motion passed 5-0.

Regarding Item C, Gisselman noted the upgrade is for 1207 North 3<sup>rd</sup> Street and questioned what is proposed to be done. Wesolowski explained there is an existing pole and transformer. The resident at 1207 North 3<sup>rd</sup> Street would like to upgrade their electrical service. WPS would bury from the pole along the back side of 1211 and 1213 over to the house at 1207. 1207 is a very narrow lot that does not have room to bury the line. WPS is asking for an easement on the City's lots in order to get a line to the house at 1207.

Gisselman asked if this would still be a public space with access once the work is done. Wesolowski said once the conduit is buried the area would be restored to grass. The easement is along the lot lines. If the City lots would be developed someday, buildings would not be that close to the lot lines. Wesolowski does not feel this would have an impact on the parcels.

Gisselman moved to approve Item C. Diny seconded and the motion passed 5-0.

Agenda Item No.

1C

***STAFF REPORT TO CISM COMMITTEE – January 11, 2024***

**AGENDA ITEM**

Action on Easement with Wisconsin Public Service for utility facilities at 1211 and 1213 North 3<sup>rd</sup> Street

**BACKGROUND**

WPS contacted the City and would like to upgrade the electrical service for 1207 N. 3<sup>rd</sup> Street, see the attached letter and easement document.

**FISCAL IMPACT**

None

**STAFF RECOMMENDATION**

Approval

Staff contact: Allen Wesolowski 715-261-6762

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE CAPITAL IMPROVEMENTS AND STREET MAINTENANCE COMMITTEE</b>	
Approving Agreement for the Management and Maintenance of a Stormwater Facility (Wausau School District – 3101 North 13 <sup>th</sup> Street).	
Committee Action:	Approved 5-0
Fiscal Impact:	None
<b>File Number:</b>	24-0205
<b>Date Introduced:</b>	February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, your Capital Improvements and Street Maintenance Committee met on January 11, 2024 to review the agreement and recommends approval of an Agreement for the Management and Maintenance of a Stormwater Facility for the Wausau School District, for stormwater facilities on their property at 3101 North 13<sup>th</sup> Street; now therefore

**BE IT RESOLVED** the Common Council of the City of Wausau does hereby approve the Agreement, a copy of which is attached hereto and incorporated herein by reference, and the City Clerk is hereby instructed to have the agreement recorded in the office of the Marathon County Register of Deeds.

Approved:

---

Katie Rosenberg, Mayor

AGREEMENT FOR THE MANAGEMENT AND  
MAINTENANCE OF A STORMWATER FACILITY

THIS AGREEMENT made this 14<sup>th</sup> day of December, 2023, by and between the City of Wausau, a municipal corporation of the State of Wisconsin, hereinafter referred to as "CITY", and \_\_\_\_\_  
Wausau School District,  
a corporation organized under the laws of the State of Wisconsin, hereinafter referred to as "OWNER";

WITNESSETH:

WHEREAS, CITY has an interest in and an obligation for the development, management, and maintenance of stormwater facilities within the corporate limits of the City of Wausau, which interest and obligation is evidenced in CITY's stormwater management ordinance and in this agreement which is being entered into pursuant to that ordinance; and

WHEREAS, OWNER wishes to construct certain buildings on land in the City of Wausau, and as an inducement for CITY to grant to OWNER a permit to construct these improvements, OWNER wishes to enter into this agreement for the management and maintenance of a stormwater facility; and

WHEREAS, the specific provision of the Wausau Municipal Code which provides for stormwater management is Chapter 15.56 of the Wausau Municipal Code, which code provides for the routine and extraordinary post construction maintenance of a stormwater management facility, and such a facility is being herein installed for the use and benefit of the development of OWNER's property, and this agreement will specifically provide for the management and maintenance of that stormwater facility.

NOW, THEREFORE, the parties hereto agree as follows:

1. That attached hereto, and incorporated herein by reference, is "Exhibit A," a map upon which there is located certain improvements and storm water facilities, which are the subject of this agreement.
2. OWNER specifically agrees to maintain the storm water facilities in accordance with the schedules and procedures set forth in "Exhibit B" attached hereto and incorporated herein by reference.
3. OWNER specifically grants CITY access to, from and across the property encompassed in "Exhibit A" in order to evaluate and inspect the pond and, in addition to the detention pond, any other stormwater facilities, which evaluation and inspection will, from time to time, be necessary in order to ascertain that the practices concerning management and maintenance are being followed pursuant to CITY's stormwater management ordinances; CITY shall maintain, as a public record, the results of all site inspections, and shall recommend any corrective actions required to bring the stormwater management practices into proper operating condition.
4. Upon notification to OWNER that maintenance deficiencies exist on property, any corrective actions shall be undertaken by OWNER within a time frame as set forth by CITY, which time frame will be reasonable; should OWNER not satisfactorily complete any directives of CITY, as identified in any inspection report or directive, within the time frame provided by CITY, then the parties agree that CITY shall complete any corrective actions and the cost of those actions, including any administrative charges, shall be paid in full by OWNER or, in lieu thereof, shall be placed as a special assessment on the tax rolls of all of the property described on "Exhibit A" pursuant to Wisconsin Statutes.

Recording Area

Name and Return Address

City of Wausau Engineering Dept.  
407 Grant Street  
Wausau, WI 54403

PIN:



- 5. This agreement is being entered into pursuant to the provisions of Chapter 15.56 of the city ordinances of the City of Wausau, and the parties agree that OWNER will be bound by these provisions or any future amendments to these provisions or any separate provisions relating to stormwater management.
- 6. These covenants, agreements, and obligations provided for in this agreement shall travel with the land and be binding upon OWNER, its successors and assigns in perpetuity.

OWNER:  
By: Ryan Urmanski

By: \_\_\_\_\_

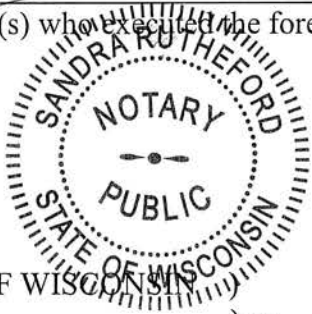
CITY OF WAUSAU:

By: \_\_\_\_\_  
Katie Rosenberg, Mayor

By: \_\_\_\_\_  
Leslie Kremer, Clerk

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF MARATHON)

Personally came before me this 14<sup>th</sup> day of December, 2023, the above-named Ryan Urmanski and \_\_\_\_\_ of Wausau School District, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.



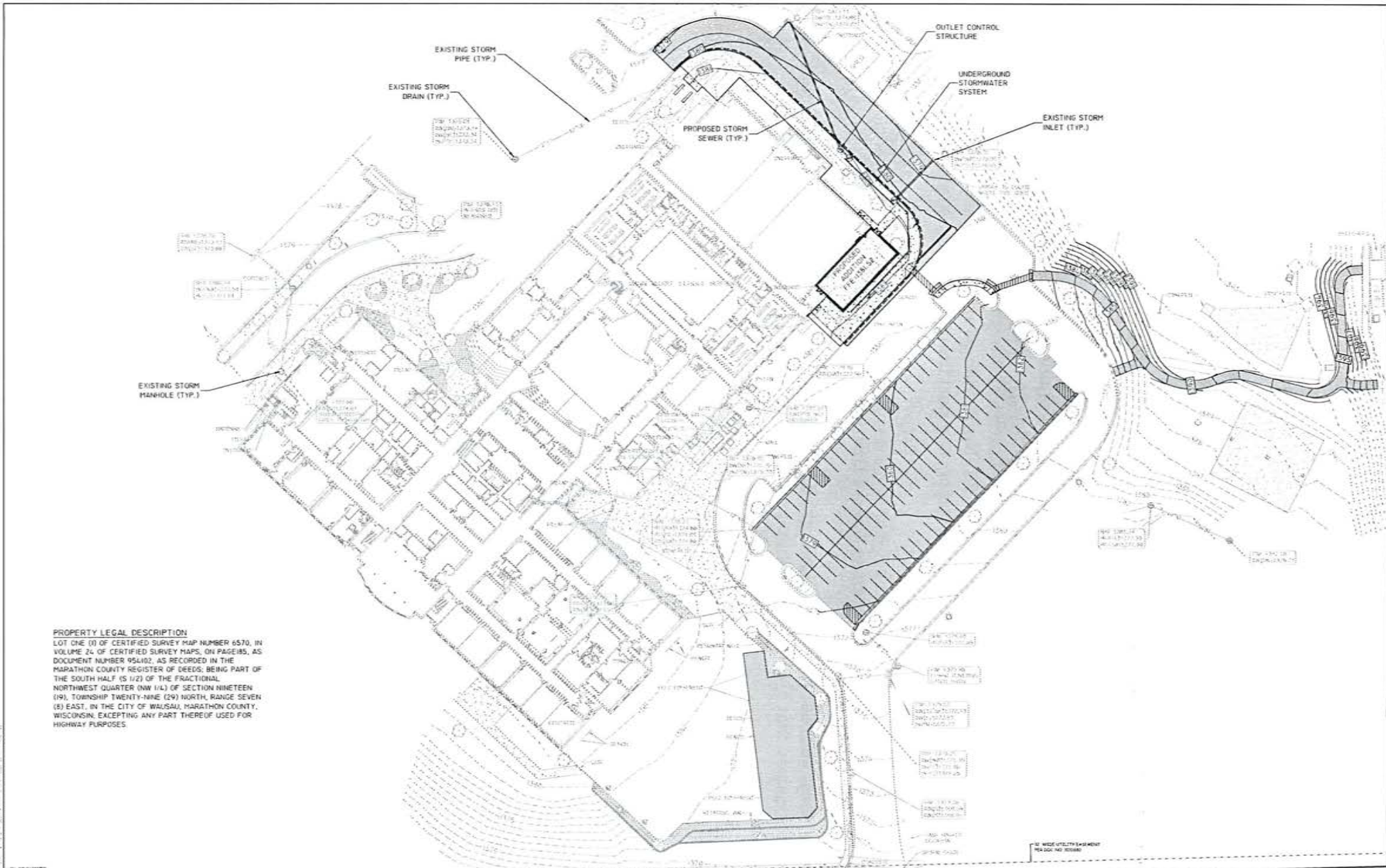
Sandra Ruthford  
Notary Public, Wisconsin  
My commission: Aug 28, 2021

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF MARATHON)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the above-named Katie Rosenberg, Mayor, and Leslie Kremer, Clerk of the City of Wausau, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

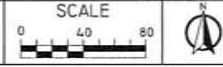
\_\_\_\_\_  
Notary Public, Wisconsin  
My commission: \_\_\_\_\_

DRAWING FILE: H:\21013700\21013700\21013700\21013700.dwg  
 PLOT FILE: H:\21013700\21013700\21013700\21013700.dwg  
 PLOT DATE: 10/02/23 10:45:00 AM  
 PLOT BY: J. G. W. & A. W. B.



**PROPERTY LEGAL DESCRIPTION**  
 LOT ONE (1) OF CERTIFIED SURVEY MAP NUMBER 6570, IN VOLUME 24 OF CERTIFIED SURVEY MAPS, ON PAGES 85, AS DOCUMENT NUMBER 954022, AS RECORDED IN THE MARATHON COUNTY REGISTER OF DEEDS, BEING PART OF THE SOUTH HALF (S 1/2) OF THE FRACTIONAL NORTHWEST QUARTER (NW 1/4) OF SECTION NINETEEN (19), TOWNSHIP TWENTY-NINE (29) NORTH, RANGE SEVEN (8) EAST, IN THE CITY OF WAUSAU, MARATHON COUNTY, WISCONSIN, EXCEPTING ANY PART THEREOF USED FOR HIGHWAY PURPOSES.

IN 21013700  
**REI Engineering, Inc.**  
 4040 N. 23TH AVENUE  
 WAUSAU, WISCONSIN 54485  
 PHONE: 765.835.5353 FAX: 765.835.0550  
 EMAIL: MAIL@REI-ENGINEERING.COM



DATE	REVISION	BY	CHKD

SURVEYED BY:	DESIGNED BY: MEM	SURVEY DATE:
SURVEY CHKD BY:	CIVIL CHKD BY:	CIVIL DATE: 10/02/23
SURVEY APVD BY:	CIVIL APVD BY:	DRAWN BY: GSW

**EXHIBIT A: GRADING & DRAINAGE**  
 HORACE MANN MIDDLE SCHOOL  
 301 N 13TH ST  
 WAUSAU, WI 54403

REI No. 5575A  
 SHEET EXH A

**EXHIBIT B**  
**Stormwater Management Facilities Maintenance Schedule & Procedures**  
**For**  
**Horace Mann Middle School Renovations**  
**3101 North 13th Street**  
**City of Wausau**  
**Marathon County, WI**

**Property Legal Description:**

Lot One (1) of Certified Survey Map Number 6570, in Volume 24 of Certified Survey Maps, on Page 185, as Document Number 954102, as recorded in the Marathon County Register of Deeds; being part of the South Half (S 1/2) of the Fractional Northwest Quarter (NW 1/4) of Section Nineteen (19), Township twenty-nine (29) North, Range seven (8) East, in the City of Wausau, Marathon County, Wisconsin; excepting any part thereof used for highway purposes.

**Responsible Party:** Wausau School District

The Owner, their successors, and assigns, shall inspect and maintain the structural and non-structural measures that function to facilitate compliance with stormwater management regulations.

**Maintenance Schedule and Procedures:**

Maintenance inspections by the Owner shall take place at a minimum of twice per year, following Owner's acceptance of the Project from the Site Contractor. Owner shall maintain a written inspection and maintenance log.

Maintenance and inspection shall be performed as follows:

- 1) **DEBRIS:** Removal of trash, debris, and noxious weeds should be done on a regular basis to maintain aesthetics and functionality of the underground stormwater system, outlet structure, and storm sewer on the site.
- 2) **STORM AND OUTLET STRUCTURES:** Remove accumulated sediment and/or debris from the outlet structure of the underground system and storm sewer pipe.
- 3) **UNDERGROUND STORMWATER SYSTEM:** Remove accumulated sediment and/or debris from the sumped portion of the underground stormwater system a minimum of every other year.
- 4) **MOWING:** Conduct regular mowing of greenspace areas to promote aesthetics. Keep clippings from entering storm sewer systems.

## CAPITAL IMPROVEMENTS AND STREET MAINTENANCE COMMITTEE

---

Date of Meeting: January 11, 2024, at 5:15 p.m. in the Council Chambers of City Hall.

Members Present: Lou Larson, Lisa Rasmussen, Gary Gisselman, Doug Diny, Chad Henke

Also Present: Mayor Katie Rosenberg, Eric Lindman, Allen Wesolowski, TJ Nicksich, Anne Jacobson, Tara Alfonso, Jill Kurtzhals, Liz Brodek, Tammy Stratz

### **CONSENT AGENDA**

**A. Approve minutes of the December 14, 2023 meeting**

**B. Action on Stormwater Maintenance Agreement with Wausau School District at 3101 North 13<sup>th</sup> Street**

**C. Action on Easement with Wisconsin Public Service for utility facilities at 1211 and 1213 North 3<sup>rd</sup> Street**

---

Item C was removed from the consent agenda. Henke moved to approve consent agenda Items A and B. Diny seconded and the motion passed 5-0.

Regarding Item C, Gisselman noted the upgrade is for 1207 North 3<sup>rd</sup> Street and questioned what is proposed to be done. Wesolowski explained there is an existing pole and transformer. The resident at 1207 North 3<sup>rd</sup> Street would like to upgrade their electrical service. WPS would bury from the pole along the back side of 1211 and 1213 over to the house at 1207. 1207 is a very narrow lot that does not have room to bury the line. WPS is asking for an easement on the City's lots in order to get a line to the house at 1207.

Gisselman asked if this would still be a public space with access once the work is done. Wesolowski said once the conduit is buried the area would be restored to grass. The easement is along the lot lines. If the City lots would be developed someday, buildings would not be that close to the lot lines. Wesolowski does not feel this would have an impact on the parcels.

Gisselman moved to approve Item C. Diny seconded and the motion passed 5-0.

Agenda Item No.

1B

**STAFF REPORT TO CISM COMMITTEE – January 11, 2024**

**AGENDA ITEM**

Action on Stormwater Maintenance Agreement with Wausau School District at 3101 North 13<sup>th</sup> Street

**BACKGROUND**

The Wausau School District is proposing improvements to the Horace Mann Middle School at 3101 N. 13<sup>th</sup> Street. This redevelopment project will include a building addition, new and reconfigured parking, driveways, sidewalks, paving a playground area, and a new asphalt trail. The stormwater will be managed by additional storm sewer and the addition of an underground detention system.

To ensure properly functioning post-stormwater facilities year after year, the City requires the owner to sign a maintenance agreement, making the owner inspect and maintain the facilities on a biennial basis. The maintenance agreement is attached for your review.

**FISCAL IMPACT**

None

**STAFF RECOMMENDATION**

Staff recommends approval of the stormwater maintenance agreement.

Staff contact: TJ Niksich 715-261-6748

CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403

**ORDINANCE OF CAPITAL IMPROVEMENTS AND STREET MAINTENANCE  
COMMITTEE**

Amending Section 10.20.080(b) designating loading zone on the east side of N. 2<sup>nd</sup> Street from a point 180 feet south of the stop bar at Washington Street and extending 80 feet south.

Committee Action: Approved 5-0

**Ordinance Number:** 61-5955

Fiscal Impact: Signs previously installed

**File Number:** 24-0206

**Date Introduced:** February 13, 2024

The Common Council of the City of Wausau do ordain as follows:

Add ( )

Section 1. That Section 10.20.080(b) of the Wausau Municipal Code is hereby amended as follows:

(b) There shall be restricted parking in the following locations:

...

North 2<sup>nd</sup> Street

- East side of North 2<sup>nd</sup> Street from a point 180 feet south of the stop bar at Washington Street and extending 80 feet south -- loading zone

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall be in full force and effect on the day after its publication.

Adopted:  
Approved:  
Published:  
Attest:

Approved:

\_\_\_\_\_  
Katie Rosenberg, Mayor

Attest:

\_\_\_\_\_  
Kaitlyn A. Bernarde, City Clerk

## CAPITAL IMPROVEMENTS AND STREET MAINTENANCE COMMITTEE

---

Date of Meeting: January 11, 2024, at 5:15 p.m. in the Council Chambers of City Hall.

Members Present: Lou Larson, Lisa Rasmussen, Gary Gisselman, Doug Diny, Chad Henke

Also Present: Mayor Katie Rosenberg, Eric Lindman, Allen Wesolowski, TJ Nicksich, Anne Jacobson, Tara Alfonso, Jill Kurtzhals, Liz Brodek, Tammy Stratz

### **Discussion and possible action on parking restrictions on North 2<sup>nd</sup> Street between Washington Street and Forest Street**

---

This street was constructed and signs were installed but were not placed in ordinance. This area is intended for picking someone up from the Imaginarium or buses.

As this is in compliance with the plan adopted, Rasmussen moved to approve. Henke seconded and the motion passed 5-0.

Agenda Item No.

2

**STAFF REPORT TO CISM COMMITTEE – January 11, 2024**

**AGENDA ITEM**

Discussion and possible action on parking restrictions on North 2<sup>nd</sup> Street between Washington Street and Forest Street

**BACKGROUND**

The City constructed 2<sup>nd</sup> Street between Washington and Forest Street in the Summer of 2023. As part of this project, a ‘No Parking, Loading Zone’ was posted on the east side of 2<sup>nd</sup> Street. See attached pictures. This parking restriction would need to be put into the municipal code.

**FISCAL IMPACT**

None, signs are installed.

**STAFF RECOMMENDATION**

Approval

Staff contact: Allen Wesolowski 715-261-6762







**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

**RESOLUTION OF THE CAPITAL IMPROVEMENTS  
AND STREET MAINTENANCE COMMITTEE**

Authorizing staff to petition the State of Wisconsin Office of the Commissioner of Railroads to determine the adequacy of warning devices at the rail-highway crossing located across 17<sup>th</sup> Avenue south of Stewart Avenue and north of Sherman Street.

Committee Action:      Approved 5-0  
Fiscal Impact:          Undetermined at this time

**File Number:**          24-0207                                  **Date Introduced:**      February 13, 2024

**FISCAL IMPACT SUMMARY**

<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount</i> <i>Annual Retirement</i>
	<i>TID Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i>	<input type="checkbox"/>	<i>Debt</i>	<input type="checkbox"/>
		<input type="checkbox"/>	<i>Interfund Loan</i>	<input type="checkbox"/>

**RESOLUTION**

**WHEREAS**, 17<sup>th</sup> Avenue, a public street in the City of Wausau crosses the tracks of WATCO Companies Fox Valley and Lake Superior Rail System, L.L.C. at-grade; and

**WHEREAS**, the existing conditions at said rail-highway crossing may pose a threat to public safety as vehicles appear to be attempting to, or are crossing the railroad tracks in disregard of the flashing light warning system that is currently in place when it is activated to warn of an approaching train, and 17<sup>th</sup> Avenue is a major four lane thoroughfare within the City of Wausau; and

**WHEREAS**, vehicle crossings occurring in disregard of the flashing light warning system when it is activated causes oncoming railroad engines to sound their horn in warning outside of “pre-rule, partial quiet zone hours” (as required by Federal regulations); and

**WHEREAS**, Section 195.28 Wisconsin Statutes authorizes the Office of the Commissioner of Railroads to determine whether the existing warning devices are adequate to protect and promote public safety at any rail-highway crossing in the State of Wisconsin; and

**WHEREAS**, your Capital Improvements and Street Maintenance Committee, at its January 11, 2024, meeting, recommended that staff be authorized to make a petition to the Office of the Commissioner of Railroads to determine the adequacy of the warning devices located on 17<sup>th</sup> Avenue south of Stewart Avenue and north of Sherman Street.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Wausau through its Common Council hereby directs staff to take all necessary steps to petition the Office of the Commissioner of Railroads for an investigation and order determining the adequacy of waring devices at the rail-highway crossing of 17<sup>th</sup> Avenue south of Stewart Avenue and north of Sherman Street.

Approved:

---

Katie Rosenberg, Mayor

## CAPITAL IMPROVEMENTS AND STREET MAINTENANCE COMMITTEE

---

Date of Meeting: January 11, 2024, at 5:15 p.m. in the Council Chambers of City Hall.

Members Present: Lou Larson, Lisa Rasmussen, Gary Gisselman, Doug Diny, Chad Henke

Also Present: Mayor Katie Rosenberg, Eric Lindman, Allen Wesolowski, TJ Niksich, Anne Jacobson, Tara Alfonso, Jill Kurtzhals, Liz Brodek, Tammy Stratz

### **Discussion and possible action on railroad quiet zones and crossings**

---

Larson asked for this to be on the agenda as he has been getting complaints of the train horn going off and on all hours of the day and night on the 17<sup>th</sup> Avenue crossing. We've had this discussion before on how federal regulations trump ordinances. It has been brought to his attention that this is the only intersection in the City that does not have gates. He wonders if it is worth the investment to install gates. He feels this is not only a capital improvement item, but also a public health and safety issue as cars race across the tracks trying to beat the train. He has discussed this with Rasmussen and it was decided to come to CISM first but then also go to Public Health and Safety. Gates can become costly, but what kind of price tag can you put on public health and safety.

Rasmussen spoke of when gates were installed on either South 3<sup>rd</sup> Ave or South 1<sup>st</sup> Ave years ago. The City was told by the railroad that to maintain the grandfathered quiet zone we had to install gates. There was less controversy about the enforceability and the nature of the quiet zone back then. At that point, we opted to install gates. Her concern is the local municipality's ability to regulate this as it is a safety feature for the railroad and they are required to sound the horn at certain crossings. We are hamstrung by federal law and are not able to create anything substantial that reduces the noise in the neighborhood. Even with the gate, they still have the right and the option to use the horn if they perceive there is some type of emergency or traffic near the tracks. We could make a substantial investment in gates, but we may not have the silence the neighbors are looking for.

Mayor Rosenberg has been getting some complaints and noted there are many more trains coming through now. She has asked why there has been excessive horn blowing. They confirmed they are blowing their horns more. They keep a log as to why they are doing this. Sometimes it is an animal on the tracks, sometimes it is a person. There was an incident at one crossing where someone was so mad at the railroad that they would show up every day. They are regulated federally and they do not have to adhere to our quiet zone. She is willing to take back information or questions, or possibly bring a representative here to answer questions. It was eye opening when they showed her the log of reasons why they are blowing their horns.

Larson asked if it would be appropriate to bring in a railroad official with their log. Mayor Rosenberg can extend an invitation. They are not interested in doing anything that puts safety at risk. If they deem it a safety issue, they will continue to do it no matter what time of day it is.

Larson asked if Rasmussen would agree to have the railroad present to a joint CISM and Public Health and Safety meeting. Rasmussen said it would be possible but questioned if there was any action capable of taking. Larson asked if it would reduce some of the noise in the neighborhood if we installed gates on 17<sup>th</sup> Avenue. There are gates on all the other busy intersections in the City. If there is no safety violation, there is no need for them to blow their horn. Rasmussen feels we need to know if that will stop or continue if we put in the gates. The 17<sup>th</sup> Ave crossing near Marathon Park seems to be a really active crossing at all times of the day. She would hate to put in the investment and they do not stop. It is a defined neighborhood that is complaining. She suggested informing the neighbors of the emergency log. We may be better off having a conversation at a neighborhood group than at committee. We have no enforcement power. We may not get anywhere if we drag them in before committee and they are not willing to change.

Diny does not think we know enough yet. If they are blowing the horn at animals and people on the tracks, gates are not going to fix it. Having them here would maybe help us understand our decision point. If most of them are hazards, we are not going to eliminate it and then it becomes an information piece for the neighborhood.

Gisselman rarely hears horns in the areas of 7<sup>th</sup> Street, 6<sup>th</sup> Street, 5<sup>th</sup> Street and 3<sup>rd</sup> Street and asked if we can somehow gauge that gates reduce the sounding of horns. With the school buses on 17<sup>th</sup> Avenue and the traffic, he feels a gate is necessary. If we can ease the horn sounds in this area by installing a gate, he thinks it should be done. It is the safety of the street and feels there should have been one there years ago.

Alfonso clarified that there is a quiet zone in effect and exists for certain crossings. If there is any kind of emergency on the track, they will blow the horn regardless. The quiet zone does exist and they do not blow the horn between the hours of 7:00 pm and 7:00 am unless there is some kind of emergency. Alfonso did talk with the federal railroad administration. The cost of gates has gone up since the last time we installed one. The cost for this crossing could be between \$350,000 and \$450,000. At this crossing there is a railroad yard to the east and the west, which makes it a heavy traffic area. The City does not get to say we want gates or we do not want gates. This committee could start a petition with the Office of the Commissioner of the Railroad (OCR) and ask if gates could be installed. They have to do research and investigations and it may involve a hearing. Then they decide whether they want gates at the crossing or not. We would then have to do what they say; they make the order. They are also involved with who pays for it. There may or may not be federal money to pay for, they may decide to order the railroad to pay for it, or they may order the City pays for it. In order to start that process, we need to recommend to Council and Council would have to approve a resolution directing staff to initiate the petition. Per the federal railroad administration, one thing that would be in favor of potentially putting in gates is that the signals that are currently there are antiquated. We've tried to get complaints directed to Lieutenant Lopes-Serrao so we have a record of how many complaints we are getting. Lieutenant Lopes-Serrao believes he has had 3 or 4 complaints in a year or so and two of them have been about 17<sup>th</sup> Avenue. We should keep a good record and have all our Alders and staff direct complaints to someone who will keep track of it. If we are going to do a petition we should have that data.

Wesolowski has talked with the OCR. A petition would start with a resolution from Council in support of putting up gates. They would look at the adequacy of the existing signals and whether they meet standards, accidents, train speed, train frequency, and the amount of traffic. Foxy would also have a recommendation. The Commissioner would then make a recommendation. One thing that would be a part of the resolution is what the City would want to do for cost sharing, but ultimately the Commissioner would decide on cost sharing. Wesolowski reiterated that the Commissioner determines whether they are needed and who pays for it.

Hands down, this is the most phone calls Henke has received on one item. It is nice to know to direct them to the Lieutenant. Between Christmas and now, he has gotten 12 phone calls. He noticed the 1<sup>st</sup> Avenue crossing is exempt and asked if that meant buses do not have to stop at the crossing. Alfonso said it could also mean it is exempt from a quiet zone.

Rasmussen feels it makes sense to begin the petition process and see where it takes us. She does not think we need a joint committee meeting as this committee also encompasses 4 members of Public Health and Safety.

Rasmussen moved to make a petition to the OCR to study the necessity of gates on 17<sup>th</sup> Ave. Henke seconded.

Lindman clarified that if the City initiates this investigation and the OCR comes back that gates are needed, the City does not have an option. Once they investigate, the City is committed. Wesolowski confirmed and indicated that is why a resolution is needed. He added that they would install the gates on their schedule.

Diny asked if Foxy is under any obligation to let us know if they are seeing increased issues. Wesolowski said those questions would be raised during the OCR hearing. They will get input as to how many accidents or close calls they have had and whether they would support gates.

Rasmussen believes the railroad would support a safety feature as it is their goal, quiet zone or not, to have less stuff in their way. If a gate keeps stuff away from the track, she would be hard-pressed to believe they would oppose added safety. She does not believe there will be a lot of resistance if the City asks for it. Alfonso feels it depends upon how much they have to pay. She added that the person she spoke with at the federal railroad administration was very favorable about Foxy. They are concerned about safety and are very careful about following all the FRA regulations. The FRA is coming here in a few weeks to meet with Foxy. Alfonso has asked him to let her know when he comes so they could possibly sit down with staff. Discussion followed.

There being a motion and a second, motion passed 5-0.

Agenda Item No.

4

***STAFF REPORT TO CISM COMMITTEE – January 11, 2024***

**AGENDA ITEM**

Discussion and possible action on railroad quiet zones and crossings

**BACKGROUND**

A summary of the current regulations related to quiet zones is attached. Questions related to individual crossings and controls such as gates or signals will be addressed by staff at the meeting.

**FISCAL IMPACT**

The installation of signals/gates at crossing can cost in the range of \$200k to \$300k. Typically, the cost to install these signals/gates have been at 100% City responsibility. Staff will provide further details at the meeting.

**STAFF RECOMMENDATION**

None

Staff contact: Allen Wesolowski 715-261-6762

## **WHO REGULATES THE SOUNDING OF TRAIN HORNS?**

### **MUNICIPALITIES AND FEDERAL LAW**

While municipalities had some measure of influence over the sounding of train horns within its boundaries many years ago, this is not the case today. Upon implementation of the "Train Horn Rule" on June 24, 2005, by the U.S. Department of Transportation, Federal Railroad Administration ("FRA"), the sounding of train horns became governed completely by Federal law which pre-empts or takes precedence over local or state regulations. Federal regulations require locomotive horns to be sounded in advance of all public highway rail crossings for motorist and pedestrian safety reasons. The FRA regulations have very specific requirements as to when, where, how long, and how loud a train must sound its horn. Engineers must begin to sound train horns at least 15 seconds, and no more than 20 seconds in advance of all public grade crossings. (42 C.F.R. s. 222.21(a)). The horns must be sounded in a pattern of 2 long, 1 short, and 1 long blast, repeated until the lead locomotive or lead cab car occupies the crossing. (42 C.F.R. s. 222.21(a)). The pattern may be varied as necessary where crossings are spaced closely together. (42 C.F.R. s. 222.21(a)). Federal law sets forth a minimum volume level of 96 decibels and a maximum volume level of 110 decibels for the train horn.

Federal law permits, however, certain communities that had train "whistle" or horn limitations in ordinances that existed prior to 2005, to retain those local limitations by following certain Federal regulations and procedures (the limitation is "grandfathered-in" in a manner of speaking). The City of Wausau does have an ordinance that has existed since 1989, and it did follow those procedures to retain the city's limitations under the ordinance. Thus, the City does have what the FRA calls a "pre-rule, partial quiet zone."

Under this "pre-rule, partial quiet zone" the FRA maintains the City's pre-existing prohibition against a railroad locomotive sounding its horn between the hours of 7:00 p.m. to 7:00 a.m. at a number of railroad crossings within the City. The list is rather extensive and includes not only various streets and roadways, but also some unnamed alleyways and driveways, particularly on the railroad lines west of the Wisconsin River. Notwithstanding the quiet hours, however, a train locomotive, by Federal law, may and in fact must, still use its train horn in an emergency situation (such as the presence of a vehicle, person, or animal on the track).

Because of the FRA "Train Horn Rule," however, enforcement of the "pre-rule, partial quiet zone" lies exclusively within the FRA for violations of the quiet zone, and no longer resides within City officials.

### **WHAT ABOUT THE CITY'S "ORDINANCE?"**

Regarding its ordinance in the Municipal Code, the City has retained this ordinance (passed in 1989) in its Municipal Code in order to document and ensure its ability to maintain a "pre-rule, partial quiet zone" under the FRA's current "Train Horn Rule." The City's ordinance contains a note to this general effect as follows:

9.04.032 Unnecessary blowing of railroad whistles and horns—Penalty.  
No railroad company or any of its agents, servants or employees shall blow or cause to be blown, between the hours of 7:00 p.m. and 7:00 a.m., any whistle or horn within the limits of



the City, except in those cases prescribed and designated by the laws of the state, but nothing in this section shall be construed as forbidding or prohibiting the blowing of any whistle or horn as a signal or warning in case of peril, fire, collision or other imminent danger to life and/or property. Any person violating any of the provisions of this section shall be punished by a forfeiture of not more than \$200.00.  
(Ord. 61-4693 (1, 1989.)

Note(s)—Pre-empted by 49 U.S.C. 20106 and regulations issued thereunder in 49 C.F.R. Part 222. Federal Railroad Administration has approved and enforces a "pre-rule, partial quiet zone" for the same hours. Ordinance remains for purposes of "grandfather" rights.

### **WHY DOES A TRAIN HORN STILL SOUND DURING THE QUIET HOURS?**

Despite the "pre-rule, partial quiet zone" that the FRA has authorized at many crossings within the City, it is possible that a passing train may sound its horn outside of the established quiet times where it is experiencing emergency situations including automobiles on or proceeding over the tracks as trains approach, as well as individuals walking, standing or crossing the tracks under the same circumstances. According to local train officials, this happens more than one might think.

If you are interested in more information, a link to a Federal Railroad Administration brochure on the "Train Horn Rule" is here: <https://railroads.dot.gov/sites/fra.dot.gov/files/2020-05/QuietZoneBrochure.pdf>

# Petition Guidelines

## **Guidelines for Seeking Office of the Commissioner of Railroads Approval of New Railroad Crossings and Alterations of Existing Railroad Crossings of Streets and Highways (Revised August 2017)**

The Office of the Commissioner of Railroads (OCR) is the state agency with jurisdiction to approve the establishment and alteration of public highway crossings with railroads (section 195.29, Wis. Stats.). Any highway authority or railroad wishing to establish a new crossing or change an existing crossing must first obtain the approval of the OCR.

Wisconsin law requires OCR approval to establish a new rail/highway crossing, to relocate, close, alter or substantially change an existing crossing (See, especially Wis. Stat. § 195.29). The OCR also determines what warning devices are needed (See, Wis. Stat. § 195.28). The OCR can also require railroads to repair rough crossings (See, Wis. Stat. § 86.12). The review process is initiated by filing a petition with the OCR. When a petition is received the Office will conduct an investigation and then contact the parties to schedule deadlines for filing testimony and exhibits and schedule a date for public hearing. After the hearing, the hearing examiner issues a proposed decision. A 15-day comment period follows and then the Commissioner issues a final decision. The OCR's decision is legally binding.

The OCR administrative rules govern our practice and procedure. Wis. Admin. Code Chapter RR 1. **The rules require that the petitioner submit preliminary engineering plans or concept plans, state a proposed completion date for the project, and a proposed apportionment of costs.** Please see Wis. Admin. Code RR 1.025 (2). The OCR uses Electronic Records Filing (ERF) to accept online submissions of filed documents and online access of these documents (see page three of this document for instructions on using ERF).

The OCR process normally takes about 6 months from the initial filing to a final decision. Petitioners can avoid delays in their projects by filing a petition as early as possible. The notice is typically issued within 4 weeks from when the petition is received. OCR staff will then contact the parties to establish filing deadlines for testimony and exhibits, and set a date for the public hearing. The proposed decision is generally issued within 30 to 60 days of the hearing and the final decision is usually issued about 30 days later. In uncontested cases, the OCR can skip the proposed decision and go directly to a final decision. This time frame can be compressed if a legitimate need exists. Complex cases may take longer.

While the OCR makes all final decisions, a municipality can increase the likelihood that the railroad will not actively oppose a new crossing by simultaneously proposing the closure of an existing crossing.

The OCR also apportions costs for crossing work. Typically, the petitioning road authority pays the cost for new crossings and relocated crossings. If a crossing is widened, the cost is typically split with the railroad based on the ratio of the existing crossing width to the new width. The railroad pays for the existing width and the highway authority pays for the added width. Cost apportionment is, however, determined on a case-by-case basis and may vary from these rules of thumb.

The OCR also determines what warning devices are required at the crossing. State and federal funds are sometimes available to pay the cost for new railroad crossing signals. These funds, however, are quite limited and there is often a 3 to 4 year waiting list for this money, which is often beyond the proposed construction schedule. If a crossing cannot be safely opened without automatic signals, the OCR will give highway authorities the option of paying for the crossing signals in order to keep the highway project on schedule. These costs cannot be recouped from state or federal funds at a later date. Railroad crossing signals with gates usually cost at least \$200,000 and can be substantially more than that depending on the specific conditions (such as proximity of other signalized crossings, number of tracks, railroad switches, and so forth).

The OCR's administrative rules require certain information to be submitted to the OCR at the time that the petition is filed. The rules also require that the petition be sent to the railroad. Failure to provide these materials and/or provide a copy to the railroad may delay scheduling a hearing. The following information must be furnished to the OCR and to the railroad:

- 1. Governing body (City Council, Village or Town Board) resolution supporting the project.**
- 2. Proposed timing of the project.**
- 3. Concept plans or preliminary engineering design plans showing the proposed changes.**
- 4. The proposed cost apportionment for the project.**

Please use the OCR ERF to file these documents electronically. Please furnish copies of all OCR correspondence to the railroad. The OCR can provide addresses for railroads upon request. **The municipality should contact the railroad as soon as possible to discuss the project. While the OCR decides whether to approve a new crossing or a crossing change, the railroad often has useful information or legitimate concerns that can be addressed in the design process.**

### **Hearing process**

The petitioning party (usually the road authority) presents their case first. After the road authority is done with presenting all of their witnesses, the railroad will put on their witnesses. Witnesses will be sworn. Witnesses are subject to cross-examination by the other party. The hearing examiner will also ask questions.

The petitioner will generally carry the burden of proof. In general, this means that the petitioner needs to show what is being proposed.

The petitioner will generally carry the burden of proof in general, and means that the petitioner needs to show that is being proposed and why it is justified.

The petitioner will need to prefile testimony before the hearing on the overall project purpose, the engineering design plans, discuss alternatives considered, and introduce the resolution and provide a map of the community or area involved. The engineering information should include alignments of the roadway and the track, profiles of the approaches to the intersection, distance and travel time to an alternate crossing, distance to adjacent crossings, volumes and speeds of highway and rail traffic, types of warning devices proposed, property lines involved, and sight distances. Other information may also be relevant in any given situation.

## Contact Information

---

4822 Madison Yards Way  
Suite S633  
Madison, WI 53705

## Resources

---

[Wisconsin Railroads \(/pages/WIRailroads.aspx\)](#)

[Federal Rail Administration \(https://railroads.dot.gov/\)](https://railroads.dot.gov/)

[Operation Lifesaver \(https://www.facebook.com/WisconsinOperationLifesaver/\)](https://www.facebook.com/WisconsinOperationLifesaver/)

[\(https://www.wisconsin.gov/\)](https://www.wisconsin.gov/)

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

**RESOLUTION OF THE FINANCE COMMITTEE**

Approving the First Amendment to the Grant Agreement with the State of Wisconsin for the Neighborhood Investment Fund Grant Program for the Westside Battery Redevelopment project.

Committee Action:      Approved by Finance on January 23 (5-0)

Fiscal Impact:           \$0

**File Number:**           24-0208

**Date Introduced:**      February 13, 2024

**FISCAL IMPACT SUMMARY**

<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>		
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Amount</i>	<i>Annual Retirement</i>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		<i>Amount</i>
	<i>TID Source: Increment Revenue <input type="checkbox"/> Debt <input type="checkbox"/> Funds on Hand <input type="checkbox"/> Interfund Loan <input type="checkbox"/></i>			

**WHEREAS**, the Department of Administration has received funds from the United States Department of the Treasury pursuant to section 602 of the Social Security Act, as amended by section 9901 of the American Rescue Plan Act of 2021 (“ARPA”) to be used for the purposes specified in the ARPA; and

**WHEREAS**, on August 24, 2021, Governor Tony Evers announced the launch of a \$200 million Neighborhood Investment Fund Grant Program providing grants to local and Tribal governments to help neighborhoods recover from negative effects of the COVID-19 pandemic with a particular focus on addressing the needs of residents living in communities disproportionately impacted by the pandemic; and

**WHEREAS**, through a competitive Request For Proposals process, City of Wausau awarded the site at 415 S 1st Avenue, otherwise known as the “Westside Battery Site,” to Gorman & Company for the purpose of redeveloping the site into an affordable housing property; and

**WHEREAS**, The City of Wausau submitted an application to Neighborhood Investment Fund Grant Program on behalf of Gorman & Company on November 11, 2021; and

**WHEREAS**, the State has approved a Grant Award to the City of Wausau and Gorman & Company in the amount of \$1,750,000; and

**WHEREAS**, the City executed the Grant Agreement with the State of Wisconsin for the Neighborhood Investment Fund Grant Program on August 11, 2023; and

**WHEREAS**, on November 9th, 2023, the United States Treasury issued an Interim Final Rule which provided clarification to recipients of SLFRF monies as to whom the obligation deadline of December 31st, 2024 for the incurrence of eligible expenses applies to; and

**WHEREAS**, the State of Wisconsin has requested that the City amend the previous grant agreement for the funds awarded to the project; and

**NOW THEREFORE BE IT RESOLVED**, by the Common Council of the City of Wausau, that the proper City officials are hereby authorized to execute the First Amendment to the Grant Agreement with the State of Wisconsin for the Neighborhood Investment Fund Grant Program.

Approved:

---

Katie Rosenberg, Mayor

**FINANCE COMMITTEE**

Date and Time: Tuesday, January 23, 2024, at 5:15 P.M., Council Chambers

Members Present: Lisa Rasmussen (C), Michael Martens (VC), Sarah Watson, Doug Diny, Carol Lukens

Others Present: Mayor Rosenberg, MaryAnne Groat, Matthew Barnes, Todd Beaten, Jeremy Kopp, Justin Pluess, Anne Jacobson, Rick Rubow, Eric Lindman, Dustin Kraege, Soloman King, Liz Brodek, Andrew Lynch, Randy Fifrick, James Henderson, Kody Hart, Alder Gisselman

Noting the presence of a quorum, Chairperson Rasmussen called the meeting to order at 5:15 P.M.

**Discussion and possible action on First Amendment to the Grant Agreement between City of Wausau and State of Wisconsin for Neighborhood Investment Fund Grant Program for Westside Battery Site.**

Motion by Lukens, seconded by Watson, to approve. Motion carried 5-0.

DRAFT

To: Finance Committee  
From: Randy Fifrick, Economic Development Manager  
Date: January 17, 2024  
Re: NIF-200 Grant for Westside Battery

---



The City of Wausau was awarded \$1.75 million through the Neighborhood Investment Fund Grant Program in 2022 to help fund a financing gap in the affordable housing project on the former Westside Battery site. In August of 2022, City Council approved Grant Agreement with the State of Wisconsin and the Cooperative Agreement with Gorman & Company.

The State of Wisconsin has requested that we amend our previous grant agreement for the funds awarded to the project. The Neighborhood Investment Fund Program received updated guidance from U.S. Treasury concerning the obligation of SLFRF monies and clarification that the incurrence deadline of such funds of December 31st, 2024 only applies to DOA and not the grantees. This will allow greater flexibility for the City as we are waiting for this project to break ground later this year.

Staff recommends approval of the amendment.

**FIRST AMENDMENT TO THE GRANT AGREEMENT**

**STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION  
and  
CITY OF WAUSAU**

**NEIGHBORHOOD INVESTMENT FUND GRANT PROGRAM**

**THIS FIRST AMENDMENT** amends the Grant Agreement entered into on August 11<sup>th</sup>, 2023 by and between the Wisconsin Department of Administration (“Department”), representing the State of Wisconsin (collectively “State”), and the City of Wausau (“Grantee”).

**RECITALS**

**WHEREAS**, on November 9<sup>th</sup>, 2023, the United States Treasury (“Treasury”) issued an Interim Final Rule which provided clarification to recipients of SLFRF monies as to whom the obligation deadline of December 31<sup>st</sup>, 2024 for the incurrence of eligible expenses applies to; and

**WHEREAS**, the aforementioned clarification from Treasury has indicated that, “A cost is considered to have been incurred once a recipient enters into a subaward that obligates the recipient to cover that cost. Once a recipient has obligated funds, the requirement in the statute and Treasury’s rule to obligate funds by December 31, 2024, has been satisfied, such that subrecipients need not themselves also obligate funds received under a subaward by December 31, 2024”; and

**WHEREAS**, given that Grantee is not a “recipient” as defined under the applicable ARPA statutes and regulations, Grantee is not required to obligate such funds received under its grant by December 31<sup>st</sup>, 2024 but, rather, can obligate such funds up until the end of the Performance Period of its grant; and

**WHEREAS**, based on the aforementioned, the parties wish to amend the Grant Agreement to clarify the obligation deadline;

**NOW, THEREFORE**, the parties hereto agree to amend the Grant Agreement as outlined below pursuant to Article 28 of the Grant Agreement:

1. The language within Article 3. Period of Performance is deleted in its entirety and replaced by the following language: “The Performance Period is March 3, 2021 through December 31, 2025, as defined on the first page of this Grant Agreement. Grant Award funds may only be used to pay for Eligible Expenses incurred during the Performance Period.”
2. Except as amended and modified by this First Amendment, all terms and conditions of the Grant Agreement, as amended, shall remain in full force and effect.



**IN WITNESS WHEREOF**, the Department and Grantee have executed this First Amendment to the Grant Agreement as of the date of last signature below.

**CITY OF WAUSAU**

**STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION**

**BY:** \_\_\_\_\_  
(signature)

**BY:** \_\_\_\_\_  
(signature)

**NAME:** \_\_\_\_\_  
(print)

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PROJECT ID:** ARPA-NIF-200

**UEI #:** RN18A9W NXNA6

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>ORDINANCE OF THE PUBLIC HEALTH &amp; SAFETY COMMITTEE</b>			
<i><b>Amending:</b></i> Wausau Municipal Code (“WMC”) § 19.08.050 – Records; WMC § 19.12.020 – When required; WMC § 19.12.050 – Restrictions on issuance; WMC § 19.16.060 – Certificate of occupancy. <i><b>Creating:</b></i> WMC § 19.12.005 – Plumbing plan submittals. <i><b>Repealing:</b></i> WMC § 19.08.030 – Registration of plumbers.			
Committee Action:	Approved 5-0	<b>Ordinance Number:</b>	61-5954
Fiscal Impact:	None		
<b>File Number:</b>	24-0209	<b>Date Introduced:</b>	February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

The Common Council of the City of Wausau do ordain as follows:

Add (   )  
Delete ( — )

Section 1. That Wausau Municipal Code § 19.08.030 - *Registration of plumbers*, is hereby repealed as follows:

**19.08.030 — Registration of plumbers.**

- (a) ~~The Plumbing Inspector shall keep on file a registration of all master, journeyman and apprentice plumbers engaged in the plumbing trade in the city.~~
- (b) ~~The registration shall include the name, address, license number, and current receipt number. In addition, apprentices shall state year of apprenticeship and the shop to which indentured. Master and journeyman registration shall state “contracting plumber or maintenance plumber” and place of employment.~~

Section 2. That Wausau Municipal Code § 19.08.050 - *Records*, is hereby amended as follows:

**19.08.050 – Records.**

The Inspector shall prepare suitable applications, and keep a daily log of all office transactions,

and file with the Common Council a monthly report of such transactions.

Section 3. That Wausau Municipal Code § 19.12.005 - *Plumbing plan submittals*, is hereby created as follows:

#### **19.12.005 – Plumbing plan submittals.**

The City of Wausau has been designated as an Agent Municipality by the Department of Safety and Professional Services of the State of Wisconsin pursuant to §§ SPS 382.20 and SPS 305, Wis. Adm. Code. Procedures for review and approval of plans and specifications, as set forth therein, shall be followed; except that plan review is required for projects involving the installation, addition or alteration of 10 or more fixtures to be installed in connection with public buildings.

Section 4. That Wausau Municipal Code § 19.12.020 - *When required*, is hereby amended as follows:

#### **19.12.020 – When required.**

A permit shall be obtained:

- (a) To perform any clearwater drainage or plumbing work as defined in Wis. Stats. ch. 145, the Wisconsin Administrative Code (WAC), or this title;
- (b) To abandon a water or sewer system before a wrecking or moving permit shall be issued by the City;
- (c) For the installation, replacement, or relocation of any water conditioning unit. Only the original installation of exchange regeneration service type units require a permit;
- (d) For the installation, replacement, or relocation of any domestic water heating unit;
- (e) For construction of any water distribution system from a source other than City water mains;
- (f) For the connection of any dispensing unit to water and/or waste pipes;
- (g) For the connection of any injection equipment intended to inject or otherwise insert any chemical, soap, or other material of any kind whatsoever into any water distribution pipe;
- (h) For the water and/or waste connection for each water-cooled air conditioner or water-cooled motor of humidifier;
- (i) For the installation of all inside roof leaders or downspouts;
- (j) For new or reconstructed sanitary sewer lateral or storm drains;
- (k) For new or reconstructed water service extension from water main to curb stop or to building;
- (l) For the installation of any sump pump or ejector;
- (m) For the discharge point of any subsoil or footing drain. The storm sewer or catch basin or sump will not require an additional permit at the discharge point;
- (n) When inspection is requested, except for inspection of plumbing work to be shipped out of the City;
- (o) A permit will be required for the replacement of all plumbing fixtures, unless the replacement fixture is in the same location and same fixture;
- (p) Permits may be applied for any licensed master plumbers and qualified home owners pursuant to Wis. Stats. ch. 145, either or both of whom may be prosecuted for the failure to obtain the permit prior to the commencement of the job.

Section 5. That Wausau Municipal Code § 19.12.050 – *Restrictions on issuance*, is hereby amended as follows:

#### **19.12.050 – Restrictions on issuance.**

- (a) No plumbing or sewer permit, with the exception of water and sewer laterals for street improvements, shall be granted until a building permit has been issued by the Building Inspector.
- (b) No plumbing, clearwater drainage, or sewer permit will be issued to any person who is in noncompliance with an order of the electrical, building, or Plumbing Inspector.
- (c) If any work is commenced without a permit first having been obtained therefor, the permit fee shall be ~~twice~~ **three times** the usual fee. Payment of any fee required by this chapter shall not relieve any person of the forfeitures that may be imposed for violation of this title

Section 6. That Wausau Municipal Code § 19.16.060 – *Certificate of occupancy*, is hereby amended as follows:

**19.16.060 – Certificate of occupancy.**

Upon completion of the plumbing work pursuant to the permit, the person doing the work shall notify the Plumbing Inspector, who shall inspect the work. If approved, the Inspector shall issue a certificate of occupancy which shall contain the date of such inspection and a ~~resume~~ **record** of the inspection. No such certificate shall be issued unless the plumbing work is in strict conformity with the rules and regulations set forth in this title.

Section 8. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 9. This ordinance shall be in full force and effect on the day after its publication.

Adopted:  
Approved:  
Published:  
Attest:

Approved:

---

Katie Rosenberg, Mayor

Attest:

---

Kaitlyn A. Bernarde, Clerk

**PUBLIC HEALTH & SAFETY COMMITTEE**

Date and Time: Monday, January 22, 2023, at 5:00 P.M., Council Chambers

Members Present: Lisa Rasmussen (C), Doug Diny (VC) Becky McElhaney, Lou Larson, Chad Henke

Others Present: Mayor Rosenberg, Matt Barnes, Jeremy Kopp, Tegan Troutner, Todd Beaten, Tracy Rieger, William Hebert, Kody Hart

Noting the presence of a quorum, Chairperson Rasmussen called the meeting to order at 5:15 P.M.

**Discussion and possible action on amending Wausau Municipal Code Title 19, plumbing code.**

Motion by Larson, seconded by McElhaney, to approve. Motion carried 5-0.

DRAFT



## Memorandum

From: William Hebert, Chief Inspector/Zoning Administrator  
To: Public Health and Safety  
Date: January 12, 2023  
Subject: WMC Title 19 - Plumbing Code Amendments

Staff is recommending a few changes to the plumbing code. Wausau has become a delegated agent for Department of Safety and Professional Services (DPS). This allows our staff to review commercial plumbing plans locally.

Some of the proposed changes include:

1. Removal of registration of plumbers. Plumbers are licensed through the state and DPS provides online access to credentials.
2. We have incorporated language for plan review submittals. We are requesting plan review for 10 or more fixtures in a public building.
3. Several other minor changes to comply with our policies and permit procedures.

Public Health and Safety will review the changes and make a recommendation to council.

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE HUMAN RESOURCES COMMITTEE</b>	
Reclassing the Admin I position in Public Works to Admin II.	
Committee Action:   Human Resources Committee Approved 5-0 Finance Committee Approved 5-0	
Fiscal Impact:	
<b>File Number:</b> 24-0212	<b>Date Introduced:</b> February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	<i>Included in Budget:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount</i> <i>Annual Retirement</i>
	<i>TID Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS, The Human Resources Director is requesting the reclassification of the admin I position in Public Works be reclassified to admin II and;**

**WHEREAS,** the proposed position will unify the admin classifications in the public works department and;

**WHEREAS,** your Human Resources and Finance Committees reviewed and approved the reclassification of the Admin I to Admin II to the Salary grade of 20, min \$42078.40 midpoint \$51,750.40, max \$58,884.31 and;

**NOW THEREFORE BE IT RESOLVED** by the Common Council of the City of Wausau that the position of Admin I position in Public Works be reclassified to Admin II effective at the start of the next pay period following selection as approved by this resolution.

Approved:

---

Kate Rosenberg, Mayor



DRAFT

**CITY OF WAUSAU JOINT HUMAN RESOURCES COMMITTEE  
and WAUSAU WATER WORK COMMISSION  
MINUTES OF OPEN SESSION**

DATE/TIME: January 8, at 4:45 p.m.

LOCATION: City Hall (407 Grant Street) – Council Chambers

HUMAN RESOURCES COMMITTEE MEMBERS PRESENT: Becky McElhane (C), Gary Gisselman,  
Dawn Herbst, Tom Killian, Michael Martens

WAUSAU WATER WORKS COMMISSION MEMBERS PRESENT: Katie Rosenberg (President), Dawn  
Herbst, Jim Force, Joe Gehin, John Robinson

MEMBERS ABSENT:

Also Present: J. Henderson, E. Lindman

The joint meeting of the Human Resources Committee and Wausau Water Works Commission was called to order by McElhane and Rosenberg.

**Discussion and Possible Action Reclassifying DPW Administrative Assistant I to Administrative Assistant II.**

Henderson explained that this position was overlooked in 2023 when he reclassified the other Administrative Assistant I positions to Administrative Assistant II due to the duties being so similar.

Motion by Herbst to reclassify the DPW Administrative Assistant I to Administrative Assistant II.  
Second by Killian. All ayes. Motion passed 5-0.

## **FINANCE COMMITTEE**

Date and Time: Tuesday, January 23, 2024, at 5:15 P.M., Council Chambers

Members Present: Lisa Rasmussen (C), Michael Martens (VC), Sarah Watson, Doug Diny, Carol Lukens

Others Present: Mayor Rosenberg, MaryAnne Groat, Matthew Barnes, Todd Beaten, Jeremy Kopp, Justin Pluess, Anne Jacobson, Rick Rubow, Eric Lindman, Dustin Kraege, Soloman King, Liz Brodek, Andrew Lynch, Randy Fifrick, James Henderson, Kody Hart, Alder Gisselman

Noting the presence of a quorum, Chairperson Rasmussen called the meeting to order at 5:15 P.M.

### **Discussion and possible action for a request for reclassification of Admin I in the Department of Public Works to Admin II.**

Motion by Diny, seconded by Martens, to approve. Motion carried 5-0.

DRAFT

### Financial Impact of Reclasses

Kristy Stoerzer	Admin I DPW	Admin II DPW	21	8	20	8	47,907.40	\$	51,750.40	\$	3,848.00
-----------------	-------------	--------------	----	---	----	---	-----------	----	-----------	----	----------

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE HUMAN RESOURCES COMMITTEE</b>	
Approving amendment to the Employee Handbook Section 5.17 – Standby Pay.	
Committee Action: Human Resources Committee Approved 5-0 Finance Committee Approved 5-0	
Fiscal Impact: None	
<b>File Number:</b> 24-0213	<b>Date Introduced:</b> February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	<i>Included in Budget:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/> <i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, the City of Wausau’s Employee Handbook is intended to provide City of Wausau employees with convenient access to the operating policies and practices of the City,

**WHEREAS**, the City of Wausau is dedicated to maintaining up-to-date and accurate policies and procedures,

**WHEREAS**, your Human Resources Committee has reviewed and approved the recommendation to amend language to the Employee Handbook to clarify the City’s policies,

**WHEREAS**, The Standby Pay Policy in the Employee Handbook, 5.17 needs to be modified to include one Fleet technician to the list of positions for standby pay

**BE IT RESOLVED** by the Common Council of the City of Wausau that the Employee Handbook Sections 5.17 Standby Pay be amended, as specified above and in supporting documents, upon action of this Council.

Approved:

\_\_\_\_\_  
Kate Rosenberg, Mayor

DRAFT

**CITY OF WAUSAU JOINT HUMAN RESOURCES COMMITTEE  
and WAUSAU WATER WORK COMMISSION  
MINUTES OF OPEN SESSION**

DATE/TIME: January 8, at 4:45 p.m.

LOCATION: City Hall (407 Grant Street) – Council Chambers

HUMAN RESOURCES COMMITTEE MEMBERS PRESENT: Becky McElhane (C), Gary Gisselman,  
Dawn Herbst, Tom Killian, Michael Martens

WAUSAU WATER WORKS COMMISSION MEMBERS PRESENT: Katie Rosenberg (President), Dawn  
Herbst, Jim Force, Joe Gehin, John Robinson

MEMBERS ABSENT:

Also Present: J. Henderson, E. Lindman

The joint meeting of the Human Resources Committee and Wausau Water Works Commission was called to order by McElhane and Rosenberg.

**Discussion and Possible Action Amending Employee Handbook Section 5.17 to Include Standby Pay for Fleet Technician Position.**

Henderson said that the department has been providing the Fleet Technician position standby pay for the last few months and this would add the position to the handbook.

Motion by Gisselman to approve amending the Employee Handbook Section 5.17 to include standby pay for the Fleet Technician position. Second by Herbst. All ayes. Motion passed 5-0.

## **FINANCE COMMITTEE**

Date and Time: Tuesday, January 23, 2024, at 5:15 P.M., Council Chambers

Members Present: Lisa Rasmussen (C), Michael Martens (VC), Sarah Watson, Doug Diny, Carol Lukens

Others Present: Mayor Rosenberg, MaryAnne Groat, Matthew Barnes, Todd Beaten, Jeremy Kopp, Justin Pluess, Anne Jacobson, Rick Rubow, Eric Lindman, Dustin Kraege, Solomon King, Liz Brodek, Andrew Lynch, Randy Fifrick, James Henderson, Kody Hart, Alder Gisselman

Noting the presence of a quorum, Chairperson Rasmussen called the meeting to order at 5:15 P.M.

### **Discussion and possible action to an amendment to policy 5.17 to include standby pay to Fleet technician.**

Diny questioned if this had come before the committee previously. It had been taken up before but was sent to the Human Resources Committee for further review and that committee approved it.

Motion by Diny, seconded by Watson, to approve. Motion carried 5-0.

DRAFT



**CITY OF WAUSAU SUPPLEMENTAL BUDGET REQUEST FORM**

Department: Public Works-Motor Pool

Project/Spending Description: On-Call (Standby) Expenses

Ongoing Project                       Onetime Purchase/Expense

Department Priority:  Critical             High             Medium             Low

**REQUESTED SUPPLEMENTAL FUNDING**

EXPENSES	DESCRIPTION	FTE	AMOUNT
Personnel Services	On-call wages		\$11,960.00
Contractual Services			
Supplies and Expenses	Mobile phone		\$510.60
Building Materials			
Fixed Charges			
Capital Outlay			
<b>Total</b>			<b>\$12,470.60</b>

REVENUES	DESCRIPTION	FTE	AMOUNT
Grants and Aids			
Public Charges for Services			
Other Revenue			
<b>Total</b>			

**PURPOSE/DESCRIPTION OF REQUEST:**

Funding for a technician to be on-call, allowing service to departments on the off-hours and weekends in case of equipment failure or breakdown.

\$11,960.00 per year for standby pay (\$230.00 per week)  
 \$510.60 per year for an additional phone (\$42.55 per month)

**SERVICE IMPLICATIONS:**

This on-call technician would be on a rotating schedule between other technicians. This would provide a phone number for departments to call in case of equipment failure or breakdown. The technician would come into work on these off-hours if needed and allow the department to continue their operations by permanent or temporary repair until more resources are available during regular working hours.

**OUTCOMES/REVIEW: *(HOW WILL YOU MEASURE SUCCESS OF PROJECT)***

Fleet would be able to communicate with other departments if this service is helpful to their off-hour operations. This would potentially keep departments in full operation during the off-hours, preventing the need to reduce services to the community. This would also give an opportunity for the departments to have a reduction in stress when facing equipment failures. A tech would be able to bring equipment back to operation with a reduction in down time.

**IMPLEMENTATION TIMETABLE:**

This service would be available immediately following the approval of the budget request and the approval of the changes to the employee handbook.



### **5.17 – Standby Pay**

Two employees with the Water Utility and two employees with the Wastewater Utility will be designated to standby on a weekly basis to keep the system operational by responding to emergent situations and/or to reduce or mitigate risk resulting from potential failures within sewer collection and water distribution system. In addition, one Electrician, one Fleet Technician and one Senior Equipment Operator will be designated to standby on a weekly basis to respond to emergency situations. Each department may add one additional employee per division to the Standby schedule when necessary. This exception shall last no more than 3 months, unless extended at the recommendation of the Department Director and approved by the Finance and Human Resources Director.

Non-exempt employees on standby status will be compensated at a rate of \$230 for the week assigned for standby status; if an employee does not serve on standby for the entire week, he or she will receive a daily portion of the flat rate ( $\$230/7$ ) for days spent on standby. Standby employees, when called in to work, will still receive the 2 hour minimum for being called in to work. While in standby, the designated employee(s) will be present at a specified location or available to be contacted and will be prepared to report immediately for work if the need arises. Standby status is not concurrent with work time. Standby status begins at the end of the normally scheduled work day and ends at the beginning of the following normally scheduled work day. Standby assignments will be in increments of one week, beginning at close of business on the designated day and end at the beginning of the work day one week later.

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE FINANCE COMMITTEE</b>	
Approving Small Government Enterprise Agreement with Environmental Systems Research Institute, Inc. (Esri).	
Committee Action:	Approved 5-0
Fiscal Impact:	\$40,900 each year for a period of three years
<b>File Number:</b>	21-0311
<b>Date Introduced:</b>	February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>	
<b>COSTS</b>	<i>Budget Neutral</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	<i>Included in Budget:</i> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <i>Budget Source: CCITC</i>
	<i>One-time Costs:</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>Amount:</i>
	<i>Recurring Costs:</i> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <i>Amount: \$40,900 each year for three years</i>
<b>SOURCE</b>	<i>Fee Financed:</i> Yes <input type="checkbox"/> No <input type="checkbox"/> <i>Amount:</i>
	<i>Grant Financed:</i> Yes <input type="checkbox"/> No <input type="checkbox"/> <i>Amount:</i>
	<i>Debt Financed:</i> Yes <input type="checkbox"/> No <input type="checkbox"/> <i>Amount</i> <i>Annual Retirement</i>
	<i>TID Financed:</i> Yes <input type="checkbox"/> No <input type="checkbox"/> <i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>

**RESOLUTION**

**WHEREAS**, on March 9, 2021, Council approved a three-year contract for GIS software with Environmental Systems Research Institute, Inc. (Esri); and

**WHEREAS**, the contract expires February 15, 2024 and the city wishes to enter into another three-year contract with Esri; and

**WHEREAS**, your Finance Committee, on February 13, 2024, recommended entering into a three-year contract.

**NOW THEREFORE, BE IT RESOLVED** by the Common Council of the City of Wausau that the proper City officials are hereby authorized to execute a three-year contract with Environmental Systems Research Institute, Inc. for GIS software.

Approved:

---

Katie Rosenberg, Mayor

## **FINANCE COMMITTEE**

Date and Time: Tuesday, January 23, 2024, at 5:15 P.M., Council Chambers

Members Present: Lisa Rasmussen (C), Michael Martens (VC), Sarah Watson, Doug Diny, Carol Lukens

Others Present: Mayor Rosenberg, MaryAnne Groat, Matthew Barnes, Todd Beaten, Jeremy Kopp, Justin Pluess, Anne Jacobson, Rick Rubow, Eric Lindman, Dustin Kraege, Solomon King, Liz Brodek, Andrew Lynch, Randy Fifrick, James Henderson, Kody Hart, Alder Gisselman

Noting the presence of a quorum, Chairperson Rasmussen called the meeting to order at 5:15 P.M.

### **Discussion and possible action on Small Government Enterprise Agreement with Environmental Systems Research Institute, Inc. (Esri).**

Motion by Martens, seconded by Diny, to approve. Motion carried 5-0.

DRAFT

Department of Public Works



Eric Lindman, P.E.  
Director of Public Works and Utilities

**TO:** Finance Committee  
**FROM:** Eric Lindman, P.E.  
Director of Public Works & Utilities  
**DATE:** January 23, 2024  
**SUBJECT:** GIS Esri SGEA Contract renewal – 3-year Contract

---

In 2021 the City moved to a Small Government Enterprise Agreement (SGEA) with ESRI as our GIS platform. This separated us from the contract we were previously sharing with the County. Pricing was slightly higher but it has allowed us to have access to many more features and to perform our updates and software upgrades to meet city needs without waiting on the county.

The city entered into the first 3-year contract in 2021 and this is the next 3-year term with the Esri SGEA.



September 18, 2023

Dan Kerntop  
City of Wausau  
407 Grant St  
Wausau, WI 54403-4737

Dear Dan,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

Small Government Enterprise Agreement

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

***"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."***

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri  
Attn: Customer Service SG-EA  
380 New York Street  
Redlands, CA 92373-8100

e-mail: [service@esri.com](mailto:service@esri.com)  
fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Angie Bramer



Environmental Systems Research Institute, Inc.  
 380 New York St  
 Redlands, CA 92373-8100  
 Phone: (909) 793-2853  
 DUNS Number: 06-313-4175 CAGE Code: 0AMS3

**Quotation # Q-492594**

Date: September 18, 2023

Customer # 221572 Contract #

City of Wausau  
 Public Works  
 407 Grant St  
 Wausau, WI 54403-4737

To expedite your order, please attach a copy of this quotation to your purchase order.  
 Quote is valid from: 9/18/2023 To: 12/17/2023

ATTENTION: Dan Kerntop  
 PHONE: 715-261-6757  
 EMAIL: dan.kerntop@ci.wausau.wi.us

Material	Qty	Term	Unit Price	Total
168178	1	Year 1	\$40,900.00	\$40,900.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				
168178	1	Year 2	\$40,900.00	\$40,900.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				
168178	1	Year 3	\$40,900.00	\$40,900.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				

Subtotal:	\$122,700.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
<b>Total:</b>	<b>\$122,700.00</b>

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

<b>For questions contact:</b> Angie Bramer	<b>Email:</b> abramer@esri.com	<b>Phone:</b> (909) 793-2853 x8378
---	-----------------------------------	---------------------------------------

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

BRAMERA

This offer is limited to the terms and conditions incorporated and attached herein.

Esri Use Only:  
 Cust. Name \_\_\_\_\_  
 Cust. # \_\_\_\_\_  
 PO # \_\_\_\_\_  
 Esri Agreement # \_\_\_\_\_



**SMALL ENTERPRISE AGREEMENT  
 COUNTY AND MUNICIPALITY GOVERNMENT  
 (E214-2)**

This Agreement is by and between the organization identified in the Quotation ("Customer") and Environmental Systems Research Institute, Inc. ("Esri").

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A  
 List of Products**

**Uncapped Quantities**

**Desktop Software and Extensions (Single Use)**

ArcGIS Desktop Advanced  
 ArcGIS Desktop Standard  
 ArcGIS Desktop Basic  
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst,  
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,  
 ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS  
 Schematics, ArcGIS Workflow Manager, ArcGIS Data  
 Reviewer

**Enterprise Software and Extensions**

ArcGIS Enterprise (Advanced and Standard)  
 ArcGIS Monitor  
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst,  
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,  
 ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS  
 Workflow Manager, ArcGIS Data Reviewer

**Enterprise Additional Capability Servers**

ArcGIS Image Server

**Developer Tools**

ArcGIS Runtime Standard  
 ArcGIS Runtime Analysis Extension

**Limited Quantities**

One (1) Professional subscription to ArcGIS Developer  
 Two (2) ArcGIS CityEngine Single Use Licenses  
 100 ArcGIS Online Viewers  
 100 ArcGIS Online Creators  
 17,500 ArcGIS Online Service Credits  
 100 ArcGIS Enterprise Creators  
 3 ArcGIS Insights in ArcGIS Enterprise  
 3 ArcGIS Insights in ArcGIS Online  
 10 ArcGIS Location Sharing for ArcGIS Enterprise  
 10 ArcGIS Location Sharing for ArcGIS Online  
 3 ArcGIS Parcel Fabric User Type Extensions (Enterprise)  
 3 ArcGIS Utility Network User Type Extensions (Enterprise)  
 3 ArcGIS Trace Network User Type Extensions (Enterprise)

**OTHER BENEFITS**

Number of Esri User Conference registrations provided annually	<b>3</b>
Number of Tier 1 Help Desk individuals authorized to call Esri	<b>3</b>
Maximum number of sets of backup media, if requested*	<b>2</b>
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

\*Additional sets of backup media may be purchased for a fee



Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("Ordering Document"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("Effective Date").

**Term of Agreement:** Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

\_\_\_\_\_ (Customer)

By: \_\_\_\_\_  
Authorized Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CUSTOMER CONTACT INFORMATION**

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Fax: \_\_\_\_\_

City, State, Postal Code: \_\_\_\_\_

E-mail: \_\_\_\_\_

Country: \_\_\_\_\_

Quotation Number (if applicable): \_\_\_\_\_

## 1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

**"Case"** means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

**"Deploy", "Deployed" and "Deployment"** mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

**"Fee"** means the fee set forth in the Quotation.

**"Maintenance"** means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

**"Master Agreement"** means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

**"Product(s)"** means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

**"Quotation"** means the offer letter and quotation provided separately to Customer.

**"Technical Support"** means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

**"Tier 1 Help Desk"** means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

**"Tier 1 Support"** means the Technical Support provided by the Tier 1 Help Desk.

**"Tier 2 Support"** means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

## 2.0—ADDITIONAL GRANT OF LICENSE

**2.1 Grant of License.** Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

**2.2 Consultant Access.** Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

## 3.0—TERM, TERMINATION, AND EXPIRATION

**3.1 Term.** This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

**3.2 No Use upon Agreement Expiration or Termination.** All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

**3.3 Termination for a Material Breach.** Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

**3.4 Termination for Lack of Funds.** For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

**3.5 Follow-on Term.** If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

#### 4.0—PRODUCT UPDATES

**4.1 Future Updates.** Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

**4.2 Product Life Cycle.** During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

#### 5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

##### a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

##### b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

## 6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

## 7.0—ADMINISTRATIVE REQUIREMENTS

**7.1 OEM Licenses.** Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

**7.2 Annual Report of Deployments.** At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

## 8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

### 8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.
  - c. Esri's federal ID number is 95-2775-732.
  - d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.
- 8.2 Order Requirements.** Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.
- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
  - b. The following information will be included in each Ordering Document:
    - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
    - (2) Order number
    - (3) Applicable annual payment due

## **9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES**

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "Ownership Change"). There will be no decrease in Fee as a result of any Ownership Change.

**9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.

**9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.

**9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE ECONOMIC DEVELOPMENT COMMITTEE</b>	
Approving Consent to Transfer, Waiver of Right of First Refusal, Termination of Recorded Deed Restrictions and Recording Set of Revised Deed Restrictions for 6235 and 6335 Packer Drive (Vandy Enterprises, LLC).	
Committee Action:	Approved 5-0
Fiscal Impact:	None
<b>File Number:</b>	06-0119
<b>Date Introduced:</b>	February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue <input type="checkbox"/> Debt <input type="checkbox"/> Funds on Hand <input type="checkbox"/> Interfund Loan <input type="checkbox"/></i>		

**RESOLUTION**

**WHEREAS**, Vandy Enterprises, LLC (“Vandy”) has received an offer to purchase the property at 6235 and 6335 Packer Drive in the Wausau Business Campus from ATCRH Wausau, LLC (“ATCRH”) for \$5,700,000.00; and

**WHEREAS**, pursuant to recorded deed restrictions on the property, Vandy seeks the City’s consent to transfer the property and waive its right to exercise its option to repurchase the property as set forth in the offer, on the same terms and conditions specified in the offer; and

**WHEREAS**, your Economic Development Committee, at their February 6, 2024 meeting, discussed and recommended transferring the property and waiving the right to repurchase the named property; and

**WHEREAS**, your Economic Development Committee directed staff to work with the seller’s attorney to finalize the deed restrictions for the property.

**NOW, THEREFORE, BE IT RESOLVED** by the Common Council of the City of Wausau that the City hereby consents to the transfer of the property to ATCRH or its assigns, waives its right to repurchase the property at 6235 and 6335 Packer Drive on the same terms and conditions contained in the present offer and release and terminate all existing deed restrictions and approve the proposed set of revised deed restrictions contained in the attached Termination and Deed Restrictions for Wausau West Business and Industrial Park.

**BE IT FURTHER RESOLVED** by the Common Council of the City of Wausau that the Mayor and Clerk are hereby authorized to execute the Termination and Deed Restrictions for Wausau West Business and Industrial Park and all other documents reasonably necessary to consummate the transaction contemplated by the accepted Offer.

Approved:

---

Katie Rosenberg, Mayor

# MINUTES

## Economic Development Committee Meeting

**Date / Time:** Tuesday, February 6, 2024, at 5:15 P.M. | **Meeting called to order by** Watson at 5:15 P.M.

### In Attendance

**Members Present:** Sarah Watson (C), Tom Kilian, Lisa Rasmussen, Carol Lukens, Chad Henke

**Others Present:** Liz Brodek, Randy Fifrick, Tammy Stratz, Atty. Anne Jacobson, Blake Opal-Wahoske (River District), Nick Patterson (T-Wall), Atty. Matt Rowe, Bruce Bohlken, Tom Neal, Alder Gary Gisselman, Alder Doug Diny

*In accordance with Chapter 19, Wisc. Statutes, notice of this meeting was posted and sent to the Daily Herald in the proper manner.*

**Agenda Item 6** – Discussion and possible action on Consent to Transfer, Waiver of Right of First Refusal, Termination of Recorded Deed Restrictions and Recording Set of Revised Deed Restrictions for 6235 and 6335 Packer Drive (Fifrick, Atty. Jacobson, Atty. Rowe)

Fifrick explained several requests have been received regarding the right of first refusal for certain properties, and addressing the requests isn't straightforward. He noted the language in the agreements is quite convoluted and has caused considerable back-and-forth between staff and attorneys involved.

Fifrick recommended to waive the right of first refusal for properties noted and move forward. He explained that to continuously revise agreements furthers us from the standard deed restrictions, and each property seems to require its own set of unique restrictions which is unfavorable because revisions consume a lot of staff time and resources of other parties involved.

Jacobson noted a correction to the purchase price to \$5.7 million, not \$6.7 million. She explained the discrepancy doesn't change the recommendation.

Rasmussen commented it's the city's long-term goal to establish a standardized set of deed restrictions; however, the unique circumstances surrounding existing properties, such as the one dating back to the late 1960s, present challenges in adopting a one-size-fits-all approach. She said while standardization is desirable, flexibility is crucial when dealing with properties that have been in use for decades.

*Rasmussen recommended waving the right of first refusal and proceeding with the deed restrictions tailored to this specific circumstance, given the complexities involved. Seconded by Alder Lukens.*

Atty. Rowe commented that he recognizes the desire to adopt standard deed restrictions, but it can present difficulties. He noted it would be different if the business park was just being developed but there are existing businesses dating back decades, like the subject property. He noted that he presented the proposed modernized deed restrictions to the party, and they discovered an issue because they said trucks couldn't be parked but they are a truck dealership, illustrating complexities of standardized deed restrictions for properties already in use. He recommended waiving the right of first refusal and said he thinks the revised deed restrictions could work and modernize it so there aren't two sets of restrictions that date back decades.

Atty. Jacobson requested to clarify Rasmussen's motion and asked if her motion was solely to approve the right of first refusal or did her motion include termination of the old restrictions.

Rasmussen responded her intention was to waive the right of first refusal but if the deed restrictions are ready to go, she was amenable to approving both. She noted consistency with standard deed restrictions is important, ensuring practicality concerning existing land use is equally important.

*Rasmussen clarified her motion as waiving the first right of refusal today and include a directive to have staff review the deed restriction to ensure land use is accommodated without rewriting the entire document. Lukens agreed to this clarification. **Motion passes unanimously 5-0.***



**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE PUBLIC HEALTH &amp; SAFETY COMMITTEE</b>	
Approving or Denying Various Licenses as Indicated.	
Committee Action:   Approved 4-0	
Fiscal Impact:       None	
<b>File Number:</b> 24-0108	<b>Date Introduced:</b> February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>				
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>	
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>	
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>	
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>	
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>	
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i>	<i>Annual Retirement</i>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>	
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>			

**RESOLUTION**

**WHEREAS**, your Public Health and Safety Committee considered certain license applications at its January 22, 2024, meeting, and has made recommendations that are attached hereto in the meeting minutes and recommends these actions to the Council for its approval, now therefore

**BE IT RESOLVED** by the Common Council of the City of Wausau that the City Clerk be hereby authorized to issue the licenses on the attached list, incorporated as part of this resolution, according to recommendations made by the Public Health & Safety Committee and upon successful completion and acceptable proof that all applicable state and municipal regulations and requirements have been met by the applicants.

Approved:

\_\_\_\_\_  
Katie Rosenberg, Mayor



## Council Date 02/13/2024

License ID	License Typ	Name	Address	Details	Business	Begin Dt	End Dt	Police	PHS	Council
194254	9061 - "Class A" Beer & Liquor	,	1626 OAK ST LA CROSSE WI 54602		KWIK TRIP #1723	01/19/2024	06/30/2024	Yes	Yes	
194267	9063 - Class "B" Beer	HOELTER, LEAH	943 SINGLE AVE WAUSAU WI 54403		GLASS & GRAIN HOUSE	01/31/2024	06/30/2024	Yes	Yes	
194250	9075 - Cigarette	,	1626 OAK ST LA CROSSE WI 54602		KWIK TRIP #1723	01/23/2024	06/30/2024			Yes
194052	9080 - Public Transport Driver New	JOHNSON, BRANDON	907 WESTERN AVE MOSINEE WI 54455		NORTHWOODS CAB	01/05/2024	06/30/2024	Yes	Yes	

**Total Licenses**

**PUBLIC HEALTH & SAFETY COMMITTEE**

Date and Time: Monday, January 22, 2023, at 5:00 P.M., Council Chambers

Members Present: Lisa Rasmussen (C), Doug Diny (VC) Becky McElhaney, Lou Larson, Chad Henke

Others Present: Mayor Rosenberg, Matt Barnes, Jeremy Kopp, Tegan Troutner, Todd Beaten, Tracy Rieger, William Hebert, Kody Hart

Noting the presence of a quorum, Chairperson Rasmussen called the meeting to order at 5:15 P.M.

**Consider approval or denial of various license applications.**

Motion by McElhaney, seconded by Diny, to approve or deny license applications as recommended by staff. Motion carried 5-0.

DRAFT



---

Kody Hart, Deputy City Clerk

---

TEL: (715) 261-6616  
FAX: (715) 261-6626

TO: Public Health & Safety Committee

FROM: Kody Hart, Deputy City Clerk

RE: Approve or deny various licenses as indicated on the attached summary report of all applications received.

DATE: January 22, 2024

Applications as listed have or will have a background check run by staff and reviewed by the Police Chief or a designee. Applications marked pending will have a status update at the meeting. In accordance with city ordinance, all permits approved are held for debts owed to the city until the debt is paid in full.

#### STAFF RECOMMENDATIONS

Approve or deny as indicated on the summary report attached, including those that may be introduced at the meeting. Further summaries on staff recommendations are outlined below.

1. **Approval Recommendation – Class “B” Beer License for Glass & Grain House** located at 1702 N. 6<sup>th</sup> St., Suite B, license applicant Glass & Grain House LLC, owners Leah and Erich Hoelter. This is a new establishment.
2. **Approval Recommendation – “Class A” Beer & Liquor and Cigarette License for Kwik Trip #1723** located at 207 Central Bridge St., license applicant Kwik Trip Inc., agent Rebecca Bluhm. This is a new establishment.
3. **Approval Recommendation – Temporary “Class B” (Picnic) License for Holy Name of Jesus Parish** located at 1104 S. 9<sup>th</sup> Ave., license applicant Shaun Eades. This is for a Mardi Gras Fundraiser at the premise basement on February 10, 2024, from 5:00 to 8:00 P.M.

**CONFIRMATION OF MAYOR'S APPOINTMENTS**

to Boards, Commissions and Committees: *Business Improvement District Board*

**File Number:** 24-0202 **Date Introduced:** February 13, 2024

**Business Improvement District Board**

Mary Gallagher 1	402 S. 2nd Avenue	Term Exp 12/31/2025	773-732-1674
Mark McKinley 1	408 N. 3rd Street – Ste. 202	Term Exp 12/31/2025	715-581-6678
Robb Shepherd #2	3406 Swallow Ln	Term Exp 12/31/2025	715-845-7969
Rebecca Bearjar #2	227822 Nuthatch Ln	Term Exp 12/31/2025	608-217-3060
Mark Craig #4	300 N 3rd St Ste 207	Term Exp 12/31/2025	715-340-3077

- (N) Individual is filling the unexpired term of a former member
- (1) Individual is in their own 1st full term
- (#) Designates the term number appointed to

Approved:

---

Katie Rosenberg, Mayor



## MEMORANDUM

DATE: February 8, 2024  
TO: Kody Hart, Deputy City Clerk  
FROM: Katie Rosenberg  
RE: Re-appointments to the Business Improvement District Board

Please note that I will be re-appointing the following individuals to the Business Improvement District Board. Please add this to the City Council Agenda packet for the meeting scheduled for Tuesday, February 13, 2024.

If you have any questions, feel free to call or email. Thank you.

### **Business Improvement District Board**

Mary Gallagher (Reappointment - 1)  
The Milk Merchant  
402 S. 2nd Avenue  
Wausau, WI 54401  
773-732-1674 (cell)  
[Mary@themilkmerchant.com](mailto:Mary@themilkmerchant.com)  
Term expires: 12/31/2025

Mark McKinley (Reappointment - 1)  
Val Kryshak Properties, LLC  
408 N. 3<sup>rd</sup> Street – Suite 202  
Wausau, WI 54403  
715-581-6678  
[4markmckinley@gmail.com](mailto:4markmckinley@gmail.com)  
Term expires: 12/31/2025

Robb Shepherd (Reappointment – 3)  
Shepherd & Schaller  
3406 Swallow Ln  
Wausau WI 54401  
715-845-7969  
[robb@shepssports.com](mailto:robb@shepssports.com)  
Term expires: 12/31/2025



---

Office of the Mayor  
Katie Rosenberg

---

TEL: (715) 261-6800  
FAX: (715) 261-6808

Rebecca Bearjar (Reappointment – 2)  
Katzenbarkers  
227822 Nuthatch Ln  
Wausau WI 54401  
608-217-3060  
[rbearjar@gmail.com](mailto:rbearjar@gmail.com)  
Term expires: 12/31/2025

Mark Craig (Reappointment – 5)  
Compass Properties  
300 N 3<sup>rd</sup> St Ste 207  
Wausau WI 54403  
715-340-3077  
[Mark@compassproperties.com](mailto:Mark@compassproperties.com)

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

**RESOLUTION OF THE PUBLIC HEALTH AND SAFETY COMMITTEE**

To consider the conceptual idea of partnering with CW Solutions to operate a tailored, two-phase transitional housing pilot program in Wausau.

Committee Action:       Approved 5-0

Fiscal Impact:           None

File Number:             24-0211

Date Introduced:       February 13, 2024

**FISCAL IMPACT SUMMARY**

<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount</i> <i>Annual Retirement</i>
	<i>TID Financed:</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>			

**RESOLUTION**

**WHEREAS**, at the Public Health and Safety Committee Meeting held on January 22, 2024, the Committee learned about and discussed the conceptual proposal presentation by CW Solutions, Wausau Police Chief Barnes, and Community Outreach Specialist Tracy Rieger that addressed a potential solution in an identified service gap for transitional living case management serving the unhoused population; and

**WHEREAS**, the Committee discussed potential ways to fund such a program such as through grants, funding requests, partnerships with other organizations; and

**WHEREAS**, the Committee believes the Common Council should have an opportunity to discuss and consider the concept proposed prior to recommending the proposal be sent to the Finance Committee; and

**WHEREAS**, the Common Council, having discussed the aforementioned proposal, believe it is a concept that deserves further consideration.

**NOW THEREFORE, BE IT RESOLVED**, by the Common Council of the City of Wausau that the conceptual proposal to address an identified service gap for transitional living case management serving the unhoused population be sent to the Finance Committee for further discussion on potential funding



sources for the aforementioned proposal.

Approved:

---

Katie Rosenberg, Mayor

**PUBLIC HEALTH & SAFETY COMMITTEE**

Date and Time: Monday, January 22, 2023, at 5:00 P.M., Council Chambers

Members Present: Lisa Rasmussen (C), Doug Diny (VC) Becky McElhaney, Lou Larson, Chad Henke

Others Present: Mayor Rosenberg, Matt Barnes, Jeremy Kopp, Tegan Troutner, Todd Beaten, Tracy Rieger, William Hebert, Kody Hart

Noting the presence of a quorum, Chairperson Rasmussen called the meeting to order at 5:15 P.M.

**Discussion and possible action on conceptual proposal presentation to address identified service gap for transitional living case management serving the unhoused population.**

Rasmussen suggested sending a recommendation of this proposed program to the Finance Committee to seek financing options.

Larson suggested sending a recommendation to the full Common Council because of the cost associated with the proposed program.

Motion by Larson, seconded by Diny, to forward the proposal to the Common Council for further review. Motion carried 5-0.

DRAFT

# Wausau Transitional Housing Pilot Program Proposal

## Program Overview and Target Population

CW Solutions proposes to operate a tailored, two-phase transitional housing pilot program in Wausau, WI in collaboration with local agencies. This program will not provide emergency housing or emergency shelter, as there are other community resources available to meet immediate housing needs. This program is designed for individuals experiencing one or more of the following increased barriers to obtaining and maintaining housing, and therefore cannot currently be rapidly re-housed through an existing agency or program:

- Significant period of time unhoused
- Eviction history
- Justice Involvement
- Mental health
- Sobriety
- Others as identified

A Readiness Assessment Tool will be utilized by the Wausau Police Department's Community Outreach Specialist to help determine if potential program participants are capable, committed, and willing to engage in all services and adhere to program policies as outlined in the program handbook. This assessment will begin to support participants and program staff in identifying skills and goals individuals hope to achieve through program participation. Once a potential participant has been identified, their assessment results will be presented to a small committee to assess their eligibility, goals, and readiness for the program.

**Phase One:** This program will initially have 4-8 units available to support literally unhoused female-presenting, single adults in the city of Wausau in Phase One. Each program participant will live in a separate, single unit apartment at the scatter-site adjacent program location. CW Solutions will serve as the leaseholder and the program will cover the cost of the security deposit, monthly rent, utilities, and basic home furnishing costs for program participants in Phase One. Due to the barriers program participants experience, wraparound intensive support will be provided for 3-12 months. Each participant will receive tailored case management, as well as other program and community wraparound services to address their increased barriers, program goals, and skills necessary to successfully fulfill their role as a tenant when they transition into Phase Two.

**Phase Two:** When program participants are ready to transition to their own housing with case management support, they will transition to Phase Two of the program. When preparing for the transition, they will apply for an apartment – outside of the 4-8 units reserved for Phase One program participants, but at the scatter-site adjacent location if units are available. If approved, they will become the lease holder of their own unit. While they will be responsible for all unit costs, other community resources and program co-enrollments will be leveraged for support services and additional general case management and support needs.

*Upon future evaluation of this pilot program, this two-phase transitional housing model could be expanded to increase the number of units – and therefore the number of participants served – and could extend the target population to male-presenting unhoused individuals.*

## Case Management and Intervention Model

Once program participants are enrolled, they will engage in a case management meeting with program staff to complete an initial assessment to identify strengths, challenges, relational-supports and housing-related goals. The assessment will leverage participants' strengths, values, and voice to identify their case management needs, as well as areas of support and growth for their time in the program. They also will

review a participant handbook which will outline program goals, expectations, and policies for the two program phases, including guest and pet guidelines, program engagement levels and expectations, support service provisions, monitoring and safety procedures, and program termination parameters. These policies will be reviewed regularly with participants.

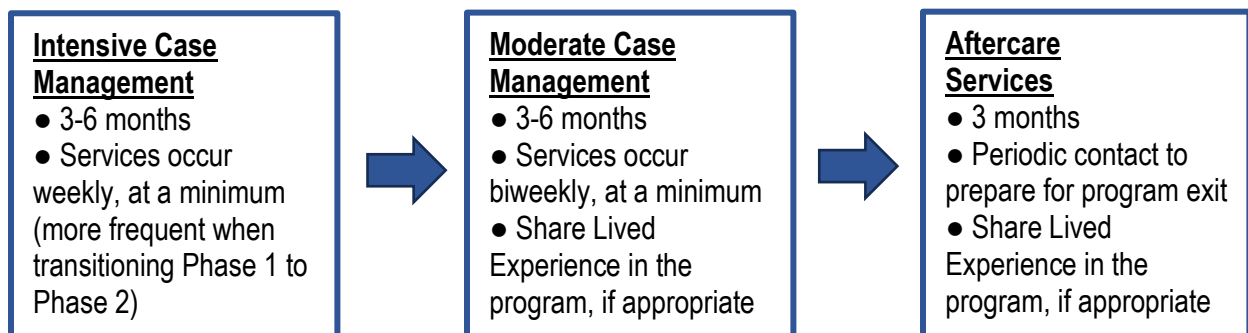
While it is expected that participants will make progress toward their goals, we recognize that each person's journey to stable housing may not be linear. Program staff will work with participants to identify individualized engagement and progress expectations, while communicating and demonstrating value and our belief that they will be successful. Safety for all program participants is imperative to the success of this program as participants must have a safe space to be successful in their growth, therefore an involuntary termination policy will exist to address unsafe and extreme behaviors that warrant immediate program exit.

Participants will benefit from structured, intentional transitional housing programming in both phases. Intensive case management techniques will support participants in addressing and navigating their trauma and identified challenge(s) while building skills, connections, resources, and capacity to learn or re-learn a sustainable housing lifestyle to bridge from transitional to independent housing, including:

- Communication and interpersonal skills, problem-solving and decision-making;
- Self-regulation, conflict resolution, and other specific needs;
- Daily living skills: personal care, household tasks, financial management, transportation, shopping, accessing community resources and services, other specific daily living needs;
- Education and information resources about mental health and/or substance abuse issues;
- Managing and coping with mental health and/or substance abuse issues;
- Social and emotional support for dealing with mental health and/or substance abuse issues;
- Tenant rights and responsibilities;
- Employment and training skills, when ready to seek employment;
- Connection to peer support and other positive relationships.

For at least the first month of Phase One, individual case management services and group activities will occur at minimum, daily. The frequency of services will be tailored to participant needs throughout Phase One, decreasing in frequency and intensity over time and as progress is made.

Participants are encouraged to engage in Phase Two for a minimum of one year but can remain in this phase for a maximum of two years. Phase Two will follow the same case management model progression that CW Solutions has used since 2021 with housing programs:



## Community Wraparound Teams

As noted above, additional services will be provided through co-enrollment opportunities with other local programs and wraparound services. While participants may have engaged in services with other agencies in the past, their increased barriers have likely limited their ability to access and participate in programming. Providing targeted, wraparound intensive services through this transitional housing program will mitigate many of these barriers and foster a foundation for successful program engagement in both this transitional housing program and other wraparound community services.

We anticipate most participants will co-enroll with the FoodShare Employment and Training (FSET) Program that CW Solutions operates. We will also seek collaboration with financial institutions, other human service agencies, and local community resources to provide many onsite and offsite wraparound services to program participants.

## Staffing Summary

Paid program staff will be on site from 6am-10pm daily, including weekends and holidays. Additionally, participants will receive additional support through co-enrollments in CW Solutions' and other community programs.

Position	Staffing Time	Role & Responsibilities
Program Manager (1)	Full-time, salaried employee Shifts vary based upon needs	<ul style="list-style-type: none"> <li>▪ Manage program policies, budgets, overall programming.</li> <li>▪ Responsible for supervising <b>the program's daily</b> operations, including staff support and supervision.</li> <li>▪ Back-up staff in providing services.</li> <li>▪ Support community collaborations.</li> </ul>
Case Managers (2)	Full-time, weekday position Varying 8-hour Shifts* between 6am-10pm	<ul style="list-style-type: none"> <li>▪ Provide individual and group case management, activities, skill-building, and sessions.</li> <li>▪ Transport participants to appointments.</li> </ul>
Specialized Position (1)	Full-time, weekday position Varying 8-hour Shifts* between 6am-10pm	<ul style="list-style-type: none"> <li>▪ Provide individual and group case management.</li> <li>▪ Develop specialized curriculum, services, and sessions.</li> <li>▪ Transport participants to appointments.</li> </ul>
Weekend and Holiday Case Managers (Float)	Part-time, 2 staff working each scheduled day Varying Shifts* between 6am-10pm	<ul style="list-style-type: none"> <li>▪ Provide individual and group case management services, activities, skill-building, and sessions that ensure participants don't lose progress towards their goals on weekends and holidays.</li> </ul>

*\*Shifts will be split between the case managers and specialized position: 6am-2:30pm, 1:30pm-10pm, and a mid-day shift (approx. 9am-5:30pm or 10am-6:30pm). Shifts will be split between the weekend and holiday case managers: 6am-2:30pm and 1:30pm-10pm (but can be split into additional shifts, based on staffing needs).*

## Budget

The annual budget estimate, based upon five units for Phase One:

Item	Amount
Salary and Fringe	\$ 398,681.50
Mileage	\$ 3,600.00
Training	\$ 2,400.00
Cell Phone	\$ 3,300.00
Insurance	\$ 1,499.28
Audit	\$ 1,686.69
Office 365/Panda	\$ 3,880.00
Equipment/Furniture	\$ 11,150.00
Program Materials	\$ 3,600.00
Other Supplies	\$ 2,000.00
Facilities	\$ 14,688.00
Sub-total	\$ 446,485.47
Admin	\$ 44,648.55
Sub-Total	\$ 491,134.02
Rent (5 units)	\$ 54,000.00
Security Deposits (5)	\$ 9,000.00
Utilities (5 units)	\$ 6,000.00
Household (\$1,000/HH)	\$ 5,000.00
Transportation	\$ 3,000.00
Landlord mitigation – Phases 1 and 2	\$ 20,000.00
<b>Grand Total</b>	<b>\$ 588,134.02</b>

## Staffing Details

Position	Hourly Wage	Annual hours
Program Manager	\$31.67	2080
Case Manger 1	\$28.34	2080
Case Manager 2	\$28.34	2080
Peer Specialist	\$28.34	2080
Holiday/Weekend	\$32.00	912
Holiday/Weekend	\$32.00	912

<b>RESOLUTION OF THE ECONOMIC DEVELOPMENT COMMITTEE</b>	
Approving Addendum to Development Agreement with Foundry on 3 <sup>rd</sup> Ph 1, LLC.	
Committee Action:	Approved 4-1
Fiscal Impact:	None
<b>File Number:</b>	19-0921
<b>Date Introduced:</b>	February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

## RESOLUTION

**WHEREAS**, Common Council approved the terms of a Development Agreement with Foundry on 3<sup>rd</sup> Ph 1, LLC (“Developer”) to construct a mixed-use building on approximately 1.352 acres in downtown Wausau in September, 2022, and the Development Agreement was executed on September 28, 2022; and

**WHEREAS**, once Developer acquires the property, the parties intend to enter into a skywalk agreement with respect to a connection to a City parking lot to the south via a pedestrian skyway above the public right-of-way abutting the property and an easement agreement with respect to the City’s grant of an easement onto and over the public rights-of-way adjacent to the building for the purpose of establishing and maintaining multiple elevated balconies encroaching in the air space above such right-of-way; and

**WHEREAS**, the City and Developer agree to the form and substance of the Skywalk Agreement and Balcony Easement; and

**WHEREAS**, your Economic Development Committee, at their February 6, 2024 meeting, discussed and recommended approving an addendum to the Development Agreement adding the skywalk agreement and balcony easement.

**NOW, THEREFORE, BE IT RESOLVED** by the Common Council of the City of Wausau that the Addendum to Development Agreement with Foundry on 3<sup>rd</sup> Ph 1, LLC is hereby approved, and once the Developer acquires the property, the City and Developer enter into the skywalk agreement and

balcony easement substantially in the form attached hereto, and directs the proper city officials to execute said agreement and easement.

Approved:

---

Katie Rosenberg, Mayor



# MINUTES

## Economic Development Committee Meeting

---

**Date / Time:** Tuesday, February 6, 2024, at 5:15 P.M. | **Meeting called to order by** Watson at 5:15 P.M.

---

### In Attendance

---

**Members Present:** Sarah Watson (C), Tom Kilian, Lisa Rasmussen, Carol Lukens, Chad Henke

**Others Present:** Liz Brodek, Randy Fifrick, Tammy Stratz, Atty. Anne Jacobson, Blake Opal-Wahoske (River District), Nick Patterson (T-Wall), Atty. Matt Rowe, Bruce Bohlken, Tom Neal, Alder Gary Gisselman, Alder Doug Diny

*In accordance with Chapter 19, Wisc. Statutes, notice of this meeting was posted and sent to the Daily Herald in the proper manner.*

---

### Agenda Item 5 – Discussion and possible action on Addendum to Development Agreement with Foundry on 3rd Ph 1, LLC, including forms of Skywalk and Balcony Easements (Brodek, Nick Patterson, Atty. Jacobson)

---

Brodek noted the Phase 1 included a brief reference to a skyway that would be talked about later with the later being this meeting. Brodek noted the amendment is meant to include both the Skywalk agreement and the balcony easement agreement and details how T-Wall will construct the balcony. She explained the easement for the balcony is a form easement which is why there are blanks in the document and nothing will be filled out until T-Wall closes on the property. She noted both documents are written to take effect after they close on the property.

Rasmussen commented that they want to lay the groundwork to let the project take flight on time so having these items in place ahead of time is beneficial.

*Rasmussen motioned to approve, seconded by Henke. **Motion passed 4-1** with Kilian being the dissenting vote.*

**ADDENDUM TO  
DEVELOPMENT AGREEMENT  
(Foundry on 3<sup>rd</sup> Ph 1)**

**THIS ADDENDUM TO DEVELOPMENT AGREEMENT** (this “Addendum”) is made as of the \_\_\_\_ day of February, 2024 (the “Effective Date”), by and between the CITY OF WAUSAU, a Wisconsin municipal corporation (the “City”), and FOUNDRY ON 3RD PH 1, LLC, a Wisconsin limited liability company (“Developer”).

**RECITALS**

WHEREAS, the City and Developer entered into a certain Development Agreement with an effective date of September 28, 2022, as amended by that certain First Amendment to Development Agreement with an effective date of August 31, 2023 (the “Development Agreement”), with respect to certain real property in the City of Wausau, County of Marathon, State of Wisconsin, consisting of approximately 1.352 acres and being depicted and identified on Exhibit A attached to the Development Agreement; any capitalized term used in this Addendum but not defined herein shall have the meaning assigned to that term in the Development Agreement; and

WHEREAS, once Developer acquires the Property, the parties intend to enter into at least two agreements with respect to the Property: (i) pursuant to Section 2.e. of the Development Agreement, an agreement with respect to a connection to a City parking lot to the south via a pedestrian skyway above the public right of way abutting the Property (the “Skywalk Agreement”); and (ii) an easement agreement with respect to the City’s grant of an easement onto and over the public rights-of-way adjacent to the building for the purpose of establishing and maintaining, multiple elevated balconies encroaching in the air space above such rights of way (the “Balcony Easement”); and

WHEREAS, the parties have agreed to the form and substance of the Skywalk Agreement and Balcony Easement and desire to memorialize that agreement; and

WHEREAS, subject to the terms and conditions herein, the City and Developer desire to enter into this Addendum as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Addendum, the parties agree as follows:

1. Addenda to Development Agreement. The following are hereby added to the Development Agreement:

- a. The Skywalk Agreement attached hereto as **Exhibit D**.
- b. The Balcony Easement attached hereto as **Exhibit E**.

2. Agreement. The City and Developer hereby agree that, after Developer acquires the Property, the parties shall enter into: (a) the Skywalk Agreement substantially in the form of **Exhibit D** attached hereto and (b) the Balcony Easement substantially in the form of **Exhibit E** attached hereto; provided, however, that no uncured material default of Developer, or event which with the giving of notice or lapse of time or both would be a default of Developer, shall exist under the Development Agreement and Developer shall not be in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument with respect to the Project to which Developer is a party or an obligor.

3. Conditions Precedent to this Addendum. The effectiveness of this Addendum is conditioned upon the satisfaction of each and every one of the following conditions:

a. The City, through its City Council, shall have approved or authorized this Addendum and the transactions contemplated herein, and all the conditions to such approval shall have been satisfied.

b. No uncured material default of Developer, or event which with the giving of notice or lapse of time or both would be a default of Developer, shall exist under the Development Agreement. Developer shall not be in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument with respect to the Project to which Developer is a party or an obligor.

4. Reaffirmation of Development Agreement. The Development Agreement, as supplemented by this Addendum, remains in full force and effect, and all terms of the Development Agreement are hereby ratified and reaffirmed by Developer.

5. Representations and Warranties of Developer. Developer hereby represents and warrants to the City that:

a. After giving effect to this Addendum, all of the representations and warranties made by Developer in the Development Agreement are true and accurate in all material respects on the Effective Date of this Addendum, and no event of default under the Development Agreement has occurred and is continuing as of the Effective Date.

b. The making, execution and delivery of this Addendum, and performance of and compliance with the terms of the Development Agreement, as supplemented hereby, have been duly authorized by all necessary action of Developer. This Addendum is the valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

6. Miscellaneous. If any provision of this Addendum or the application thereof to any person or circumstance is or shall be deemed illegal, invalid or unenforceable, the remaining provisions of this Addendum shall remain in full force and effect and this Addendum shall be interpreted as if such illegal, invalid or unenforceable provision did not exist. This Addendum may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The parties agree that electronically scanned signatures shall be binding on all parties. This Addendum shall be governed in all respects by the laws of the State of Wisconsin.

*[Signature page follows.]*

IN WITNESS WHEREOF, the parties are signing this Addendum to Development Agreement as of the Effective Date in the introductory paragraph.

**DEVELOPER:**

FOUNDRY ON 3RD PH 1, LLC

By: \_\_\_\_\_  
Terrence R. Wall, President of  
T. Wall Enterprises Manager, LLC, its Manager

**THE CITY**

CITY OF WAUSAU

By: \_\_\_\_\_  
Katie Rosenberg, Mayor

Attest: \_\_\_\_\_  
Kaitlyn Bernarde, Clerk

**EXHIBIT D**

**Form of Skywalk Agreement**

[Attached.]

**SKYWALK EASEMENT  
AGREEMENT**

Document Number

Document Title

**THIS SKYWALK EASEMENT AGREEMENT** (this "Agreement") is made as of [\_\_\_\_\_] \_\_\_\_\_, 2024 (the "Effective Date"), by and between the **CITY OF WAUSAU**, a Wisconsin municipal corporation (the "City") and **FOUNDRY ON 3RD PH 1, LLC**, a Wisconsin limited liability company ("Developer").

**RECITALS**

A. The City is the owner of certain real property located in the City of Wausau, Wisconsin, being more particularly described in Exhibit A attached hereto (the "Parking Parcel"), on which is located a City parking ramp (the "Parking Ramp").

B. Developer is the owner of certain real property located in the City of Wausau, Wisconsin, being more particularly described in Exhibit B attached hereto (the "Developer Parcel"), on which Developer has constructed, or will construct, a mixed-use building (residential and commercial) (the "Building") pursuant to that certain Development Agreement (Foundry on 3rd Development) dated as of September 28, 2022, between the City and Developer, as amended from time to time (the "Development Agreement").

C. Pursuant to Section 2.e. of the Development Agreement, Developer desires to connect the Building to the Parking Ramp via a pedestrian skyway (the "Skywalk") above the public right of way that runs between the City Parcel and the Developer Parcel (the "ROW") as shown on Exhibit C attached hereto.

D. Developer desires that the Building and Parking Ramp be connected by the Skywalk and the City and Developer desire to enter into this Agreement in order to provide the necessary easements and waivers to allow the existence and use of the Skywalk on the terms and conditions herein.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Grant of Easements, Licenses, and Waivers.

(a) *Parking Ramp Easement.* The City hereby grants for the benefit of the Developer Parcel an exclusive easement on, over, across, under and through the portion of the Parking Ramp as shown on Exhibit D attached hereto (the "Parking Ramp Easement Area"). Such easement shall allow Developer to install, construct, maintain, inspect, alter, replace, protect, test, patrol, repair, reconstruct, remove or

Recording Area

Name and Return Address

Anne L. Jacobson, Esq.  
City of Wausau, City Attorney  
407 Grant Street  
Wausau, WI 54403

See Exhibit A

Parcel Identification Number (PIN)

abandon, and use, a connection between the Parking Ramp and the Skywalk (the "Parking Ramp Connection") in the Parking Ramp Easement Area (the "Parking Ramp Easement").

(b) *ROW Skywalk Encroachment Waiver.* The City hereby grants for the benefit of the Developer Parcel its consent to the use portions of the ROW labeled as the "ROW Anchor Encroachment Area" as shown on Exhibit E-1 attached hereto (the "ROW Anchor Encroachment Area") sufficient to allow Developer to install, construct, maintain, inspect, alter, replace, protect, test, patrol, repair, reconstruct, remove or abandon, and use, two anchors and piers and four columns necessary to support the Skywalk (the "ROW Anchor") in the ROW Anchor Encroachment Area. In addition, the City hereby grants for the benefit of the Developer Parcel its consent to use the portion of the airspace of the ROW labeled as the "ROW Skywalk Encroachment Area" as shown on Exhibit E-2 attached hereto (the "ROW Skywalk Encroachment Area") sufficient to allow Developer to install, construct, maintain, inspect, alter, replace, protect, test, patrol, repair, reconstruct, remove or abandon, and use, the Skywalk (the "ROW Skywalk") in the ROW Skywalk Encroachment Area. For the term of this Agreement, the City also hereby agrees to waive, release, and will not pursue any enforcement action for, any encroachment in the ROW by the Skywalk, or its anchors, piers, or columns.

(c) *Use of the Easements.* The easements and consents granted herein are for the benefit of the owner of the fee title to the Developer Parcel, or any portion of the Developer Parcel, and its agents, employees, customers, invitees, designees, licensees, tenants and occupants of the Developer Parcel or any portion thereof.

2. Grant of Temporary Construction Easement. The City also hereby grants Developer and its agents, employees and contractors the further right to use the Parking Parcel, the Parking Ramp and the ROW solely for construction purposes in connection with the construction of the Skywalk (the "Construction Easement"). The Construction Easement is for construction purposes only and shall terminate upon the earlier to occur of: (i) the date on which the Skywalk is completed; and (ii) the Project Completion Deadline as defined in the Development Agreement. Developer hereby agrees to restore, or cause to have restored, the Parking Parcel, the Parking Ramp, and the ROW as nearly as is reasonably possible, to the condition existing prior to such entry by Developer, its agents, employees or contractors. This restoration, however, does not apply to any trees, bushes, branches or roots which may reasonably interfere with Developer's construction of the Skywalk.

3. Construction, Maintenance, and Removal. During the term of this Agreement, Developer, at its sole cost and expense, shall be responsible for every aspect of the Skywalk including, but not limited to, its installation, construction, maintenance, alteration, replacement, protection, testing, patrolling, repairing, and reconstruction. Developer shall secure and pay for all necessary permits required by any governing body or agency having jurisdiction over the Skywalk. Developer understands and agrees that the City has no obligation whatsoever with respect to the Skywalk. If the City's Director of Public Works & Utilities or City Engineer determines in its reasonable discretion that maintenance needs to be done on the Skywalk, the City may (but without any obligation to do so), upon thirty (30) days' prior notice to Developer (except that no notice shall be required in the case of an emergency), enter the Skywalk and the Developer's Parcel and perform such maintenance or repair (including replacement, as needed) on behalf of Developer. In such case, Developer shall reimburse the City on demand for all costs incurred in performing such maintenance, repair or replacement, plus an administration fee equal to ten percent (10%) of such amount. If the Skywalk is ever removed for any reason, Developer shall be solely responsible for the cost and expense of such removal and Developer shall repair and restore the Parking Ramp and the Parking Parcel after such removal to the satisfaction of the City as determined by the City's Director of Public Works & Utilities or City Engineer.

4. Compliance with Laws. Developer and its agents, employees, customers, invitees, designees, licensees, and tenants shall at all times comply with all applicable laws, regulations, codes and

other legal requirements in connection with all activities on or about the Skywalk, the Parking Ramp, and the Parking Parcel.

5. Term/Termination. The term of this Agreement shall commence on the Effective Date of this Agreement, and except as otherwise herein specifically provided, shall continue until terminated as provided herein. Notwithstanding the foregoing, this Agreement may be terminated: (i) by the City in its sole discretion if Developer shall breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement, and such failure shall continue for sixty (60) days following written notice thereof from the City to Developer (or such longer period of time as is necessary to cure the default as long as Developer has commenced the cure of the default within the 60-day period and is diligently pursuing the cure of the default) by recording with the Register of Deeds Office for Marathon County, Wisconsin, a unilateral termination of this Agreement; or (ii) by recording with the Register of Deeds Office for Marathon County, Wisconsin, a written instrument of termination signed by all of the then-owners of the Parking Parcel, the Parking Ramp, and the Developer Parcel. Additionally, this Agreement shall terminate automatically if the Parking Parcel is no longer used for parking or in the event the Skywalk is removed or abandoned. However, if the City makes the determination that the Parking Parcel will no longer be used for parking, the City shall use commercially reasonable efforts to locate, within 1,100 linear feet of the Developer Parcel, a number of available parking spaces similar to the number of parking spaces that the Developer Parcel had the use of on the Parking Parcel. If this Agreement is terminated for any reason, Developer shall, at Developer's sole cost and expense, promptly remove the Skywalk and Developer shall repair and restore the Parking Ramp and the Parking Parcel after such removal to the satisfaction of the City as determined by the City's Director of Public Works & Utilities or City Engineer. Developer's obligations in the foregoing sentence shall survive the termination of this Agreement.

6. Damage. Developer shall repair, or cause to be repaired, any damage to the Parking Ramp, the Parking Parcel or the ROW caused by Developer's or its agents', employees', customers', invitees', designees', licensees', or tenants' activities in connection with the Skywalk.

7. Indemnity. Developer shall indemnify, save harmless and defend the City and its officers, agents and employees from and against any and all liability, suits, actions, claims, demands, losses, costs, damages and expenses of every kind and description, including reasonable attorney costs and fees, for claims of any kind including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them brought because of any injuries or damages received or sustained by any person, persons, or property on account of or arising out of the use of the Parking Ramp Connection or the ROW Skywalk in connection with the Skywalk by Developer or its agents, employees, customers, invitees, designees, licensees, and tenants.

8. Insurance. During the term of this Agreement, Developer shall obtain and maintain the insurance coverages in the amounts included in, and otherwise comply with, the insurance requirements set forth on Schedule I attached hereto or such other insurance requirements reasonably acceptable to the City (for this purpose, the City acceptance is delegated to the City Attorney) to insure against injury to property, person, or loss of life arising out of Developer's, or any of its agents', employees', customers', invitees', designees', licensees', or tenants' activities with respect to the Skywalk.

9. Miscellaneous.

(a) Headings. Paragraph and subparagraph headings herein are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

(b) Waiver. No delay or omission by the City or Developer to exercise any right or power occurring upon any non-compliance or failed performance by the other under the provisions of this



Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by the City or Developer of any of the covenants, conditions or agreements hereof to be performed by another, shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement contained herein.

(c) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

(d) Amendments to be in Writing. No amendment to this Agreement shall be effective to add to, change, modify, waive or discharge this Agreement in whole or in part, unless such amendment is in writing and signed by all parties bound hereby.

(e) Covenants Running With the Land. All of the easements, restrictions, covenants and agreements set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of, and enforceable by the City and Developer and their respective successors and assigns.

(f) Partial Invalidity. If any provisions, or portions thereof, 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 provision, or portion thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) Interpretation. This Agreement is the product of negotiations between the parties. As such, the Agreement shall not be construed against one party or another merely because such party drafted some part or all of this Agreement.

(h) Authority. The execution and delivery of this Agreement by a party and the execution by the person signing this Agreement on behalf of such party has been duly authorized by all necessary action of such party. This Agreement constitutes a valid and binding obligation of each party. None of the execution, delivery, or performance of a party's obligations under this Agreement will violate or conflict with any other agreement by which such party is bound.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

(j) Force Majeure. For the purposes of any provisions of the Agreement, a party shall not be considered in breach or default of its obligations in the event of delay in the performance of such obligations to the extent due to a Force Majeure event. As used herein, "Force Majeure" means any event that (i) renders it impossible for the affected party to perform its obligations under this Agreement, (ii) is beyond the reasonable control of the affected party, (iii) is not caused by the intentional misconduct, gross negligence, or recklessness of the affected party, and (iv) cannot be avoided by the exercise of due diligence by the affected party, including the expenditure of a commercially reasonable sum of money. Subject to the satisfaction of the conditions set forth in clauses (i) through (iv) of the foregoing definition, Force Majeure shall include, without limitation: (A) strikes or other labor conflicts that are not motivated by the breach of any other contract on the part of the affected party, strikes or other labor disputes that cause the delay of any major equipment supplied by a third party, a lockout, industrial dispute or disturbance; (B) civil disturbance, an act of a public enemy, war (whether or not declared), a riot, blockage, insurrections, terrorism, uprisings, sabotage and commercial embargoes against the United States of America (or against any other country if it impacts the delivery of any major equipment supplied by a third party); (C) an epidemic or pandemic; (D) natural phenomena such as hurricane, tornado, landslide, lightning, windstorm, earthquake, explosion, storm, flood; (E) fires, (F) inability to obtain or a delay in obtaining easements,

rights-of-way or permits (provided such delay or inability was not caused by the party claiming Force Majeure); (G) acts, failures to act or orders of any kind of any governmental authority acting in its regulatory or judicial capacity (provided that the party claiming Force Majeure did not create or contribute to such act, failure or act or order); (H) the inability of either of the parties, despite having exercised its commercially reasonable efforts, to obtain in a diligent and proper manner any permits necessary for such party's compliance with its obligations under this Agreement; (I) transport accidents, whether they be maritime, rail, land or air; (J) equipment failure or equipment damage (provided such failure or damage was not caused by the intentional misconduct, gross negligence or recklessness of the party claiming Force Majeure); and (K) a material change in law or any other cause, whether enumerated herein or otherwise, not within the control of the party claiming Force Majeure, which precludes that party from carrying out, in whole or in part, its obligations under this Agreement. Force Majeure with respect to a party shall not include any of the following events: (1) financial difficulties of such party; (2) changes in market conditions affecting such party; or (3) delay in the compliance by any contractor or subcontractor of such party, except where such delay is caused by circumstances which would otherwise constitute Force Majeure under this Agreement if such party were the affected person

(k) No Personal Liability. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

*[Signature page follows.]*





## SCHEDULE I

### City's Insurance Requirements

Developer, during the term of this Agreement, and any contractor engaged by Developer to perform any work on the Skywalk, during the time such contractor is performing any work on the Skywalk, shall procure and maintain insurance coverage in the following amounts and types:

- (a) Property Insurance – Insurance against loss or damage to the Skywalk under an “all risk” or “special form” insurance policy, which shall include coverage against all risks of direct physical loss, including but not limited to loss by fire, lightning, wind, terrorism, and other risks normally included in the standard ISO special form.
- (b) Professional Liability – if project includes the use of engineers, architects, or other professionals, the below coverage and limits apply:
  - (1) Limits
    - (i.) \$1,000,000 each claim
    - (ii.) \$1,000,000 annual aggregate
  - (2) Must continue coverage for 2 years after final acceptance of service/job/work.
- (c) PROPERTY INSURANCE COVERAGE (BUILDERS RISK INSURANCE) to be provided by the contractor, if the exposure exists.
  - i. The “property” insurance amount must be at least equal to the total value of the structure(s), plus or minus any change orders. It must also include value of Engineering or Architect fees, claims preparation costs, and owner furnished equipment.
  - ii. Covered property must include property on the project work sites, property in transit, property stored off the project work sites, and any equipment furnished by the City.
  - iii. Coverage must be on a Replacement Cost basis, with no co-insurance penalties.
  - iv. The City, Consultants, architects, architect consultants, engineers, engineer consultants, contractors, and subcontractors must be added as named insureds to the policy.
  - v. Coverage must be written on a “special form” or “all risk” perils basis. Coverage to include collapse.
  - vi. Coverage must include coverage for Water Damage (including but not limited to flood, surface water, hydrostatic pressure) and Earth movement.
  - vii. Coverage must be included for Testing and Start up.
  - viii. If the exposure exists, coverage must include Boiler & Machinery including mechanical or electrical breakdown coverage.
  - ix. Coverage must include Building Ordinance or Law coverage with a limit of at least 5% of the contract amount.
  - x. The policy must cover/allow Partial Utilization by owner.
  - xi. Coverage must include a “waiver of subrogation” against any named insureds or additional insureds.
  - xii. Contractor will be responsible for all deductibles and coinsurance penalties
- (d) Commercial General Liability Coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:
  - (i.) \$1,000,000 each Occurrence limit
  - (ii.) \$1,000,000 Personal and Advertising Injury limit
  - (iii.) \$2,000,000 general aggregate (other than Products-Completed Operations) per project
  - (iv.) \$2,000,000 Products-Completed Operations aggregate
  - (v.) \$50,000 Fire Damage limit – any one fire
  - (vi.) \$5,000 Medical Expense limit – any one person

- (vii.) Products-Completed Operations coverage must be carried for two years after final acceptance of work.
- (e) Automobile Liability Coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1 – “Any Auto” basis.
- (f) Worker’s Compensation and Employer’s Liability if required by Wisconsin State Statute or any Worker’s Compensation Statutes of a different state. Must carry coverage for Statutory Worker’s Compensation and an Employer’s Liability with limits of:
- (i.) \$100,000 Each Accident,
  - (ii.) \$500,000 Disease-Policy Limit
  - (iii.) \$100,000 Disease-Each Employee
  - (iv.) Employer’s Liability limits must be sufficient to meet umbrella liability insurance requirements.
- (g) Umbrella Liability Coverage at least as broad as the underlying Commercial General Liability, Automobile Liability, and Employer’s Liability, with a minimum limit of \$4,000,000 each occurrence and \$4,000,000 aggregate, and a maximum self-insured retention of \$25,000. The umbrella must be primary and non-contributory to any insurance or self-insurance carried by City. Products – Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work.
- (h) Installation Floater/Developer’s Equipment or Property – The contractor is responsible for loss and coverage for these exposures. City will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by the contractor or its subcontractors or are to be built, installed, or erected by the contractor or its subcontractors. This includes but is not limited to property owned, leased, rented, borrowed, or otherwise in the care, custody or control of the contractor or subcontractor of any tier.
- (i) Applicable Requirements and Provisions for Liability Insurance of Developers/Contractors
- (i.) Primary and Non-contributory requirement - All insurance must be primary and non-contributory to any insurance or self-insurance carried by City.
  - (ii.) Acceptability of Insurers - Insurance is to be placed with insurers who have an A.M. Best rating of no less than A- and a Financial Size Category rating of no less than Class VII, and who are authorized as an admitted insurance company in the State of Wisconsin.
  - (iii.) Additional Insured Requirements - The following must be named as additional insureds on all liability policies: City of Wausau, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04 and also include Products – Completed Operations additional insured coverage per ISO form CG 20 37 07 04 or their equivalents for a minimum of 2 years after acceptance of work. This does not apply to Worker’s Compensation policies or Professional Liability policy.
  - (iv.) Waivers of Subrogation – All developer and subcontractor liability, workers compensation, and property policies, as required herein, must be endorsed with a waiver of subrogation in favor of the City of Wausau, its officers, elected or appointed officials, agents, employees, and authorized volunteers.
  - (v.) Deductibles and Self-Insured Retentions - Any deductible or self-insured retention in the developer’s policy must be declared to the City of Wausau and satisfied by the contractor.
  - (vi.) Evidence of Insurance - Prior to execution of the Agreement, the Developer shall file with the City a certificate of Insurance (Acord Form or equivalent for all coverages) signed by the insurer’s representative evidencing the coverage required by this Contract. In addition, form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed

operations exposure must also be provided or its equivalent on the Commercial General Liability coverage.

- (vii.) Limits and Coverage – The insurance requirements under this Agreement shall be the greater of the minimum limits and coverage specified herein, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minim insurance requirements stated hereinabove are sufficient to cover the obligations of Developer under this Agreement.
- (viii.) Cancellation/Non-Renewal – No policy of insurance required to be maintained hereunder shall be cancelled, non-renewed, or voided without 30 days' prior written notice to the City of Wausau, except where cancelation is due to the non-payment of premiums, in which event, 10 days' prior written notice shall be provided.

**EXHIBIT A**

**Parking Parcel Legal Description**

Lot 7 of Alexander Davis Plat in the City of Wausau, Marathon County, Wisconsin.



**EXHIBIT B**

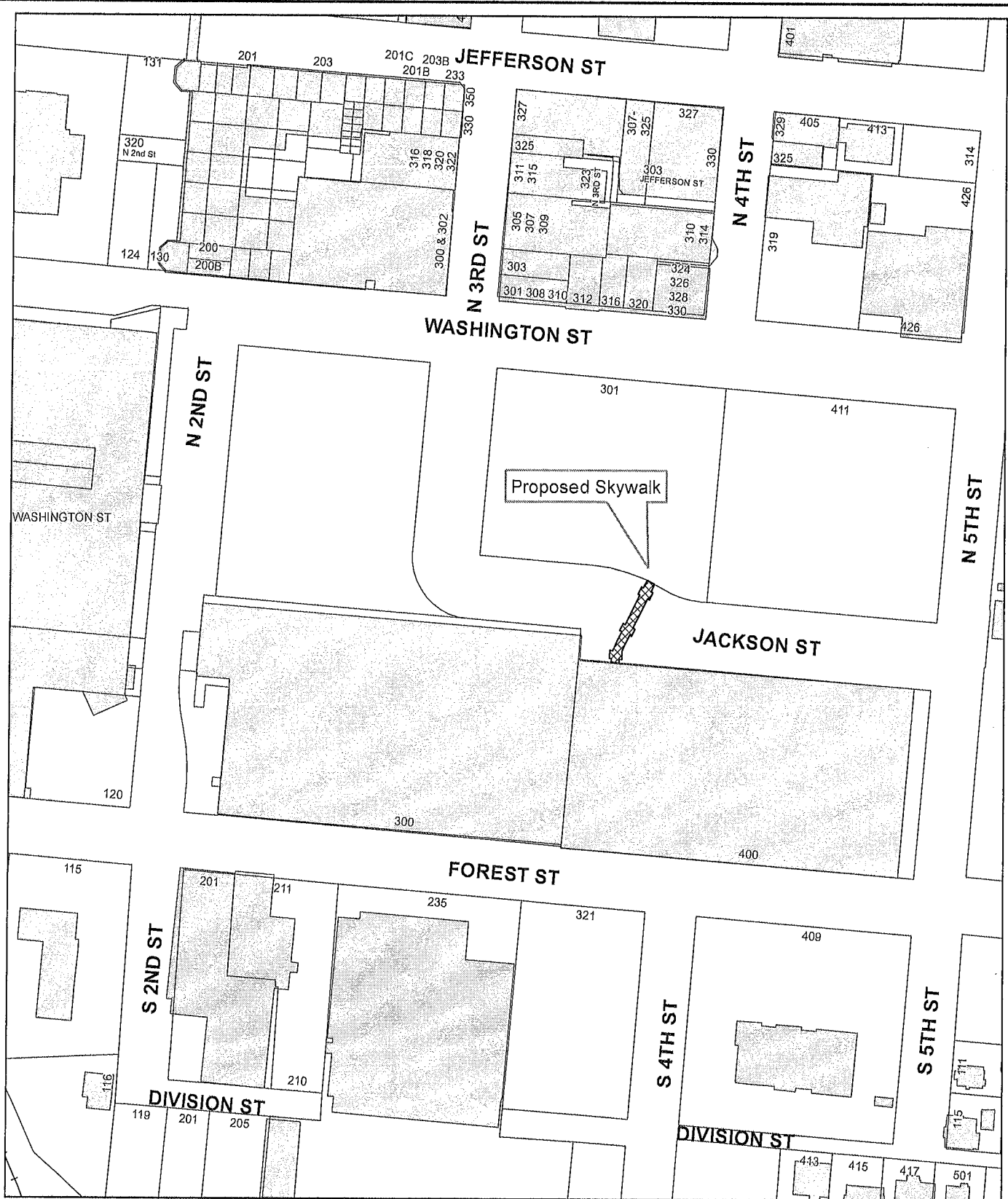
**Developer Parcel Legal Description**

Lot 4 of Alexander Davis Plat in the City of Wausau, Marathon County, Wisconsin.

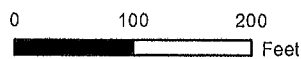
**EXHIBIT C**

**Depiction of ROW**

[See attached.]



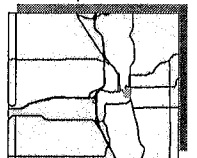
City of Wausau  
Marathon County Wisconsin



**Legend**

- Parcels
- Right of Way
- Road Edge
- Proposed Skywalk

**Map Location**



**EXHIBIT D**

**Parking Ramp Easement Area**

[See attached]



**EXHIBIT E-1**

**ROW Anchor Encroachment Area**

[See attached]



**EXHIBIT E-2**

**ROW Skywalk Encroachment Area**

[See attached]





# EXHIBIT MAP

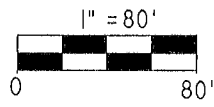
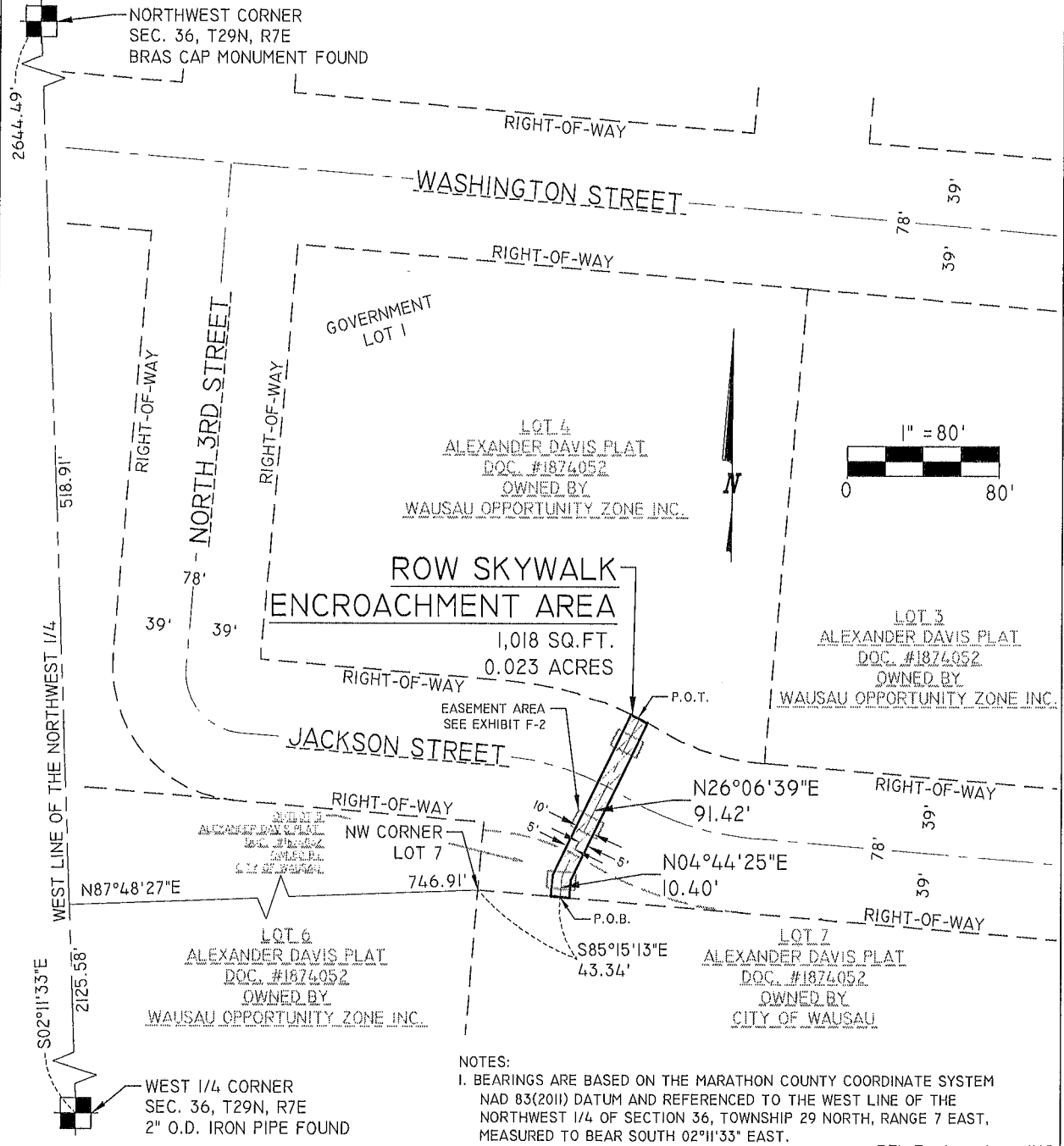
A 10' WIDE EASEMENT BEING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE; BEING PART OF THE RIGHT-OF-WAY OF JACKSON STREET AND OUTLOT 5, AS SHOWN ON THE ALEXANDER DAVIS PLAT, RECORDED AS DOCUMENT NUMBER 1874052, IN THE MARATHON COUNTY REGISTER OF DEEDS OFFICE; LOCATED IN GOVERNMENT LOT 1 OF SECTION 36, TOWNSHIP 29 NORTH, RANGE 7 EAST, CITY OF WAUSAU, MARATHON COUNTY, WISCONSIN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE SOUTH 02°11'33" EAST, COINCIDENT WITH THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 36, 518.91 FEET; THENCE NORTH 87°48'27" EAST, 746.91 FEET TO THE NORTHWEST CORNER OF LOT 7 OF SAID ALEXANDER DAVIS PLAT AND THE SOUTH RIGHT-OF-WAY LINE OF JACKSON STREET; THENCE SOUTH 85°15'13" EAST, COINCIDENT WITH SAID SOUTH RIGHT-OF-WAY LINE OF JACKSON STREET, 43.34 FEET TO THE POINT OF BEGINNING OF SAID CENTERLINE; THENCE NORTH 04°44'25" EAST, 10.40 FEET; THENCE NORTH 26°06'39" EAST, 91.42 FEET TO THE NORTH RIGHT-OF-WAY LINE OF JACKSON STREET AND THE POINT OF TERMINATION OF SAID CENTERLINE.

SAID EASEMENT CONTAINS 1,018 SQUARE FEET, OR 0.023 ACRES, MORE OR LESS.

SAID EASEMENT IS SUBJECT TO EASEMENTS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.

DRAWING FILE: P:\19466-940919485C - PROMISED LOT 4 (DRAWING SURVEY) 19485C EASEMENT EXHIBIT F.DWG LAYOUT: NEW E-2 PLOTTED: MAY 23, 2023 - L3APP PLOTTED BY: JWB/RAJ



WAUSAU OPPORTUNITY ZONE 301 WASHINGTON STREET WAUSAU, WISCONSIN 54403		FIGURE : EXHIBIT E-2	
PROJECT NO.	9485C	DRAWN BY:	JWP
		DATE:	5/23/2023

REI Engineering, INC.

**EXHIBIT E**

**Form of Balcony Easement**

[Attached.]

Document No.

**EASEMENT AGREEMENT**

Document Title

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2023,  
by and between the CITY OF WAUSAU, a municipal corporation of  
the State of Wisconsin, herein referred to as "City," Grantor, and  
Foundry on 3<sup>rd</sup> Ph 1, LLC, Grantee;

WITNESSETH:

WHEREAS, City owns a public right of way known as Washington  
Stret, N. 3<sup>rd</sup> Street and Jackson Street that is integral for the public to  
access certain properties; and

WHEREAS, Grantee intends to construct a building on property that  
abuts on City's right of way; and

WHEREAS, Grantee has requested permission to build multiple  
elevated balconies off the [ ] elevations of its building that  
would encroach in the air space above the right of way; and

WHEREAS, City is willing to permit Grantee to construct the proposed  
encroachments upon certain terms and conditions, including hold  
harmless and insurance provisions; and

WHEREAS, the area encompassed by this easement is described as follows:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by and between the  
parties as follows:

1. City hereby grants to Grantee an easement onto and over the public right-of-way adjacent to the building  
on both \_\_\_\_\_ Street and \_\_\_\_\_ Street which easement shall be for the purpose of  
establishing and maintaining, multiple elevated balconies encroaching in the air space above the right of  
way, as follows:
  - (a) Multiple elevated balconies off the \_\_\_\_\_ and \_\_\_\_\_ elevation of Grantee's building that will  
encroach not more than \_\_\_ feet into the City's right of way. The elevated balconies shall be located  
in such a manner that the lowest area of encroachment into the air space above the right of way area  
is at least \_\_\_ feet above the ground within the said easement.
  - (b) [Repeat as necessary for directional elevation.]
2. Grantee agrees to undertake construction of the encroachments in a manner which will not unnecessarily  
interfere with the existing right of way in the easement area.

Recording Area

Name and Return Address

City of Wausau Engineering Department  
407 Grant Street  
Wausau, WI 54403

PIN: 291.

3. This easement shall continue for so long as multiple elevated balconies encroach in the air space above the right of way.
4. Grantee agrees not to erect, cause to be erected, or place any other structures, whether permanent or temporary, in the air space above the easement, other than the encroachments described herein.
5. Grantee shall maintain liability insurance coverage for its operations on and activities at its location including the easement area, which insurance shall be suitable to City and in an amount not less than one million dollars. City shall be named as an additional insured on the policy. Grantee shall increase these insurance limits upon the reasonable request of City.
6. Grantee hereby expressly agrees to release, indemnify and hold harmless City, City's employees, agents and officers, free and harmless from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, actions and/or causes of action of any kind or of any nature which may be sustained or to which they may be exposed by reason of injury or injuries to anyone, or of the death or deaths of anyone, or by reason of any personal injury and/or real property damage, or by reason of any other liability imposed by law, or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to Grantee's and/or anyone else's operations, actions or omissions on that portion of the easement area owned by City; specifically included within this release, indemnification and hold harmless our attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.
7. Grantee shall be responsible to maintain the improvements in the easement area, and if the Grantee fails to adequately maintain its improvements encroaching in the air space, City may provide Grantee with a written notice setting forth the needed repairs or maintenance. If it is determined that work is, in fact, needed in the easement area, and if the Grantee does not commence such work within ninety (90) days from the date of receipt of the aforesaid written notice, and such failure to commence such maintenance or repair work is not due to a cause beyond Grantee's control, then City may perform such work and Grantee shall reimburse City for all direct costs incurred in performing such work.
8. This agreement shall run with the land, encumbering the air space above the property encompassed by the easement area and shall be binding on and shall enure to the benefit of the parties hereto and to their respective successors and assigns, for so long as the aforementioned balconies encroach in the air space above the easement area.
9. The terms of this agreement are transferable by Grantee, however, City must be given notice, in writing, of any transfer.

IN WITNESS WHEREOF, this agreement has been duly executed the day and year first above written.

[Signatures on following page]



**Proposed Balcony R/W Encroachment Easement**  
**benefiting**  
**215 N. 3<sup>rd</sup> Street/301 Washington Street**  
**291-2907-362-0262**

Part of Outlot 8, Alexander Davis Plat, Government Lot 1, Section 36, Township 29 North, Range 7 East, City of Wausau, Marathon County, Wisconsin, described as follows:

The Southerly 3 feet of said Outlot 8 (being the Washington Street right-of-way) lying Northerly of and immediately adjacent to the Westerly 230 feet of Lot 4, said Alexander Davis Plat;

and also;

The Easterly 3 feet of said Outlot 8 (being the North 3<sup>rd</sup> Street right-of-way) lying Westerly of and immediately adjacent to said Lot 4;

and also;

The Northerly 6 feet of said Outlot 8 (being the Jackson Street right-of-way) lying Southerly of and immediately adjacent to the Westerly 75 feet of said Lot 4.

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

**RESOLUTION OF THE FINANCE COMMITTEE**

Approving Termination of Animal Control Services to the Everest Metropolitan Police Department, provided pursuant to an Intergovernmental Humane Officer Services Agreement.

Committee Action: *Pending*

Fiscal Impact: Loss of \$15,455 revenue

**File Number:** 12-1214

**Date Introduced:** February 13, 2024

**FISCAL IMPACT SUMMARY**

<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, the City of Wausau and the Everest Metropolitan Police Department (“EMPD”) have had an intergovernmental agreement since 2014 to provide animal control services to EMPD by a Humane Officer, vested with statutory authority pursuant to Chapter 173 of the Wisconsin Statutes; and

**WHEREAS**, On December 19, 2023, pursuant to File Number 12-1214, the Common Council authorized entering into an agreement with EMPD to furnish such services for a term from January 1, 2024 through December 31, 2024, and authorized and directed the proper city officials to execute the same; and

**WHEREAS**, a representative of the EMPD contacted the City and indicated that with the unknown outcome of a potential merger of their department with a department from another jurisdiction, they decided to decline executing the contract sent to them for execution, but offered to pay for any services provided after December 31, 2023, when the most recent contract terminated; and

**WHEREAS**, in order to allow residents within the EMPD jurisdiction to participate in an already marketed event, “Paws and Protect” on March 16, the parties have agreed to fix the date of March 31, 2024, as the last day services are to be provided, for which a prorated payment of 1/12<sup>th</sup> of the contract amount, or \$1,405, will be made to the City.

**NOW, THEREFORE, BE IT RESOLVED** that the Common Council rescinds its approval

on December 19, 2023, of an Intergovernmental Agreement with the Everest Metropolitan Police Department for calendar year 2024, and hereby approves the termination of animal control services, under agreement since 2014, to the Everest Metropolitan Police Department, effective through March 31, 2024, for which the payment of \$1,405 shall be due the City for any services provided between January 1, 2024 and March 31, 2024.

Approved:

---

Katie Rosenberg, Mayor



Staff Memo

TO: Finance Committee Members

Common Council Members

FROM: Anne Jacobson, City Attorney

RE: Intergovernmental Humane Officer Services Agreement between the City of Wausau and Everest Metropolitan Police Department

DATE: January 26, 2024

---

Purpose: To obtain approval of termination of services provided under this Agreement.

Background: The City of Wausau, beginning in the year 2020, annually approved and entered into an intergovernmental agreement for humane officer/animal control services with the Everest Metro Police Department (“EMPD”), for a fee.

On December 19, 2023, the Common Council approved executing a contract for human officer services with EMPD for \$16,860. Payment is due July 5, 2024. The term, under paragraph 4. Is for one year from January 1, 2024, through December 31, 2024.

I spoke with a Nicholas Aldrich today who is handling this contract and indicated to me that EMPD, given the unknowns of a potential merger, and with the upcoming retirement of the Police Chief, was no longer interested in executing this Agreement for this calendar year. They are agreeable to paying for any services provided from January 1, 2024, through effective date of termination of services.

Recommendation:

I propose preparing a short memorialization or amendment wherein both bodies agree that while approved by the City of Wausau, the EMPD will not be executing this agreement, but that services will be effectively terminated on any date after Council can take action on this matter, and that EMPD will pay the costs of services from January 1, 2024, through the date after which services will cease to be provided.

**RESOLUTION OF THE FINANCE COMMITTEE**

Approving of Intergovernmental Humane Officer Services Agreement between the City of Wausau and Everest Metropolitan Police Department from January 1, 2024 through December 31, 2024.

Committee Action: Approved 5-0

Fiscal Impact: Revenue payment of \$16,860 from Everest Metro Police Department

File Number: 12-1214

Date Introduced: December 19, 2023

**FISCAL IMPACT SUMMARY**

<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source: Animal Control Fund</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, the City of Schofield, Village of Weston and Town of Weston are parties to the Schofield/Weston Police Merger Agreement, executed October 4, 1993; and

**WHEREAS**, each jurisdiction has passed and is responsible for enforcing local ordinances governing the regulation, licensing and impounding of certain animals within the territorial limits of the Everest Metro Police Department (EMPD); and

**WHEREAS**, an agreement was entered into in 2023 between the City of Wausau and Everest Metropolitan Police Department for humane officer services; and

**WHEREAS**, the EMPD desires to again contract with the CITY for the provision of certain animal control services to the three jurisdictions within which it provides law enforcement, which shall include the impoundment, care and treatment of stray dogs taken into custody within its jurisdiction; and

**WHEREAS**, the CITY is agreeable to rendering such services on the terms and conditions set forth in the attached agreement; and

**WHEREAS**, EMPD will administer the agreement upon authorization by the governing bodies of Weston and Schofield.



# WAUSAU

*...as the standard of  
excellence in policing*

## Memorandum

From: Captain Melinda Pauls, Police Department

To: Finance Committee

Date: November 14, 2023

Re: Renewal of Intergovernmental Humane Officer Services Agreement with Everest Metropolitan Police Department

---

### **Purpose:**

Requesting renewal of the one year Animal Intergovernmental Humane Officer Services Agreement between the City of Wausau and Everest Metropolitan Police Department.

### **Background:**

The City of Wausau and Everest Metro Police Department have held an intergovernmental agreement since 2014. The agreement extends the Humane Officer's jurisdiction to areas covered by the Everest Metro Police Department and allows the Humane Officer to pick up stray dogs, impound animals or return them to the owner, and issue citations as appropriate. The Humane Officer may also investigate complaints of alleged violations of state statutes and local ordinances relating to animals and, in the course of the investigations, may execute inspection warrants pursuant to Wis. Stat. §66.0119. The agreement further enables duties, investigations, abatement and exercise of powers related to animals as set forth in Wis. Stat. §§ 173.07, 173.09, 173.10, 173.11, and 173.13.

### **Impact:**

Everest Metro shall pay \$16,860 to the City for the services provided in this Agreement. The City agrees that all funds paid by Everest Metro pursuant to this Agreement will be used only to fulfill the terms of this Agreement.

### **Recommendation:**

Department recommends approving the renewal of the one year contract.

**INTERGOVERNMENTAL HUMANE OFFICER  
SERVICES AGREEMENT  
BETWEEN THE CITY OF WAUSAU AND  
EVEREST METROPOLITAN POLICE DEPARTMENT**

**THIS AGREEMENT**, entered into this 1st day of January, 2024, by and between the CITY OF WAUSAU, a municipal corporation of the State of Wisconsin, hereinafter referred to as "CITY" and the Everest Metropolitan Police Department, hereinafter referred to as "EVEREST METRO";

**WHEREAS**, the CITY has appointed a Humane Officer certified pursuant to Wis. Stat. §173.05, who provides animal control services pursuant to Wis. Stat. Ch. 173 including, but not limited to, vaccination of animals, reporting human exposure to rabies, quarantine and testing of biting animals, reduction of stray animal population, restraint of dangerous animals, protecting persons from the dangers associated with animals at large, inhumane treatment of animals, and other related services; and

**WHEREAS**, EVEREST METRO is responsible for enforcing local ordinances governing the regulation, licensing and impounding of certain animals within its territorial limits; and

**WHEREAS**, EVEREST METRO wishes to enter into an Agreement with the CITY for the providing of Humane Officer services as more fully hereinafter set forth; and

**WHEREAS**, CITY is agreeable to rendering such services on the terms and conditions as hereinafter enumerated; and

**WHEREAS**, the CITY and EVEREST METRO are authorized pursuant to Wis. Stat. §66.0301 to enter into this Agreement which proves a governmental function and/or service that each party is authorized to perform and in which the parties are mutually interested, such as police protection and public health and welfare.

**NOW, THEREFORE**, the parties hereto agree as follows:

1. SCOPE OF ANIMAL SERVICES. Subject to the provisions hereinafter contained in this Agreement, the CITY shall provide the following animal control services to EVEREST METRO:
  - a. Pick up stray dogs; impound animals or returning them to the owner; and issue citations as appropriate.
  - b. Investigate complaints of alleged violations of state statutes and local ordinances relating to animals and, in the course of the investigations, may execute inspection warrants pursuant to Wis. Stat. §66.0119.
  - c. Provide those duties, investigations, abatement and exercise those powers related to animals as set forth in Wis. Stat. §§173.07, 173.09, 173.10, 173.11, and 173.13.

2. STAFFING. Humane Officer hours shall be on average 40 hours per week which said schedule shall be flexible. However, the Humane Officer or his/her designee shall still respond to those calls for services in the times set forth on Exhibit A.
  
3. PRIORITIZATION. Upon receiving a telephone call or other communication from an EVEREST METRO police officer, or from a designated municipal staff member from the City of Schofield or Village of Weston, related to those duties set forth in ¶1. a-c. above, such matter will be handled on a priority basis. The CITY reserves the right to prioritize responses according to the attached animal response prioritization set forth on Exhibit A attached hereto and incorporated herein.
  
4. COMMENCEMENT, TERM, AND TERMINATION. The term of this Agreement shall commence on January 1, 2024 (“Commencement Date”) and terminate on December 31, 2024 (“Termination Date”).
  
5. COMPENSATION. EVEREST METRO shall pay \$16,860 to the CITY for the services provided in this Agreement. Payment will be due no later than July 5, 2024 to the Treasurer of the CITY. The CITY agrees that all funds paid by EVEREST METRO pursuant to this Agreement will be used only to fulfill the terms of this Agreement.
  
6. HOLD HARMLESS/INDEMNIFICATION & INSURANCE.
  - a. The CITY shall maintain insurance coverage to protect against claims, demands, actions and causes of action, arising from any act or omission of the Humane Officer, the CITY’S agents and employees in the execution of this Agreement. Certificates of insurance by a company authorized to transact business in the State of Wisconsin shall be supplied to EVEREST METRO with EVEREST METRO as an additional insured. All insurance coverage shall contain a 10-day advance notice of cancellation to EVEREST METRO. The CITY shall timely pay all insurance premiums. Limits of liability shall not be less than:

Worker’s Compensation Statutory Coverage

General Liability Insurance Coverage:

Bodily Injury – Per Person .....	\$ 500,000
– Per Occurrence .....	\$ 1,000,000
Property Damage – Per Occurrence ....	\$ 250,000
Comprehensive Auto Liability Including Non-Ownership Coverage	
Per Person .....	\$ 100,000
Per Occurrence .....	\$ 300,000
Property Damage	
Per Occurrence .....	\$ 50,000

b. Liability for any damages or bodily injury, disability, and/or death of employees or any person or for damage to property caused in any way by the services of the CITY in this Agreement shall be assumed by the CITY which shall indemnify and hold harmless EVEREST METRO against all claims, actions, proceedings, damages, and liabilities, including reasonable attorney's fees, arising from or connected to the activities provided to EVEREST METRO, including but not limited to, any acts or omissions of the Humane Officer, the CITY's employees, agent, representatives, and any other person doing business with the Humane Officer.

7. EVEREST METRO shall fully cooperate with the Humane Officer including but not limited to the furnishing of any and all information in its possession about the ownership of a suspected rabid animal, including rabies vaccination certificates, any history of the animal or the name and address of any possible victims of an animal bite or injury.
8. ANIMAL TREATMENT FEES. All animal care, impoundment, treatment, or disposal shall be the sole responsibility and at the direction of EVEREST METRO.
9. ENFORCEMENT. All citations issued by the Humane Officer within the jurisdiction of EVEREST METRO shall be prosecuted in the Everest Metro Municipal Court at EVEREST METRO's sole expense. However all forfeitures collected therefrom will be retained by EVEREST METRO's municipalities. EVEREST METRO shall be responsible for the payment of legal services for the prosecution of offenses occurring in EVEREST METRO'S jurisdiction.
10. NOTICES. Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

CITY:	EVEREST METRO
City of Wausau	Attn: Chief of Police / <i>Nick</i>
Attn: City Clerk	5303 Mesker Street
407 Grant Street	Weston, WI 54476
Wausau, WI 54403	

11. ASSIGNMENT. The parties acknowledge that the services provided herein are unique. Accordingly, neither party may assign their rights or delegate the duties or obligations under this Agreement.
12. AMENDMENTS. This Agreement contains the entire Agreement of the parties and supersedes any prior agreements or understandings, whether oral or in writing, between them. This Agreement may not be changed or modified except by a written instrument in accordance with the provisions herein.

13. JURISDICTION. Personal jurisdiction and venue for any civil action commenced by either party arising out of this Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court of Marathon County unless it is determined that such Court lacks jurisdiction. The parties expressly waive the right to bring such action in, or to remove such action to any other court whether state or federal, unless it is determined that the Circuit Court for Marathon County lacks jurisdiction. This Agreement shall be construed under the laws of the State of Wisconsin.
14. SEVERABILITY. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or void, such illegality or unenforceability shall not affect the validity of any other part, term or provision and the rights of the parties will be construed as if the invalid part, term or provision was never part of the Agreement.
15. IMMUNITY. Nothing contained in this Agreement constitutes a waiver of either party's sovereign immunity under applicable law.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the first date written above and by so signing this Agreement, certify that they have been duly and properly authorized by their respective boards and councils to make the commitments contained herein, intending them to be binding upon their respective entities and to execute this Agreement on their behalf.

CITY OF WAUSAU

EVEREST METRO POLICE DEPT.

\_\_\_\_\_  
Katie Rosenberg, Mayor

\_\_\_\_\_  
Clayton Schulz, Chief of Police

\_\_\_\_\_  
Kaitlyn A. Bernarde, City Clerk

\_\_\_\_\_  
Mark Maloney, Chairman – Everest Metro  
Joint Finance Committee

## EXHIBIT A

Call Type	Response Level (Immediate/Delayed)
Animal cruelty or neglect	Delayed--respond within 24 hours.
Domestic animal at-large	Immediate if in traffic or threat to any person(s) or property. Delayed- Response within eight (8) hours.
Found or unwanted animals to be picked up	Delayed-Train Officers to handle outside normal hours, if unavailable or specialized recover and transportation needs are required it may be necessary outside normal hours to call-in animal control staff.
Animal sanitation complaints	Delayed-Response within 24 hours
At-large animal that is sick, injured or in danger	Immediate
Aggressive animal	Immediate
Barking dogs	Delayed
Other animal noise complaints	Delayed
Animal attacks on other animals or people	Immediate
Deceased animals that pose no risk to safety	Delayed-Response within 24 hours.
Deceased animals that pose a risk to safety	Delayed-Response within 24 hours.
Other Calls not set forth herein.	Response shall be at the discretion of the Humane Officer.



**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE FINANCE COMMITTEE</b>	
Approving Wireless Telecommunications Equipment and Service Agreement with New-Cell, LLC d/b/a Cellcom	
Committee Action:	<i>Pending</i>
Fiscal Impact:	Approx. \$42,000 annually
<b>File Number:</b>	14-1009
<b>Date Introduced:</b>	February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source: Department budgets</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<i>Amount: about \$ <u>42,000</u></i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue <input type="checkbox"/> Debt <input type="checkbox"/> Funds on Hand <input type="checkbox"/> Interfund Loan <input type="checkbox"/></i>		

**RESOLUTION**

**WHEREAS**, on February 14, 2023, Council approved a one-year contract for cellular services with New Cell, Inc. d/b/a Cellcom; and

**WHEREAS**, the contract expires February 15, 2024 and the city wishes to renew the contract for one year with New Cell, Inc.; and

**WHEREAS**, your Finance Committee, on February 13, 2024, recommended renewing the contract for one year.

**NOW THEREFORE, BE IT RESOLVED** by the Common Council of the City of Wausau that the proper City officials are hereby authorized to execute a one year contract with New Cell, Inc. d/b/a Cellcom for wireless telecommunications equipment and service.

Approved:

\_\_\_\_\_  
Katie Rosenberg, Mayor

**WIRELESS TELECOMMUNICATIONS EQUIPMENT  
AND SERVICE AGREEMENT**

**THIS WIRELESS TELECOMMUNICATIONS EQUIPMENT AND SERVICE AGREEMENT** ("Agreement") is made, entered into, and effective this \_\_\_\_ day of \_\_\_\_\_ 2024, by and between NEW-CELL, LLC., a Wisconsin limited liability company, doing business as Cellcom, ("Cellcom"), and City of Wausau, ("Customer").

**Section 1 – Provision of Telecommunications Services and Related Equipment**

A. **Services.** Cellcom shall make available to Customer, its employees, representatives and other designees, an unlimited number of service lines ("Line" or "Lines") through which Cellcom shall provide wireless telecommunications services. As a condition to Cellcom's offer to provide services and equipment identified herein at the rates and charges identified below, Customer shall maintain a minimum of 93 Lines ("Line Minimum") on rate plans identified in Exhibit A at all times during the Term of this Agreement. In addition, Customer shall execute a Cellular Telephone Equipment and Service Agreement in the form attached as Exhibit B which shall also govern the availability of the services on each Line.

B. **Flex Plan Lines Not Eligible.** Customer acknowledges and understands that any lines purchased through Cellcom under Cellcom's Flex plan are not covered by this Agreement and are not eligible for the rates, terms and conditions contained in this Agreement. Lines purchased under the Flex plan must comply with the terms and conditions contained in the Flex agreement.

**Section 2 – Rates and Charges**

A. **Monthly Service Charges.** Each Line maintained by Customer pursuant to this Agreement shall incur a monthly service charge as identified in Exhibit A.

B. **Additional Air Time, Text, Data and Roaming Charges.** Each Line maintained by Customer pursuant to this Agreement shall include the allotment of included air time, text messages and data packages, if applicable, for use in the "home" area as set forth in Exhibit A. Customer shall incur an additional charge for services used in excess of such allotment for each Line, with each Line considered individually for these purposes. Additionally, Customer shall incur additional roaming charges for services utilized outside the "home" area identified in Exhibit A.

C. **Payment.** Cellcom shall invoice Customer for the aggregated total of the monthly service and associated charges for using Cellcom service, including, but not limited to, additional air time, text messages, data usage, roaming charges and additional equipment expenses incurred by all Lines maintained by Customer pursuant to this Agreement. Customer shall pay each such invoice within 30 days of receipt of each invoice. Unpaid invoices shall accrue interest at the monthly rate of 1.5 %, or the highest amount allowed by law, whichever is lower.

**Section 3 – Term, Renewal and Termination**

A. **Initial Term.** The Initial Term of this Agreement shall be one year, commencing on the date first written above and ending on the first anniversary thereof.

B. **Renewal Term.** Upon the expiration of the Initial Term, Customer may renew this Agreement for one consecutive one-year Renewal Term(s) by providing to Cellcom written notice of its intent to renew this Agreement no later than sixty (60) days prior to the end of the Initial Term.

C. **Termination.** This agreement may be terminated prior to the end of the Initial Term, or Renewal Term if applicable, as follows:

i. **Automatic Termination.** This Agreement will automatically terminate if either party: (a) makes an assignment for the benefit of creditors; or, (b) becomes a party to any receivership, bankruptcy, or similar proceeding, and such proceedings are not dismissed within 90 days of commencement.

ii. **Default.** In the event of a material breach of this Agreement, the non-breaching party may provide written notice of the breach and may terminate this Agreement at any time after a reasonable opportunity to cure the breach. For purposes of this Agreement, a reasonable opportunity to cure is deemed to be 10 days for a monetary default and 30 days for a non-monetary default. If the breaching party, prior to the expiration of the cure period, has cured the breach, this Agreement will remain in effect, provided the breaching party promptly reimburses the non-breaching party for any reasonable damages the non-breaching party may have incurred.

iii. **Mutual Agreement.** This Agreement may be terminated at any time by mutual, written agreement of Cellcom and Customer.

**D. Early Termination of Lines and Effect of Non-Renewal of Agreement.**

i. **Termination of Lines.** Customer may, at any time during the Initial Term, or Renewal Term if applicable, terminate one or more Lines maintained pursuant to this Agreement, while not terminating this Agreement generally, by delivering to Cellcom advance written notice of such termination. In the event any such termination causes Customer to thereafter maintain fewer active Lines than the Line Minimum, Customer must also pay to Cellcom a "Termination Fee," as detailed below in this subsection, for each terminated Line below the Line Minimum. The Termination Fee shall be payable at the time Customer delivers its notice of termination, and shall be determined by reference to the devices activated on the terminated Line(s) falling below the Line Minimum.

a. For each Standard Device activated on the terminated Line(s), the Termination Fee is \$175.00, which amount shall be reduced by \$5.00 for each completed month of the term of this Agreement; and

b. For each "Smart Device" activated on the terminated Line(s), the Termination Fee is \$350.00, which amount shall be reduced by \$10.00 for each completed month of the term of this Agreement.

Notwithstanding any such termination of one or more Lines, this Agreement shall remain in effect as to all other Lines maintained by Customer; provided, however, Cellcom reserves the right to revise the amount of the line allowance provided to Customer based on the number of remaining Lines and the remaining time left in the then-current Term.

ii. **Effect of Non-Renewal of Agreement.** In the event Customer does not renew this Agreement at the end of the Initial Term, Customer shall pay to Cellcom \$175.00 for each Standard Device and \$350.00 for each "Smart Device" activated within the final 90 days of the Initial Term. Upon the expiration of the Initial Term, or Renewal Term if applicable, Customer may maintain Lines established pursuant to this Agreement on a month-to-month basis thereafter; provided, however, the terms and conditions (including rates and charges) applicable to all such Lines shall be determined by reference to Cellcom's then-current rate plans generally made available to the public (without regard to the terms and conditions of this Agreement).

iii. **Standard Device; Smart Device.** "Standard Device" is defined as a device that is not a smartphone. "Smart Device" is defined as a device that is a smartphone.

**Section 4 – Miscellaneous**

A. **Entire Agreement.** This Agreement, together with all exhibits and other attachments and other documents referenced herein, shall constitute the entire agreement between the parties and no term or condition



**EXHIBIT A**

**Rate Plan and Line Features**

Customer may upgrade up to 47 lines at promotional equipment pricing during the one-year term of this agreement. Any upgrades provided above 47 will require retail equipment pricing.

Customer will receive a 20% accessory discount with a maximum discount of \$15 off the retail price of accessories when purchased through Business Sales Representative.



# Business Unlimited Plan

Enjoy unlimited nationwide talk, messaging, and data



## Included Benefits:

- Mobile Hotspot, FREE Basic or Visual Voicemail\*, FREE Caller ID, FREE Call Waiting, FREE 3-Way Calling, and Unlimited Domestic and International Messaging.\*\*

\*Visual Voicemail available on select devices.

\*\*See cellcom.com for international messaging details.

## Choose Your Unlimited Data Plan

	Monthly Charge*	Max. # of Devices that can Share Data
1 Line	<b>\$60</b>	N/A
Multiple Lines	<b>\$95</b>	10

Each primary line must subscribe to a shared data package. Data is shared among all lines on the same calling plan on the same account.

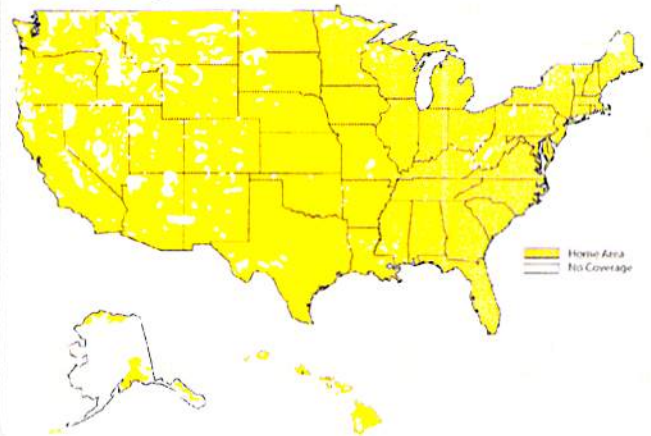
\*Pricing is with autopay (checking and savings accounts only) and paperless bill discount of \$5 for one line and \$10 for multiple lines (\$65 for one line and \$105 for multiple lines).

## Add Phones or Devices to Your Plan

Line Access Fees/month	2 year Agreement	No Contract*
Smartphone	\$40/mo.	\$20/mo.
Basic Phone	\$20/mo.	\$20/mo.
Mobile Broadband/USB Modems	\$25/mo.	\$20/mo.
Tablets	\$25/mo.	\$20/mo.
Connected Devices	\$10/mo.	\$5/mo.

\*No contract pricing is available with Flex, upon completion of a 2-year service agreement, paying full price for device, or bringing own device on Business Unlimited Plan. Paying full price for device or bringing own device requires a new line activation or completion of existing 2-year service agreement. Flex line access does not include monthly device installments. Price varies by device. See cellcom.com/flex for details.

## Coverage Map:



## Plan Add Ons (per line)

Spartan Camera Premium^	\$4.00/month
Fleet for Vehicles/Assets	\$15.00/month
Fleet for Smartphone	\$10.00/month
Fleet Mobile Worker	\$20.00/month
Usage Controls* - each line	\$0.99/month
MultiRing	\$6.95/month

Nquire/411 Directory Assistance	\$1.99/per use
Call Forwarding	\$0.99/month
Detail Billing	\$2.99/month
Handset Protection	refer to brochure
Hours of Service	\$20/month
Hours of Service w/ Fuel Tax	\$30/month

## International Long Distance & Text

International Dialing	pay per minute
International Discount Calling	\$5/month/line
Unlimited calls to Canada and Mexico and a discount per minute long distance rate to other countries.	

Refer to cellcom.com for current long distance rates by country and international roaming options.

\*Requires connected device live access.

\*Due to delays in system reporting, actual data usage may take up to 24 hours to register and may exceed the usage limit set before data usage is blocked or a warning received.

**Important Information:** An E911 compliant CDMA phone, compatible with Cellcom's network, is required. Customer must maintain a billing address within Cellcom's licensed market to be eligible for service. Cellcom reserves the right to terminate service if less than seventy-five percent (75%) of the customer's overall minutes of airtime are used in Cellcom's licensed market during any three month period during the term of this Agreement. Airtime is billed in 60 second increments. Plan minutes only apply when you are in your calling plan's designated home area. Calls originating and terminating in the home area are toll free. Calls originating outside the home area may be subject to long distance charges. Calls originating outside of the home area are subject to roaming and long distance charges. Cellcom reserves the right to deactivate any mailbox that has not been initialized within 60 days of activation or any mailbox that has not had any messages deposited for over 60 days. Minutes used checking voicemail are deducted from Nationwide Minutes while within the Cellcom designated area. Call Forwarding includes 60 minutes of forwarding to a non-Cellcom exchange per month. Voice services, including 911, are not available on mobile broadband or tablet devices. See sales representative for details. To place an international call, you must dial 011, the country code and the number for the international call. International long distance rates apply in addition to plan minutes or airtime charges when calling from your home calling plan area. While roaming, international long distance rates apply in addition to standard long distance and roaming charges. Rates are subject to change without notice. The International Discount Calling Package has a monthly feature charge in addition to reduced international long distance rates. Cellcom reserves the right to terminate this feature if less than seventy-five percent (75%) of the customer's international overall minutes of airtime are used in Cellcom's licensed market during any three month period during the term of this Agreement. Unlimited Voice services are for live dialog between two individuals, voicemail, and automated services without additional charges. Unlimited voice service may not be used for conference calling, call forwarding, monitoring services, data transmission, transmission of broadcasts, or transmission of recorded material. Additional situations may apply. If you are using unlimited voice service for anything other than stated as appropriate, Cellcom reserves the right to terminate your service. Messaging and Data Services: Data monthly charge will be charged to the primary line on the Business Unlimited Plan. Use of text messaging, picture messaging, video messaging and other data services is subject to the Data Acceptable Use Policy located at www.cellcom.com/AUP. Sending and receiving picture messages may deduct from your data allowance. Usage Controls: It may take up to 60 minutes for changes to usage control settings to take effect. Due to delays in system reporting, actual data usage may take up to 24 hours to register and you may exceed the usage limit set before data usage is blocked or a warning received. Overage charges will apply to any usage over your shared data plan allotment regardless if you have Usage Controls on your account. Unlimited Data Plan: After 22GB per line per billing cycle for smart and basic phones and 10GB per line per billing cycle for mobile broadband, tablets and connected devices, data speeds will be slowed to 200 Kbps to 500 Kbps. Autopay (checking and savings accounts only, no credit or debit cards) and paperless bill required for the discounted data rates of \$5 per month for single lines and \$10 per month for multiple lines on the Business Unlimited Plan. Cellcom reserves the right to switch customer to another data plan if less than seventy-five percent (75%) of the customer's overall data usage are used in Cellcom's licensed market during any three month period during the term of this agreement Cellcom reserves the right, without notice, to change rates and coverage areas that do not adversely impact the consumer. In all other situations, a notice will be given. Rate maps indicate where rates apply and may not depict actual service availability or wireless coverage. Coverage areas depicted are approximate. To inquire about specific service availability in a geographical area, contact Cellcom's Customer Service at (800) 236-0055. Geographic terrain, equipment, and long distance may apply. A line set up fee and early termination fee may apply. If applicable, the early termination fees may be reduced proportionately to the remaining months of the term of the agreement. Universal Service Fund (USF) and regulatory and other recovery fees charged on all service lines. An E911 fee or Police & Fire Protection fee charged on all service lines. The amount or range of taxes, fees and surcharges vary and are subject to change without notice. See retail location or www.cellcom.com/fees for details.

**EXHIBIT B**

**Cellular Telephone Equipment and Service Agreement**





**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

**RESOLUTION OF THE CAPITAL IMPROVEMENTS AND STREET MAINTENANCE COMMITTEE & THE FINANCE COMMITTEE**

Approving Urban Nonpoint Source and Stormwater Management Planning Grant Agreement

Committee Action: CISM Approved 4-0; Finance *Pending*

Fiscal Impact:

**File Number:** 24-0215

**Date Introduced:** February 13, 2024

**FISCAL IMPACT SUMMARY**

<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i> Annual Retirement
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, the City of Wausau has been awarded partial project funding for a Stormwater Quality Management Plan Update; and

**WHEREAS**, this project includes updated modeling of our existing conditions Best Management Practices (BMP), BMP alternative analysis for Total Maximum Daily Load (TMDL) compliance, a stormwater utility feasibility study update, and analysis of our leaf pickup procedures to apply for the WDNR TP Leaf Credit; and

**WHEREAS**, your Capital Improvements and Street Maintenance Committee discussed the grant agreement at its meeting on February 8, 2024 and recommends approval; and

**WHEREAS**, your Finance Committee discussed the grant agreement at its meeting on February 13, 2024 and recommends approval;

**NOW THEREFORE, BE IT RESOLVED**, by the Common Council of the City of Wausau that the proper City officials are hereby authorized and directed to execute the necessary documents related to the Urban Nonpoint Source and Stormwater Management Planning Grant Agreement.

**BE IT FURTHER RESOLVED** that the City of Wausau shall comply with all state and federal laws, regulations and permit requirements pertaining to implementation of this project and to fulfillment of the grant document provisions.

Approved:

---

Katie Rosenberg, Mayor

DRAFT

<b>AGENDA ITEM</b>
Discussion and possible action on Urban Nonpoint Source and Stormwater Management Planning Grant Agreement
<b>BACKGROUND</b>
The City has applied for, and has been awarded, partial project funding for a Stormwater Quality Management Plan Update. The project includes updated modeling of our existing conditions Best Management Practices (BMP), BMP alternative analysis for Total Maximum Daily Load (TMDL) compliance, a stormwater utility feasibility study update and analysis of our leaf pickup procedures to apply for the WDNR TP Leaf Credit
<b>FISCAL IMPACT</b>
This grant is a 50/50 match with a maximum match \$85,000 if the project meets or exceeds \$170,000. At time of application the total project cost was estimated to be \$186,000.
<b>STAFF RECOMMENDATION</b>
Staff recommends approval of the grant agreement.
Staff contact: TJ Nicksich 715-261-6748



October 26, 2023

► **REQUIRES IMMEDIATE ACTION** ◀  
**Urban NPS & Stormwater Mgmt. Program**  
**Grant# USP37291Y24**  
**Grant Amount: \$85,000.00**

Thomas J. Niksich, Project Engineer  
City of Wausau  
407 Grant St.  
Wausau, WI 54403

Dear Mr. Niksich:

Congratulations! On behalf of the Governor, we are pleased to forward to you a grant agreement for financial assistance for the following project: *Stormwater Quality Management Plan Update*.

This grant, and any reimbursements made under it, is governed by very specific statute and administrative code provisions. Accordingly, please read the grant documents thoroughly, paying particular attention to the Scope and Conditions sections for eligibility, grantee requirements and reimbursement provisions. There are also several activities where you must obtain prior departmental review and authorization before proceeding.

You are obligated to submit a final report, using the Department's BMP Implementation Tracking System (BITS), prior to submitting your final reimbursement request for the projects completed under this grant; before and after photographs are a required component for construction projects.

In early 2024, DNR will hold a grant administration webinar to provide information about seeking reimbursement from DNR, amending your grant, submitting the final report, etc. All grantees receiving CY 2024 grant awards must attend the webinar or view the webinar recording prior to submitting the first reimbursement request for their grant. Stay tuned for details coming via email regarding the webinar date and time.

To accept this grant, please review the agreement and email a scanned copy signed by the authorized government official, along with the completed *Grantee Contact Page*, and evidence that your community has committed the necessary funding for the local share, to [DNRCFANONPOINTGRANTS@wisconsin.gov](mailto:DNRCFANONPOINTGRANTS@wisconsin.gov).

Please review this grant thoroughly and if you have any questions, contact your Regional Nonpoint Source Coordinator, Terry Kafka, at (715) 498-0432. You may be contacted by the Office of the Governor or your state Legislator concerning the issuance of a press release to publicize the grant award. Thank you for your continued cooperation with Wisconsin's Runoff Management Grant Programs.

Sincerely,

  
Jim Ritchie, Director  
Bureau of Community Financial Assistance

Enclosure(s)

C (e-copy): Terry Kafka, Regional Nonpoint Source Coordinator, DNR West Central Region  
Corinne Johnson, Nonpoint Source Program Grant Manager, CF/2



**Notice:** By signing this grant agreement, grantees indicate concurrence with conditions of this agreement, authorized under ss. 281.66 and 283, Wis. Stats., and chs. NR 151, 154, 155 and 216, Wis. Adm. Code. This agreement must be signed and returned to the address above within 30 days so that funds will be reserved for this project. Failure to return a signed agreement will result in denial of grant funds. Personally identifiable information collected will be used for program administration and may be made available to requesters as required under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

**PART 1. GRANT ADMINISTRATION INFORMATION**

<b>Grant Number</b> USP37291Y24	<b>Grant Award Date</b> October 26, 2023		
<b>Grantee (Unit of Government)</b> City of Wausau			<b>Total Grant Amount</b> \$85,000
<b>Project Name</b> Stormwater Quality Management Plan Update		<b>Grant Period</b> From January 1, 2024 Through December 31, 2025	
<b>Authorized Government Official</b> Eric Lindman, Director of Public Works		<b>Grantee Contact</b> Thomas J. Niksich, Project Engineer	
<b>Government Official Address</b> 407 Grant St.		<b>Contact's E-mail Address</b> thomas.niksich@ci.wausau.wi.us	
<b>City, ZIP Code, County</b> Wausau, 54403, Marathon County		<b>Contact's Telephone Number</b> (715) 261-6748	
<b>Name of Department Regional Nonpoint Source Coordinator, Phone Number and Email Address</b> Terry Kafka, (715) 498-0432, Terence.Kafka@wisconsin.gov			<b>DNR Region</b> West Central Region

**PART 2. ELIGIBLE COST-SHARE BUDGET DATA**

Note: Line items cannot be exceeded without grant agreement amendment.

Budget Line-Item Description	State Cost-Share Amount	Cost-Share Percentage
1. Urban Stormwater/Erosion Plan – BMP U8	\$77,350.00	50%
2. Utility Formation/Feasibility Analysis – BMP U9	\$7,650.00	50%
<b>Total Maximum Grant Amount</b>	<b>\$85,000.00</b>	

**PART 3. PURPOSE AND SCOPE**

This grant provides cost-share funding and authorizes reimbursement by the DEPARTMENT for the above-named project as described in the grant application submitted for the grant period in Part 1 above. Reimbursements may be made for work performed and expenses incurred for the following eligible local assistance activities to address storm water management under chs. NR 151 and NR 216, Wis. Adm. Code, or Total Maximum Daily Load goals.

1. Urban Stormwater/Erosion Plan – BMP U8
2. Utility Formation/Feasibility Analysis – BMP U9

**PART 4. CONDITIONS**

**A. General Conditions**

- A.1. The Wisconsin Department of Natural Resources (DEPARTMENT) and the GRANTEE identified in Part 1 above mutually agree to perform this agreement in accordance with the Urban Nonpoint Source Water Pollution Abatement and Storm Water Management Grant Program and ss. 281.66 and 283, Wis. Stats., and chs. NR 151, 154, 155, and 216, Wis. Adm. Code, and with the project proposal, application, terms, promises, conditions, plans, specifications, estimates, procedures, maps and also any assurances attached and made a part of this agreement.
- A.2. This agreement, together with any referenced parts and attachments, shall constitute the entire agreement and previous communications or covenants pertaining to this agreement are superseded. Any revisions to this agreement must be made by written amendment, signed by both parties, prior to the termination date of this agreement, whether

for changes in scope, grant period, or cost. Requests to extend the grant period must be made 45 days or more before the end of the grant period in Part 1.

A.3. Failure by the GRANTEE to comply with the terms of this agreement shall not cause the suspension of all obligations of the State if, in the judgment of the Secretary of the DEPARTMENT, such failure was due to no fault of the GRANTEE. In such case, any amount required to settle at minimum costs any irrevocable obligations properly incurred shall be eligible for reimbursement under this agreement, at the DEPARTMENT's discretion.

A.4. Eligibility for cost-sharing reimbursement is governed by the provisions of ch. NR 155, Wis. Adm. Code. Cost-share rates and applicability may be further limited by departmental contract approval(s), which may restrict the cost-share amount due to the eligibility requirements of the statute and codes.

A.5. The amount listed in Part 2 above is the maximum amount the DEPARTMENT may reimburse under this agreement.

A.6. The GRANTEE:

1. Agrees to comply with all applicable Federal, Wisconsin, and local laws in fulfilling the terms of this agreement. In particular, GRANTEE agrees to comply with all applicable local and state contract and bidding requirements. GRANTEE should consult its legal counsel with questions concerning contracts and bidding. For assistance, GRANTEE may consult Procurement Guide for Local Governments Receiving DNR Grants.
2. Promises, in consideration of the promises made by the DEPARTMENT, to execute the project described in accordance with this agreement.
3. May decline the offer of financial assistance provided through this agreement, in writing, at any time prior to the start of the project and before expending any funds. After the project has been started or funds expended, this agreement may be rescinded, modified, or amended only by mutual agreement in writing.
4. Agrees that its employees or agents are not employees or agents of the DEPARTMENT for any purpose, including Worker's Compensation.
5. Agrees, to save, keep harmless, defend and indemnify the DEPARTMENT and all its officers, employees and agents, against any and all liability claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this agreement or omissions of GRANTEE's employees, agents or representatives.
6. Agrees to reimburse the DEPARTMENT of any and all funds the DEPARTMENT deems appropriate in the event the GRANTEE fails to comply with the conditions of this agreement or project proposal as described or fails to provide public benefits as indicated in the project application, proposal description or this agreement. In addition, should the GRANTEE fail to comply with the conditions of this agreement, fail to progress due to non-appropriation of funds, or fail to progress with or complete the project to the satisfaction of the DEPARTMENT, all obligations of the DEPARTMENT under this agreement may be terminated, including further project cost payment.
7. Agrees, in connection with the performance of work under this agreement, not to discriminate against any employee or applicant for employment because of age, race, religion, color, disability, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the GRANTEE further agrees to take affirmative action to ensure equal employment opportunities, as required by law. The GRANTEE agrees to post in conspicuous places available, for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
8. Agrees that accounting for project funds shall conform to generally accepted accounting principles and practices, and that GRANTEE shall maintain a financial management system, separate from all other GRANTEE activities, for this agreement.



9. Agrees to comply with the cost containment and procurement procedures in the applicable administrative codes governing this agreement.
10. Agrees that all contracts or scope of service agreements related to this grant-funded project must obtain prior approval of the DEPARTMENT Regional Nonpoint Source Coordinator for this grant, with respect to reimbursement eligibility and conformity with standards and storm water permitting requirements.
11. Agrees to retain and make available to the DEPARTMENT for inspection all fiscal records, including invoices and canceled checks, that support all project costs claimed by the GRANTEE, for three years from the date of final payment by the DEPARTMENT or three years after the end of the Grant period, whichever is later, or for a longer period if required by the DEPARTMENT for audit purposes.
12. Agrees to complete and submit project progress reports to the DEPARTMENT Regional Nonpoint Source Coordinator identified in Part 1 of this agreement with each request for partial grant reimbursement.
13. Agrees, within 60 days of the grant expiration date, to complete and submit a Final Report Form (Form #3400-189P) or to complete and submit a final report, using the DEPARTMENT's "BMP Implementation Tracking System" (BITS) once it is operational to replace Form 3400-189P, and submit a final request for grant reimbursement to the DEPARTMENT's Regional Nonpoint Source Coordinator for review and approval.
14. Agrees to submit final planning products required by a municipal storm water permit to the DEPARTMENT using the Water ePermitting System (<https://dnr.wisconsin.gov/permits/water>). Other final planning products will be submitted to the DEPARTMENT Regional Nonpoint Source Coordinator identified in Part 1 of this agreement.
15. Agrees that reimbursements may only be made for work performed, and expenses incurred, during the grant period as specified in Part 1 above.
16. Agrees to comply with annual Single Audit requirement, at its own expense, if combined total state and federal grant awards received by the GRANTEE from all sources is \$750,000 or more during the calendar year. Annual Single Audit requirements are specified in 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards (referred to as Uniform Guidance) and the Wisconsin State Single Audit Guidelines found at: <http://www.doa.state.wi.us/Divisions/budget-and-finance/financial-reporting/state-controllers-office/state-single-audit-guidelines> issued by the Wisconsin Department of Administration (DOA), State Controller's Office.
17. Should consider following methods for controlling, transporting and disposing of aquatic invasive plants and animals and water in which they may be contained, as described in the DEPARTMENT's Manual Code 9183.1 *Boat, Gear, and Equipment Decontamination and Disinfection* and available on the DEPARTMENT's website at: <http://dnr.wi.gov/topic/invasives/disinfection.html>.

#### A.7. The DEPARTMENT:

1. Promises, in consideration of the covenants and agreements made by the GRANTEE, to obligate for the GRANTEE the amount identified in Part 2 above and to tender to the GRANTEE that portion of the obligation that is required to pay the DEPARTMENT's share of the costs based on the cost-share percentage listed in Part 2 above for eligible project work performed and expenses incurred during the grant period noted in Part 1 above.
2. Agrees that the GRANTEE shall have sole control of the method, hours worked, and time and manner of any performance under this agreement other than as specifically provided in this document. The DEPARTMENT reserves the right only to ensure that the project is progressing or has been completed in compliance with the agreement. The DEPARTMENT takes no responsibility of supervision or direction of the performance of the agreement to be performed by the GRANTEE or the GRANTEE's employees or agents. The DEPARTMENT further agrees that it will exercise no control over the selection and dismissal of the GRANTEE's employees or agents.
3. Shall reimburse the grantee at a rate of one-half the cost-share rate stipulated in Part 2 above until completed product(s) is submitted to, and approved by, the DEPARTMENT and the DEPARTMENT has approved the project's Final Report.

- 4. Shall reimburse costs incurred for completed grant project deliverables at amounts not to exceed those itemized for each grant deliverable in the DEPARTMENT's professional service agreement approval letter(s).

**B – Special Condition**

**Environmental and Natural Heritage Concerns.** Research and findings must include at least preliminary determinations on the potential for environmental hazards, cultural, historical, endangered and threatened resources, along with the potential for wetland and Chapter 30 conflicts, within the areas of prospective structural practice installations.

FOR THE GRANTEE

By:

\_\_\_\_\_  
Authorized Government Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Signed

FOR THE STATE OF WISCONSIN

By:

*Corinne Johnson*  
\_\_\_\_\_  
for Jim Ritchie, Director  
Bureau of Community Financial Assistance

*October 26, 2023*  
\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
(Printed Name, If Different Than Authorized Government Official on P.1)

**When returning the signed grant, you must also include evidence of your community's local share of the grant project costs – such as a copy showing its inclusion in the municipal budget, or other evidence that the community has, in fact, committed the necessary funding to complete the project.**



**NOW THEREFORE BE IT RESOLVED**, by the Common Council of the City of Wausau that the proper City officials are hereby authorized and directed to modify the 2024 Budget as outlined above.

Approved:

---

Katie Rosenberg Mayor

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE COMMON COUNCIL</b>	
Approving Final Form of Master Partnership Agreement between the City of Wausau, Wausau Water Works and Community Infrastructure Partners LLC, for lead service line replacement and related infrastructure work.	
Committee Action:	None
Fiscal Impact:	None
<b>File Number:</b>	23-1215
<b>Date Introduced:</b>	February 13, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, Community Infrastructure Partners, LLC (“CIP”), responded on July 18, 2023, to a Request for Qualifications to deliver a comprehensive community-based public private partnership delivery model for private side lead service line replacement and associated infrastructure work through performance based contracting; and

**WHEREAS**, on July 25, 2023, the Board of Public Works accepted the sole respondent to develop a scope of work as a consultant to the City for the management of all components of lead service line replacement to include engineering, surveying, bid support, construction, community outreach, local contractor support, work force development/support, financing, and data/record keeping, with the City administering the agreement with the Consultant; and

**WHEREAS**, on October 17, 2023, following a presentation by CIP on September 5, 2023, the Wausau Water Works commission voted unanimously to enter into a contract with CIP, subject to legal review and approval with authorized official signing off on it upon a resolution; and

**WHEREAS**, on December 19, 2023, the Council authorized and directed proper city officials to execute an agreement in substantial form with that draft which appeared in the packet (11-24-23), with CIP for lead service line replacement and associated infrastructure, conditioned by voice consensus upon inserting language in the contract that required more transparency on the part of the City; and

**WHEREAS**, on January 23, 2024, upon a vote by the Common Council to Reconsider the Resolution approving the Master Partnership Agreement, the measure failed 3-8, and the draft agreement remained to be

amended; and

**WHEREAS**, the parties have agreed upon proposed amended language to the contract, providing for openness and transparency.

**NOW, THEREFORE, BE IT RESOLVED**, that the Common Council approves the final form of the Master Partnership Agreement as attached between Community Infrastructure Partners, LLC, Wausau Water Works, and the City of Wausau, for management of a lead service lateral replacement program.

Approved:

---

Katie Rosenberg, Mayor



---

Office of the City Attorney

TEL: (715) 261-6590  
FAX: (715) 261-6808

---

Anne L. Jacobson  
City Attorney

Tara G. Alfonso  
Assistant City Attorney

Tegan Troutner  
Assistant City Attorney

STAFF MEMO

TO: Common Council Members  
Wausau Water Works

FROM: Anne Jacobson, City Attorney

RE: Approving Final Form of Master Partnership Agreement between the City of Wausau, Wausau Water Works and Community Infrastructure Partners, LLC for lead service line replacement and related infrastructure work

DATE: February 6, 2024

---

Purpose

To seek Common Council approval of the final form of the Master Partnership Agreement between Community Infrastructure Partners, LLC ("CIP"), the City of Wausau ("City"), and Wausau Water Works ("WWW") with additional language added since consideration of the draft presented to Council on December 19, 2023. (The following background is taken from approved minutes found in the public record.)

Background

On January 9, 2023, staff followed up with the WWW commission regarding the presentation received from CDM Smith and Clark Dietz the commission heard at their November 1, 2022 meeting. It was recommended that the utility complete a "pilot replacement plan" for the private side lead service laterals. At that time, there was no funding allocated for LSL replacement on the private side. The utility had submitted a funding request to the WDNR for lead service lateral ("LSL") replacement funding in 2023, but wouldn't hear until summer of 2023. The commission moved 4-0 to request the City consider financial use of ARPA for this project.

On **February 7, 2023**, the WWW again discussed the implementation of a lead service line replacement plan beginning in 2024, and Director Lindman indicated \$3.5 million from the BIL for State fiscal year 2024 had been requested. Following discussion, a motion to approve a private side lead service line implementation beginning in 2024, was approved unanimously (5-0).

At the same meeting, the commission moved unanimously to approve participation in the United States Environmental Protection Agency ("USEPA") Lead Service Line Replacement Accelerators Community Initiative.

On **March 7, 2023**, the WWW discussed private side lead service line replacement plan (“LSLRP”) in 2023 and 2024 and future action items. No action was taken.

On **June 6, 2023**, the WWW discussed approving staff to prepare a Request for Qualifications (“RFQ”) utilizing performance contracting for lead service line replacement in 2024. In the June Director’s Report, an Update provided on the LSLR Pilot Plan indicated that public outreach began the week of May 15, 2023. Two public meetings were held specifically for the residents of the project areas on May 22 and May 24, and about 12-15 attendees were present in total. WWW staff and Clark Dietz representatives visited residents on each project directly to discuss the project and answer questions, and of 99 homes identified on 10<sup>th</sup> St., Grant and Henrietta Streets, 71 had been inspected, 9 needed no work, 29 opted in, the City was awaiting 40 to opt in, and 20 were not done.

Director Lindman indicated they’d had presentations from the Community Infrastructure Partners, and like Johnson Controls (another energy project), both are related to performance contracting. If the City wanted to move forward with a contract for lead service line replacement moving forward into 2024, do it on a shorter timeline (of 5 years vs. 15 years), to maximize the amount of funding that’s available, city staff would not be able to manage that, and a private partner would be necessary to be the lead on that because staff would not be able to manage that work alone from a contract standpoint. He stated performance contracting has not been used with lead service line replacement before, so this will be a first. The intent would be to establish a request for qualifications for firms to submit proposals of their qualifications to the work, and once a partner were selected, if the city still wanted to move forward, a scope of work would be established. Following discussion, the commission approved 4-0 to have staff prepare an RFQ for the type of work contemplated.

On **July 10, 2023**, the Director’s Report contained an update on the 2023 Lead Service Line Replacement Pilot Program, wherein Director Lindman advised that the RFQ was prepared and began advertising June 28, 2023 with proposals due and opened on July 18. He would forward the staff recommendation to the Board of Public Works on July 25, and provide an update to the WWW on August 10. The drinking water principal forgiveness loan for 2024 was submitted June 29 for replacement of approximately 600 private side lead service laterals.

On **July 18, 2023**, the Board of Public Works opened one response to the RFQ for Developing and Implementing a Lead Service Line Replacement Program Utilizing Performance Contracting and the CBP3 Delivery Model.

On **July 25, 2023**, the Board of Public Works approved accepting Community Infrastructure Partners, LLC (“CIP”) for developing a scope of services, with any financial obligation going through the approval process with the WWW, along with the scope of services (contract).

On **August 7, 2023**, the Director’s Report contained an update that three other firms showed interest, but that only CIP submitted an SOQ for review and it was scored by four staff and brought to the BPW to move forward. The first meeting with CIP was held on August 2, 2023.

On **September 5, 2023**, the WWW had a presentation and update by CIP regarding the lead service line 5-Year replacement scope of services. Their presentation is included in the online packet, accessible on the City’s website. They indicate that the City is launching the country’s first CBP3 model for lead service line replacement. CIP shared the names of their partner entities and a timeline.



City Engineering Staff prepared a Request for Qualifications ("RFQ") to solicit Statement of Qualifications ("SOQ") from qualified firms who have had experience in establishing performance-based contracting and establishing Community Based Public Private Partnerships (CBP3s) as a delivery model to complete infrastructure projects. Community Infrastructure Partners, LLC ("CIP") was the only firm to submit an SOQ on (date).

An RFQ was published on June 28 on the City's website to seek a partner to deliver a comprehensive community-based delivery system model for lead service line replacement and associated infrastructure work.

The **October 10, 2023** meeting of the WWW did not take place due to a lack of quorum present. However, the full draft (9/27/23) of CIP's proposed contract was included in the public packet (Master Partnership Agreement For a Community-Based Public Private Partnership For Lead Service Line Replacement and Related Infrastructure Work between City of Wausau, Wausau Water Works and Community Infrastructure Partners, LLC).

On **October 17, 2023**, the WWW approved unanimously, entering into a contract with Community Infrastructure Partners, LLC ("CIP"), subject to legal review and approval with authorized official signing off on it upon a resolution.

Initially, it was proposed to enter into a contract with WWW, and later, CIP requested a contract with both WWW and the City as separate parties.

On **December 19, 2023**, at its regular Council meeting, the Council authorized and directed proper city officials to execute an agreement in substantial form with that draft which appeared in the packet (11-24-23), with CIP for lead service line replacement and associated infrastructure, conditioned by voice consensus of the Council, upon inserting language that required more transparency on the part of the City.

On **January 23, 2024**, a request for Reconsideration of the December 19, 2023, agenda item, failed on a vote of 3-8. However, satisfaction with additional language to be added to the contract by consensus of Council, for transparency purposes, is yet to be achieved.

On **February 5, 2024**, Director Lindman indicated in his report to the WWW that final language changes are being proposed. Inventory verification is ongoing through direct contact with homeowners in the census tracts approved for 2024 construction. CIP has set up their own website (Equi-Flow) and we are requesting that the City website provide a link to their website. Bid documents are currently being prepared and are expected to be ready for bidding by February 15. Financing and loan closing discussion will be discussed at the February 13, 2024 joint Finance/WWW meeting.

On **February 13, 2024**, the Common Council will consider as a body, approving the amended draft as the final form of the contract.

**MASTER PARTNERSHIP AGREEMENT**  
**FOR A COMMUNITY-BASED PUBLIC PRIVATE PARTNERSHIP FOR LEAD**  
**SERVICE LINE REPLACEMENT AND RELATED INFRASTRUCTURE WORK**  
**BETWEEN**  
**CITY OF WAUSAU,**  
**WAUSAU WATER WORKS**  
**AND**  
**COMMUNITY INFRASTRUCTURE PARTNERS LLC**

February     , 2024

**TABLE OF CONTENTS**

**Article I. THIS AGREEMENT ..... 1**

    Section 1.1    *Purpose* ..... 1

    Section 1.2    *Term* ..... 2

    Section 1.3    *Entire Agreement*..... 2

**Article II. DEFINITIONS AND GENERAL PROVISIONS ..... 2**

    Section 2.1    *Terms Generally* ..... 2

    Section 2.2    *Definitions*..... 2

    Section 2.3    *Data Sharing and Notifications*..... 11

**Article III. Annual Planning..... 12**

    Section 3.1    *Preparation and Contents of the Annual Plan* ..... 12

    Section 3.2    *Review and Approval of the Annual Plan* ..... 13

    Section 3.3    *Amendment of Final Annual Plan*..... 13

**Article IV. Project Planning and Pre-Construction ..... 14**

    Section 4.1    *Development of Project Books* ..... 14

    Section 4.2    *Termination of Budgeted Projects Prior to Final Project Book* ..... 14

    Section 4.3    *Submission of Project Books*..... 15

    Section 4.4    *City Review of Project Books* ..... 15

    Section 4.5    *Amendment of Final Project Book*..... 15

**Article V. Construction ..... 15**

    Section 5.1    *General Scope of Construction Period Work* ..... 15

    Section 5.2    *Engagement of Certifier*..... 15

    Section 5.3    *Project Site; Access Roads and Utilities* ..... 16

    Section 5.4    *Construction* ..... 16

    Section 5.5    *Construction Management, Monitoring and Review; Inspections; Acceptance* ..... 18

    Section 5.6    *Change Orders* ..... 19

**Article VI. Compensation..... 21**

    Section 6.1    *Actual Program Costs*..... 21

    Section 6.2    *Base Fee* ..... 21

    Section 6.3    *Performance-Based Fee* ..... 22

    Section 6.4    *General Requirements & Conditions*..... 22

    Section 6.5    *Method of Payment by the City* ..... 22

    Section 6.6    *Interim Financing* ..... 24

Section 6.7	Reconciliation .....	24
<b>Article VII. Indemnification and Insurance .....</b>		<b>24</b>
Section 7.1	Manager Indemnification .....	24
Section 7.2	Insurance .....	25
<b>Article VIII. Contract Extension .....</b>		<b>25</b>
Section 8.1	Extension Period .....	25
<b>Article IX. Regionalization .....</b>		<b>25</b>
Section 9.1	Regional LSL Professional Services .....	25
<b>Article X. MISCELLANEOUS .....</b>		<b>26</b>
Section 10.1	Representations, Warranties and Covenants of the Manager .....	26
Section 10.2	Representations and Warranties of the City.....	27
Section 10.3	Notices.....	27
Section 10.4	No Personal Liability.....	28
Section 10.5	Waiver; Amendment .....	28
Section 10.6	Entire Agreement.....	28
Section 10.7	No Third-Party Beneficiaries.....	28
Section 10.8	Severability .....	28
Section 10.9	Governing Law .....	28
Section 10.10	Time is of the Essence; Deadlines .....	28
Section 10.11	Relationship of Parties.....	29
Section 10.12	Captions and Interpretation .....	29
Section 10.13	Counterparts/Electronic Signature .....	29
Section 10.14	Termination.....	29
Section 10.15	Dispute Resolution .....	30

**MASTER PARTNERSHIP AGREEMENT**

THIS MASTER PARTNERSHIP AGREEMENT (“this Agreement”) is entered into as of \_\_\_\_\_, 2024 (the “Effective Date”), by and between the CITY OF WAUSAU, a municipal entity created by the state of Wisconsin, and its municipal water authority, WAUSAU WATER WORKS (collectively, “the City”), and COMMUNITY INFRASTRUCTURE PARTNERS LLC, a Delaware limited liability company (the “Manager”). The City or the Manager or both may be referred to herein as a “Party” or the “Parties.”

**WITNESSETH**

WHEREAS, the City desires to augment and expand the capabilities of its Public Works Department to address lead service water lines that exist in its community;

WHEREAS, in 2023, the Manager responded to a Request for Professional Qualifications to deliver a comprehensive community-based delivery system model for lead service line replacement and associated infrastructure work;

WHEREAS, the City has accepted the Manager’s Statement of Qualifications as implemented by this Agreement;

WHEREAS, the City believes that the community-based public private partnership delivery model (the “Program”) provides significant advantages through (a) performance-based structure that shifts delivery risk from the City to the Manager; (b) resources to focus on accessing private property; (c) access to a large base of skilled subcontractors in the region that can maximize pricing efficiencies by combining economies of scale and increasing competition in the marketplace; and (d) greater construction capacity to manage program scale;

WHEREAS, the Manager and the City have agreed to enter into this Agreement with respect to the planning, design, construction, installation, management, maintenance, repair, replacement and inspection of Projects (hereinafter defined);

WHEREAS, the Parties acknowledge that there are significant opportunities for public benefit in the development, implementation and use of lead service line replacement and associated infrastructure management in and around the City; and

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties do covenant and agree as follows:

**ARTICLE I.  
THIS AGREEMENT**

Section 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions pursuant to which the Manager shall (a) work with the City to develop and agree upon an Annual Plan (as defined below) setting forth the scope of Work (as defined below) to be completed within each such plan, (b) develop community and stakeholder outreach programs to provide access to private property, and (c) create workforce and contractor development

programs to ensure sufficient capacity to replace all lead service lines throughout the City in an accelerated manner.

Section 1.2 Term. The term of this Agreement shall commence on the Effective Date and end on December 31, 2029, unless extended by mutual written agreement of the Parties or terminated earlier pursuant to the terms of this Agreement (the “Term”).

Section 1.3 Entire Agreement. This Agreement, including the schedules attached hereto, (a) constitutes the entire and complete agreement with respect to the Work and the Budgeted Projects (as defined below) and (b) supersedes all prior or contemporaneous understandings, arrangements and commitments, whether oral or written, relating to the subject matter hereof. The descriptions of any such agreements herein, in each and every case, are subject entirely to the actual terms of those agreements as executed.

## **ARTICLE II. DEFINITIONS AND GENERAL PROVISIONS**

Section 2.1 Terms Generally. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation/” except as the context may otherwise require. The words “agree,” “agreement,” “approval” and “consent” shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed” except as the context may otherwise require. The word “or” is not exclusive. The phrase “sole cost and expense,” when used with respect to a cost or expense to be paid by the Manager, means that no portion of the amount payable shall be paid by the City apart from the Project Book Prices (as such term is defined below). Words in the singular number include words in the plural and vice versa unless the context of the usage of such term clearly indicates otherwise.

Section 2.2 Definitions. The following are definitions of certain terms used in this Agreement.

“Acceptance” or “Accepted” means the ultimate acceptance of all of the Work in each Completed Project by the City.

“Affiliate” means, when used with reference to a specified Person, any Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person.

“Agreement” shall have the meaning ascribed to it in the first paragraph of this Agreement, as the same may be amended from time to time in accordance with the terms herein.

“Applicable Laws” means (a) every applicable federal, state or City law, code, rule, constitution, mandate, statute, regulation, Permit, ordinance, municipal charter provision, and (b) any interpretation or administration of any of the foregoing by any Governmental Authority, in each case, which applies to the activities or Parties under this Agreement, whether now or hereafter in effect.

“Application for Payment” shall have the meaning specified in Section 6.5.

“Authorized Representative” means the City’s Authorized Representative and/or the Manager’s Authorized Representative as the context of the usage of such term may require.

“Billing Month” means each calendar month in each Billing Year.

“Billing Year” means a Fiscal Year comprised of twelve (12) calendar months ending on December 31 of a given year, except that (a) the first Billing Year shall commence upon the Effective Date and end on December 31 next thereafter and (b) the last Billing Year shall end concurrently with the end of the Term or, if applicable, on the date of termination of this Agreement.

“Budgeted Project” shall have the meaning set forth in Section 3.1.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday, which is not a legal holiday in the City.

“Certifier” means the person or firm engaged to verify to the City the Manager’s performance of Work in accordance with the requirements of this Agreement.

“Change in Law” means (a) the enactment, adoption, promulgation, modification or repeal, after the Effective Date, of any Applicable Law or any change in interpretation thereof by any Governmental Authority or (b) the imposition, after the Effective Date, of any conditions on the issuance, modification or renewal of any Permit which, in either event, (1) adversely affects the Manager’s performance of the Work or increases the Manager’s costs to perform the Work, (2) adversely affects the City’s ability to perform its obligations hereunder, or (3) imposes requirements on the applicable Party that are more burdensome than the most stringent requirements that (A) are in effect on the Effective Date or (B) have been accepted by the Manager in any applications for Permits.

The enactment into law after the Effective Date of any Applicable Law establishing a fee, charge, levy or assessment, or the increase of same, which was not in effect as of the Effective Date, shall be considered a Change in Law under this Agreement. The enactment into law after the Effective Date of any federal, City or state tax law imposing or changing the rate of income taxation upon the Manager or the owners of the Manager shall not be considered a Change in Law or any other Uncontrollable Circumstance under this Agreement. Changes in local tax law directly affecting the costs or timing of the Work may constitute a Change in Law.

“City Cause” means any material breach, failure, nonperformance or noncompliance by the City with the terms and provisions of this Agreement for any reason (other than Uncontrollable Circumstance or Manager Cause) or any act or omission of any officer, agent, employee, subcontractor or independent contractor of the City (other than the Manager or the Certifier) which, prevents or materially delays, either individually or cumulatively, (i) the City’s performance of its obligations under this Agreement, (ii) the Manager’s performance of its obligations under this Agreement, (iii) prevents or materially delays the Work on the relevant Budgeted Project, (iv) causes a material increase in the Manager’s actual project costs for such Project or (v) deprives the Manager of any of its material rights under this Agreement.

“City Indemnified Parties” shall have the meaning set forth in Section 7.1.

“Change Order” shall have the meaning set forth in Section 5.6.

“Change Order Proposal” shall have the meaning set forth in Section 5.6.

“Compensable Change Order(s)” means a change to the Work, the cost thereof or the schedule for a Budgeted Project that arises from (a) an Uncontrollable Circumstance, or (b) City Cause.

“Completed Project” shall mean a Project for which the Certifier has confirmed the project is Substantially Complete.

“Construction Commencement Date” means, with respect to each Budgeted Project, the earlier of (a) the date on which construction activities begin at the applicable Project Site and (b) the date on which the Manager commences acquiring equipment or materials for use at the Project Site.

“Construction Season” shall be defined as the period during each calendar year commencing on approximately May 1 and ending on approximately November 1.

“Construction Work” means Work contracted for by the Manager which is subject to competitive bidding requirements, and not Work contracted for professional services.

“Contractor” means any firm engaged by the Manager that provides Work but does not include vendors or suppliers for Manager’s overhead, administrative, general requirements or insurance. Notwithstanding the foregoing, this term shall refer to general contractors, prime contractors, subcontractors, and vendors contracted for implementation of the Program, and including software, job cost accounting, project controls, outreach, marketing/communications, contractor/workforce development vendors.

“Direct Costs” means the costs incurred and paid or payable by the Manager in connection with the performance of the Work proposed in each Project Book and the Program. These costs shall include all costs associated with Contractors and Subcontractors directly working on Work related to the Program.

“Effective Date” means the date of the execution of this Agreement by the Parties.

“Emergency” means an incident beyond the reasonable control of the Manager and Contractors requiring immediate action on the part of the Manager, which incident, if not immediately addressed, may reasonably be expected to result in imminent and substantial damage, injury or loss.

“Engineer” means a qualified engineer selected and engaged by Manager who has demonstrated experience in the area of civil engineering, planning, surveying, permitting, LSL replacements and water engineering.



“Environmental Litigation” means any lawsuit, filed in a court, arising out of soil or groundwater contamination, air contamination, or surface water contamination with recognized pollutants, whether initiated by federal or state governmental entity or by a private party.

“Final Project Book” shall have the meaning specified in Section 4.3.

“Fiscal Year” means each year of this Agreement commencing on January 1 and ending on the immediately succeeding December 31.

“Governmental Authority” means any federal, state, regional, municipal, city, or local government, any political subdivision thereof, or any other governmental, public or statutory instrumentality, authority, body, agency, commission, or court having jurisdiction over, as applicable, the Program, the Project(s), the Project Site(s), or the transactions with respect to the development, construction, installation, management, operation or maintenance of the City’s drinking water system.

“Interim Financing” means a debt of the City incurred to temporarily finance the Work of the Manager until permanent financing is obtained from annual grant funding or other sources.

“Interim Financing Costs” means the net interest, fees, and charges associated with the City issuing Interim Financing to the Manager, including attorney’s fees.

“Invitation to Bid” means a written invitation to prospective suppliers to submit a bid on materials or services.

“Key Performance Indicators” or “KPIs” shall mean a quantifiable measure of performance over time for a specific objective. Annual KPIs are measured in twelve-month segments during the Term of this Agreement and Semi-Annual KPIs are measured in six-month segments during the Term of this Agreement Term.

“Local Business” means a business entity located in the state of Wisconsin.

“Local Business Utilization KPI” shall mean the Semi-Annual KPI as set out by Schedule 3 which is earned if the Manager awards at least fifty percent (50%) of Construction Work to Local Businesses.

“LSL” shall mean Lead Service Lines.

“LSL Cost KPI” shall mean the Annual KPI as set out by Schedule 3 which is structured as a not-to-exceed value per LSL replaced. The not-to-exceed value shall be determined annually in each Annual Plan in negotiations with the City. If the Manager delivers the scope at or less than agreed upon not-to-exceed value per LSL replaced, then the Manager earns this KPI. Any savings below the agreed upon per LSL not-to-exceed value shall be utilized by the Manager to replace additional LSLs.

“LSL Implementation Schedule KPI” shall mean the Annual KPI as set out by Schedule 3 which is earned if the Manager replaces a minimum number of LSLs each year, as determined

annually in each Annual Plan in negotiations with the City, and adjusted in each Project Book if funding availability differs from what was initially projected.

“LSL Professional Services” means engineering, architectural, legal, and other professional services related to LSL replacement under this Agreement, which may include services outlined in Wis. Admin. Code NR § 166.07(1)(q).

“Losses” means any and all debts, claims, obligations and other liabilities, monetary damages, fines, fees, assessments, impositions, interest obligations, losses, costs, expenses (including amounts paid in settlement, interest, court costs, costs of investigators, fees and expenses of attorneys, accountants, financial advisors, engineers and other experts, and other expenses of litigation) and any and all out-of-pocket costs incurred by the City for the procurement of similar services to cover any default by the Manager.

“Manager” shall have the meaning ascribed to it in the first paragraph of this Agreement identifying the Parties hereto.

“Manager Cause” means (a) any material breach, failure, nonperformance or noncompliance by the Manager with the terms and provisions of this Agreement for any reason except to the extent such breach, failure, nonperformance or noncompliance is caused by the occurrence or continuing effect of an Uncontrollable Circumstance or City Cause, or (b) any material breach, failure, nonperformance, noncompliance, negligence or willful misconduct of any agent, officer, or employee of the Manager which prevents or, individually or cumulatively, materially interferes with or delays the City’s performance of its obligations.

“Master Project List” means a list prepared by the Manager and updated monthly documenting (a) all Proposed Projects, which are prioritized based on their relative value to the Program, as determined in Manager’s reasonable discretion; (b) a schedule for the replacement and Substantial Completion of the Proposed Projects; and (c) an estimate of the number of LSL replacements.

“Material Change Order” shall have the meaning set forth in Section 5.6.

“Monthly Status Report” shall have the meaning set forth in Section 5.5.

“Notice” means written notice from the Authorized Representative of the applicable Party to the other, all in accordance with Section 10.3 and the timeframes and other applicable requirements of this Agreement.

“Permits” means all actions, reviews, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights, licenses, filings, zoning changes, and entitlements which are required under Applicable Law to be obtained or maintained by any Person with respect to either or both of the subject Project or the Work.

“Person” means, without limitation, any individual, person, firm, corporation, company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority, and other entities.

“Posting Notice” shall mean an automatic and concurrent electronic notification (by email) to be generated and transmitted to all Parties each time information or data has been posted to a Project Dataroom.

“Program” shall have the meaning specified in the Recitals to this Agreement.

“Project” shall mean a Proposed Project, Budgeted Project, or Completed Project, as the context requires.

“Project Book” means a document setting forth, with respect to each Budgeted Project included therein:

- (a) its location and scope of Work (as defined below);
- (b) the LSLs and related improvements to be constructed or installed on the Project Site;
- (c) the proposed Construction Commencement Date and the Scheduled Substantial Completion Date (as defined below);
- (d) the estimated number of LSLs to be replaced;
- (e) the Manager’s estimated Project Book Price;
- (f) the Manager’s estimated annualized compensation for the Work for each such Project;
- (g) specifications for the scope of Work for each such Project;
- (h) a list of proposed Contractors and Subcontractors for each such Project; and
- (i) a list of the anticipated Permits required for each such Project.

“Project Book Amendment” shall have the meaning set forth in Section 4.4.

“Project Book Price” means the total price to fully replace the full LSL project bundle within a given Project Book.

“Project Dataroom” means the virtual data room maintained by the Manager (or a Contractor engaged by it) for each Project.

“Project Site” means, with respect to each Budgeted Project, the geographic area specified in the Project Book.

“Proposed Project” means a group of LSLs proposed to be replaced pursuant to the Program.

“Schedule” means a schedule to this Agreement which is incorporated into and shall be a part of this Agreement, unless the context or usage of such term clearly indicates a reference to another document.

“Scheduled Substantial Completion Date” shall, to the extent applicable, be the date anticipated for Substantial Completion of a Budgeted Project as stated in the applicable Project Book or as changed by Notice from the Manager in accordance with Section 5.1, as such Scheduled Substantial Completion Date may be extended pursuant to this Agreement.

“Section” means a section of this Agreement, unless the context or usage of such term clearly indicates a reference to another agreement or statute.

“Site Owner” shall mean the owner of real property where a Project is located.

“Subcontractor” means any firm engaged by a Contractor that provides Work but does not include vendors or suppliers for Manager’s overhead, administrative, general requirements or insurance.

“Substantially Complete” or “Substantial Completion” means that all of the Work with respect to a Project is sufficiently complete such that it is capable of functioning, as reasonably determined by the Certifier.

“Target Class Business” shall mean a business entity that is small business, a minority-owned business, a woman-owned business, a veteran owned-business, or a union business.

“Target Class Business Utilization KPI” shall mean the Semi-Annual KPI as set out by Schedule 3 which is earned if the Manager awards a negotiated percentage of Construction Work to Target Businesses.

“Term” shall have the meaning specified in Section 1.2.

“Training Individuals and Businesses KPI” shall mean the Annual KPI as set out by Schedule 3 which is earned if the Manager implements a Workforce or Contractor Development Program and achieves the quantifiable goals set out in Schedule 2 for each year or determined annually in each Annual Plan in negotiation with the City.

“Uncontrollable Circumstance” means any act, event or condition that:

- (a) prevents or, individually or in the aggregate, materially delays the Manager or the City from fulfilling its obligations hereunder, or
- (b) materially increases the cost of performing the applicable Party’s obligations under this Agreement, to the extent such act, event or condition is due to circumstances beyond the reasonable control of the Party asserting an Uncontrollable Circumstance; provided, however, such act, event or condition shall not be the result of such Party’s failure to perform its obligations hereunder in accordance with the terms and conditions of this Agreement.

- (1) Subject to said terms and conditions, the following acts, events or conditions are examples, but not limitations, of what may qualify as an Uncontrollable Circumstance:
- (A) an act of God, hurricane, tornado, severe storm, tsunami, severe flood, epidemic, pandemic, severe earthquake, severe fire, explosion or landslide, act of a public enemy, terrorism, war, blockade, insurrection, riot, restraint of government and people, civil disturbance, sabotage or similar occurrence;
  - (B) the order, injunction or judgment of any Governmental Authority, including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; excepting decisions interpreting federal, City, state or local tax laws; provided, so long as such order, injunction or judgment did not arise from the negligence or the willful misconduct of the Manager. For the avoidance of doubt, neither the contesting in good faith of any such order, injunction or judgment nor the reasonable failure to so contest shall constitute or be construed as negligence or the willful misconduct of the Manager;
  - (C) the suspension, termination, interruption, denial, failure to issue, modification, or failure of renewal of any Permit; so long as such act, event or condition did not arise from the negligence or willful misconduct of the Party relying thereon and that neither the contesting in good faith of any such order nor the reasonable failure to so contest shall be construed as negligence or willful misconduct of such Party;
  - (D) a Change in Law;
  - (E) any subsurface or latent physical condition (including the presence or discovery of protected species, archaeological objects, unusual geological conditions or hazardous waste, but excluding such materials brought to a Project Site by the Manager), which shall prevent, or require redesign or change in, the construction of, or adversely affect the Work completion schedule for, the relevant Budgeted Project;
  - (F) the failure of any Contractor to furnish services, materials, supplies, utilities or equipment on or before the dates agreed to, or the failure of any Subcontractor to procure labor or transportation in the open market; provided (i) such failure is the result of an act, event or condition outside of the Manager's reasonable control and not due to the negligence or willful misconduct of the Manager, (ii) such failure materially and adversely affects the Manager's ability

to perform its obligations and (iii) the Manager is not reasonably able to obtain substitute services, materials, supplies, utilities, equipment, labor or transportation at comparable cost on or before the agreed upon dates;

- (G) any labor strike, walkout, work stoppage or slowdown or similar industrial or labor action by the employees of the Manager or any of its Contractors performing Work on a Budgeted Project which directly results in a material delay in the performance of the Work, unless the final adjudication by a court of competent jurisdiction finds that such event was principally caused by the Manager's breach of any applicable collective bargaining agreement;
- (H) the failure of the Certifier to perform its obligations other than as a result of Manager Cause; and
- (I) Any interference by the Site Owner, or any officer, agent, employee, subcontractor or independent contractor of the Site Owner, with the development or maintenance of a Project, or damage to a Project caused by the Site Owner or any Person permitted on the Project Site by the Site Owner, or the failure of the Site Owner properly to maintain or protect the Project Site.

(2) None of the following acts, events or conditions shall constitute an Uncontrollable Circumstance under this Agreement:

- (A) any act, event or condition which is caused by the negligence or willful misconduct or interference of (i) the Manager, any of its Affiliates or (ii) the City, its subcontractors, agents or employees; provided, however, if the affected Party is the Manager, then a Change in Law resulting from an enactment of an Applicable Law by the City shall nevertheless constitute an Uncontrollable Circumstance;
- (B) reasonably anticipated weather conditions in the geographic area of the City, other than those listed in (1)(A) of this definition or other prolonged, severe weather conditions; and
- (C) changes in the financial condition of the City, the Manager, Affiliates or any contractor or subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement.

(3) The City may not assert the occurrence of an Uncontrollable Circumstance in order to excuse or delay the making of any payment due pursuant to this Agreement. In the event that the City is excused from the timely performance of any obligation hereunder because of the occurrence of an Uncontrollable Circumstance, the Manager shall be entitled to submit a Material Change

Order, the need for which is directly attributable to the City's excused or delayed performance as a consequence of such Uncontrollable Circumstance.

“Warranty Period” means, with respect to a given Project, the period beginning upon Substantial Completion of that Project and lasting one (1) year thereafter.

“Work” means all the duties, obligations and activities the Manager is responsible for performing or causing to be performed with respect to each Project.

Section 2.3 Data Sharing and Notifications.

Section 2.3.1 Project Dataroom. As a general rule, all documents with respect to the Program and the Projects shall be posted to the Project Dataroom maintained by the Manager when and as they are ready for delivery to the other Party. So long as the City has provided to the Manager the names and valid email addresses for its Authorized Representatives and the Certifier, the Manager shall provide, or cause the Project Dataroom operator to provide to the City, its Authorized Representatives and the Certifier, at all times, full and complete access to the Project Dataroom, including the right and ability to view, print and download the information therein.

Section 2.3.2. Posting Notification. Each Party shall, promptly upon posting any document or information to the Project Dataroom, deliver or cause to be delivered to the other Parties (including their respective Authorized Representatives) a Posting Notice.

Section 2.3.3. Confidentiality and Disclosure. The Parties acknowledge and agree that, given the novel and innovative nature of the Program, (i) information contained in the Project Dataroom is intended to be of a confidential and proprietary nature, and (ii) access by, and disclosure of information in the Project Dataroom to, third parties (other than the Certifier or the Engineer) could either impair the future ability of the City, the Manager or its Affiliates to obtain information in a similar or different project or manner or could cause substantial harm to the competitive position of the City and/or the Manager or its Affiliates in similar or different endeavors. The City and the Manager will provide prompt Notice to each other of any requests from third parties (other than the Certifier or the Engineer) for information from or access to the Project Dataroom. The Parties further agree that in the event that use of the Project Dataroom as contemplated herein causes an enhanced risk of the disclosure to third parties (other than the Certifier or the Engineer) of confidential or proprietary information posted in the Project Dataroom, the Parties will collaborate in an effort to either make appropriate modifications to the requirements of the Project Dataroom or consider alternative means of communicating information under this Agreement intended to maintain the confidentiality of such information. Nothing herein shall prevent, impede or limit the City from complying with its obligations under Applicable Law with respect to the disclosure of information.

Section 2.3.4 Public Records. Notwithstanding anything in this Section 2.3, or any other part of this Agreement, the Manager understands that the City is bound by the Wisconsin Public Records Law, Wis. Stat. §19.21, et. seq. pursuant to Wis. Stat. §19.36(3), and that the City may be obligated to produce, to a third (3<sup>rd</sup>) party, the records of Manager that are “produced or collected” by Manager under this Agreement (“Records”). Manager is therefore

obligated to retain such Records and produce them to the City to the extent it is required under the Wisconsin Public Records Law. Manager's failure to maintain and produce Records as required by this Section 2.3.4 shall constitute a material breach of this Agreement, and Manager agrees to hold the City, and its officers, elected officials and employees, harmless from liability due to such breach, and shall indemnify the City, its officers, elected officials and employees, from any damages or costs, including reasonable attorney's fees, due to Contractor's failure to comply with this Section 2.3.4. Manager's records and other documents produced in the ordinary course of its business are not subject to such disclosure.

Section 2.3.5 Public Meetings. With regard to any public information or public participation meetings held by Manager, including, but not limited to, Project Bid Contractor Information Sessions, the Manager will share relevant details with the City and the City will post notice as required by Wis. Stat. §19.84. Additionally, there shall be provided on the City's official website, the posting of such meetings on the City's calendar. The City shall provide a link to the Manager's website on the City's website, as well as posting regular updates on this project. The Manager shall post regular updates to the Manager's website on this project.

### **ARTICLE III. ANNUAL PLANNING**

#### Section 3.1 Preparation and Contents of the Annual Plan.

- (a) Preparation of the Annual Plan. During the one (1) year period prior to each Construction Season (or, with respect to the first Construction Season, within one hundred twenty (120) days following the Contract Date), representatives of the City and the Manager shall, not less than on a monthly basis, meet to discuss (a) the Proposed Project(s) contemplated to be initiated during the upcoming Construction Season, and (b) the workforce and/or contractor development requirements contemplated for the upcoming Construction Season. Based on such discussions between the Parties, not less than one hundred twenty (120) days prior to the start of each Construction Season (or, in the case of the first Billing Year, within one hundred twenty (120) days after the Contract Date), the Manager shall prepare a draft of the Annual Plan.
- (b) Contents of the Annual Plan. The draft Annual Plan, which shall be substantially in the form attached hereto as Schedule 1, shall set forth:
  - (1) For each Proposed Project anticipated to be initiated during the upcoming Construction Season:
    - (A) the proposed Project Site;
    - (B) the total number of LSLs to be replaced within the City's utility service area once such Proposed Project is Substantially Complete and Accepted;



- (C) the anticipated Construction Commencement Date;
  - (D) the anticipated date of Acceptance;
  - (E) the budget for each such Annual Plan (“Annual Plan Budget”); and
  - (F) based on the Annual Plan Budget, the estimated Base Fee and Deferred Compensation Fee (as such terms are defined below).
- (2) An anticipated project schedule for the applicable Construction Season with respect to each Budgeted Project.
  - (3) Proposed community outreach and stakeholder engagement activities for the upcoming calendar year.
  - (4) Proposed workforce and/or contractor development activities for the upcoming Construction Season.

The Manager acknowledges and agrees that City will rely on such Annual Plan in determining the amount of the aggregate funding needed for development and construction of the Proposed Project(s) for each applicable Construction Season. The scope of each Annual Plan will be developed in alignment with the expected incoming funding from the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), commonly known as the “Bipartisan Infrastructure Law,” administered through Wisconsin Department of Natural Resources (“WDNR”) and any other funding sources available to the City. Accordingly, in preparing the Annual Plan, the Manager shall use good faith estimates based on its current understanding of the relevant facts and circumstances for each Proposed Project.

If the Parties cannot agree on the Annual Plan Budget for one or more Proposed Project(s), the City may elect, by delivering Notice to the Manager’s Authorized Representative, to (A) extend the date for approval of the Annual Plan, or (B) remove the Proposed Project(s) from the Annual Plan.

Each Proposed Project specified for implementation during a particular Construction Season, as set forth and approved in an Annual Plan, shall be deemed to be a “Budgeted Project” for purposes of this Agreement.

Section 3.2 Review and Approval of the Annual Plan. The City and the Manager shall collaborate in good faith to finalize each Annual Plan by no later than January 31 in each Fiscal Year, and in any event, prior to the start of each Construction Season. Each final Annual Plan, together with any changes, modifications or amendments thereto from time to time (the “Final Annual Plan”), shall be mutually acceptable to and executed by the Manager and the City. Upon execution thereof, a copy of each Final Annual Plan shall be attached as an exhibit to this Agreement.

Section 3.3 Amendment of Final Annual Plan. The Final Annual Plan for a Construction Season may only be amended, modified or supplemented with the prior written consent of the City and the Manager.

**ARTICLE IV.  
PROJECT PLANNING AND PRE-CONSTRUCTION**

Section 4.1 Development of Project Books. Not less than fifteen (15) months prior to the start of each Construction Season, the Manager and the City shall meet to review and discuss all Proposed Projects under the Program. By no later than twelve (12) months prior to the start of each Construction Season, the Manager and the City shall develop a list of Proposed Projects they agree to submit for implementation, pursuant to the process set forth in Section 4.3 below. Subject to the terms of Section 4.2 below, for each such Proposed Project, the Manager and the City shall cooperate in good faith to agree upon a list of Budgeted Projects and to finalize each Project Book therefor in accordance with the process set forth Section 4.4 below by no later than ten (10) months prior to the start of each Construction Season.

- (a) Competitive Pricing for Subcontracted Construction Work. Prior to submitting a Project Book to the City, the Manager shall conduct a public competitive pricing process for Subcontractors for all Construction Work expected to cost greater than \$25,000 relating to construction of the Budgeted Projects. The lowest bid responding to the Invitation to Bid by a responsible bidder shall be selected, unless all bids are rejected. The Manager shall make such bid submissions available to the City by no later than the time the Manager submits the proposed Project Book for the City's review.
- (b) Permits and Licenses. The Manager shall secure or set forth the process to secure all Permits necessary to construct the relevant Budgeted Projects. The City shall exercise all commercially reasonable efforts to assist the Manager in obtaining these Permits. Manager may submit and the City may review a particular Project Book prior to the obtaining of all required Permits; provided, however, the City's review of such Project Book shall not relieve or otherwise diminish the Manager's obligation to secure Permits prior to the performance of the Work for which such Permits are required.
- (c) Access to Project Site. The Manager shall obtain, or cause to be obtained, any and all access rights, servitudes, easements and rights-of-way necessary to construct the relevant Budgeted Projects from all Persons (other than the City), including all utility providers. The City shall exercise all reasonable efforts to assist the Manager in obtaining such necessary access rights, servitudes, easements and rights-of-way, including, but not limited to, from the City.
- (d) Agreements with Site Owners. Manager is responsible for obtaining all access and/or easement agreements from any Site Owner to conduct the Work for a particular Project, as deemed necessary in the Manager's reasonable discretion.

Section 4.2 Termination of Budgeted Projects Prior to Final Project Book. Either the City or Manager shall have the right to terminate or defer consideration of a Budgeted Project prior to the City's review of the Project Book in accordance with Section 4.4 for the relevant Budgeted Project (in which case, the proposed Project Book shall be modified accordingly).

Section 4.3 Submission of Project Books. The Manager will submit to the City for review one or more Project Books. Unless otherwise specified in a submittal, a reasonable time for review and comment by the City shall mean ten (10) Business Days after its receipt of a Project Book for review and comment. Failure by the City to deliver comments in writing to Manager within ten (10) Business Days after its receipt of a Project Book shall constitute a waiver of any comments or objections thereto; provided, however, that if, within such ten (10) Business Day period, the City notifies the Manager in writing that additional review time is required, a failure of the City to provide comments shall not constitute a waiver unless such failure continues for an additional five (5) Business Days.

Section 4.4 City Review of Project Books. Upon the later to occur of completion of review by the City of each Project Book, and confirmation of the availability of funds sufficient to pay the sum of the estimated Project Book Prices for Projects included in such Project Book, each Project described therein shall constitute a “Budgeted Project” and thereafter such Project Book shall be referred to as a “Final Project Book.” Manager shall thereafter proceed to implement the Budgeted Project(s) reflected therein in accordance with Article V. The Manager shall not be required to commence Work on a Budgeted Project unless the Manager shall determine, based upon such assurances or certifications from the City as Manager shall reasonably require, that adequate funds are available from the sources provided for herein for the Project Book Price for each Budgeted Project in the Final Project Book.

Section 4.5 Amendment of Final Project Book. A Final Project Book and a Budgeted Project may only be amended, modified or supplemented by written agreement of the City and the Manager or pursuant to a Change Order as authorized by this Agreement (each a “Project Book Amendment”).

## **ARTICLE V. CONSTRUCTION**

Section 5.1 General Scope of Construction Period Work. Following the City’s acknowledgement of a Final Project Book, the Manager shall deliver Notice to the City regarding any changes to the Construction Commencement Date and/or the Scheduled Substantial Completion Date for the applicable Budgeted Projects as stated in the Project Book. **The Manager shall be responsible for selection, management and implementation of all construction means, methods, techniques, sequences, and procedures necessary** or desirable for the correct, prompt and orderly prosecution and completion of the Work and the Budgeted Projects.

Section 5.2 Engagement of Certifier. Promptly following execution of this Agreement, the City and the Manager shall agree upon and the Manager shall engage a firm or an individual (the “Certifier”) appropriately qualified to inspect the construction Work performed, to advise the City whether or not such Work is performed in accordance with the applicable standards and to issue applicable KPIs for Projects that have achieved Substantial Completion. Either Party may, upon thirty (30) days’ Notice to the other Party, request that the Certifier be replaced by another mutually acceptable Person qualified to act in such capacity; provided that, unless agreed to by the Manager and accompanied by any necessary adjustment to the Scheduled Substantial Completion Date and the applicable Project Book(s), the Certifier shall not be replaced with

respect to any Budgeted Project if such replacement would delay the completion or increase the cost of such Budgeted Project.

Section 5.3 Project Site; Access Roads and Utilities.

- (a) Site of Construction. Each Budgeted Project shall be constructed on the relevant Project Site described or depicted in the Final Project Book.
- (b) Access Roads and Utilities. If needed, the City will assist the Manager to obtain from the applicable municipality(ies) appropriate provision for roads, utilities and utility distribution systems within each Project Site. The Manager shall be responsible (i) for any damage, destruction, loss, or injury to roads, utilities and utility distribution systems within each Project Site caused by its negligence or willful misconduct in the performance of Work, (ii) for obtaining all necessary electricity service connections required for construction, installation and Substantial Completion of the relevant Budgeted Project, and (iii) with the cooperation of the City, for obtaining and maintaining all necessary taps into sewer and water lines. The cost of all such systems, design and construction shall be included in the Project Book Price.

The Manager shall be responsible for notifying all affected utility companies prior to performing any Work that could impact the relevant utility service or infrastructure and shall cooperate with the utility providers in connection with such Work. The Manager shall cooperate with the owners of any underground utilities or overhead utility lines in order to minimize the disruption of these utility operations to the extent reasonably practicable. In the event of interruption to utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Manager shall promptly notify the proper authority and shall cooperate in the restoration of the service.

Section 5.4 Construction.

- (a) Minimization of Interference.
  - (1) Public Convenience and Safety. The Manager shall at all times conduct the Work in a manner to create the least practicable interference and obstruction to all forms of traffic, the Site Owner and the general public, residents and tenants at or adjacent to the relevant Project Site, shall take commercially reasonable steps to minimize noise, any objectionable or unpleasant odors, dust, vibrations, inconvenience and disruption to such Persons, and shall comply with Applicable Laws governing construction activities.
  - (2) Preservation, Protection and Restoration of Property. The Manager shall exercise reasonable care to protect the property of others from injury or loss arising from the Work. The Manager shall, to the extent practicable, keep each Project Site clean of dirt, debris, rubbish and waste materials arising out of the Work. At the completion of the Work, the Manager shall promptly remove all dirt, debris, rubbish and waste materials arising out of

the Work from and about the Project Site, including any material laydown, staging, storage or work force area, which shall be returned in a clean, neat, and workmanlike condition.

- (b) Discovery of Contamination. If, during construction, any Contractor encounters unexpected contamination or potential contamination such as, but not limited to: underground storage tanks, soil that is discolored or has an odor, or free product, the Contractor shall immediately take steps to ensure that the contamination is contained and protected and shall notify Manager. Manager shall deliver Notice to the City and the applicable Site Owner. Manager, City and such Site Owner shall determine the most appropriate next steps which may include:
- (1) Notification of the WDNR;
  - (2) A decision whether the contamination can be removed, so as to allow the project to continue;
  - (3) A decision to terminate, modify, or continue with construction; and/or
  - (4) A Compensable Change Order for appropriate adjustments in the Project Book Price and Scheduled Substantial Completion Date.

The Manager shall not be compelled without its consent to continue with construction of the Project without a Compensable Change Order.

- (c) Environmental Litigation: Defense. In the event that the performance of all or any part of the Work on a Project or under the Program gives rise to Environmental Litigation where the City and/or Manager are named as defendants, each party shall be responsible for its own defense and liabilities.
- (d) Employees and Workmanship.
- (1) Qualified Employees. Other than supervised apprentices or participants in workforce or contractor development/training programs, only personnel trained and skilled in the task assigned to them may be employed on any portion of the Work.
  - (2) Licensed Employees. When Applicable Laws require that certain personnel be licensed, then all such personnel employed on the Work shall be so licensed.
  - (3) Methods and Quality.
    - (A) All workmanship shall be of the standards set forth in the Project Book for such Budgeted Project. Recommendations of the manufacturers of specified materials shall be considered as a part of such specifications.

- (B) Materials shall be accurately assembled and set, and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced and coursed.
- (4) Supervision. The Manager shall ensure appropriate and adequate supervision at each Project Site at all times during the progress of the Work.
- (5) Safety. The Manager shall require all legally mandated precautions to prevent injury or damage to persons and property in or about the Budgeted Project and each Project Site through until the applicable Project becomes a Completed Project.
- (6) Emergencies. In the event of any Emergency affecting the safety of persons, the Work or property (including the Project Site and property immediately adjacent thereto), absent specific instructions or authorizations from the City if time or circumstances do not permit, the Manager shall take whatever reasonable measures are necessary under such circumstances to prevent or mitigate threatened damage, injury or loss. The Manager shall, as expeditiously as reasonably practicable after the occurrence of such Emergency, give Notice to the City of such Emergency providing reasonable details thereof. If the Manager reasonably believes the Emergency required additional Work which was actually performed, the Manager may submit to the City a written statement describing in reasonable detail (a) the Work performed, (b) the cost of such Work and (c) the effect of the Work, if any, on the Project Book Price as set forth in the Project Book, or on the guarantees, warranties or obligations of the Manager under this Agreement, and shall be entitled to a Compensable Change Order with respect to such Work.

Section 5.5 Construction Management, Monitoring and Review; Inspections; Acceptance.

- (a) Work Progress: Monthly Status Report. Beginning with the Construction Commencement Date of a Budgeted Project, the Manager shall, on a monthly basis, prepare and submit to the City a written report (the “Monthly Status Report”) containing the status of planning, procurement and construction activities for each Budgeted Project, including an updated project schedule therefor.
- (b) Monthly Meetings. The Manager shall meet with the City’s Authorized Representatives monthly or on such other periodic basis as the Parties shall determine in order to review the Monthly Status Report, discuss problems and corrective actions planned, and generally keep the City up to date on all material issues related to the Projects. The Manager may request that representatives of the City at particular monthly meetings include such senior officials of the City as the Manager believes may be helpful in addressing particular issues or problems.

- (c) Inspections. After receiving written permission from Site Owners setting forth reasonable hours of access, the City, its agents and Authorized Representative shall be granted access to each Project Site at reasonable times in order to monitor or inspect the Project Site of each Budgeted Project. Any such inspections or visits shall be conducted in a manner to minimize interference with the Work.
- (d) Acceptance. At such time the Certifier confirms in writing to the City that each Project is Substantially Complete, the Manager shall no longer have any obligations with respect to such Project, except to satisfy warranty claims under Section 5.5(e) below.
- (e) Warranty. The Manager warrants to the City that materials and equipment furnished under this Agreement will be as provided by the Project Book for each Project and new unless the applicable Project Book requires or permits otherwise. The Manager further warrants that the Work will conform to the requirements of this Agreement and will be free from defects, except for those inherent in the quality of the Work or permitted by this Agreement or the applicable Project Book. Work, materials, or equipment not conforming to these requirements may be considered defective. The Manager's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Certifier, the Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Notwithstanding any other provision of this Agreement, it is agreed that the Manager does not expressly or impliedly warrant the adequacy, sufficiency, or suitability of the plans, specifications, specified materials, or equipment, or other documents including in each applicable Project Book, including, without limitation, any specified sole source or brand-named products, equipment, or materials. Other than the express warranty contained in this Section 5.5(e) and in Section 10.1, the Manager makes no other warranty whether express or implied. The duration of all warranties of any kind from the Manager to the City shall be for the duration of the Warranty Period. The Manager agrees to assign to the City at the time of final completion of each applicable Project any and all manufacturer's warranties relating to materials and labor used therein and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

Section 5.6 Change Orders. Either Party may propose changes, improvements or additions to a Budgeted Project (each, a "Change Order") at any time prior to Substantial Completion of such Budgeted Project. Manager may make changes that do not constitute Material Change Orders without Notice to the Owner.

- (a) Material Change Orders. Any Party proposing a Material Change Order (as defined below) shall submit Notice of the proposed Material Change Order to the other Party in advance for review and approval. For purposes hereof, a "Material Change Order" means any Change Order which will, or can reasonably be expected to:

- (1) change the quality, integrity, durability or reliability of such Budgeted Project; or
- (2) substantially modifies the cost or schedule for a Budgeted Project from what is set forth in the Project Book therefor.

If the Manager proposes a Material Change Order, then it shall prepare and submit a proposed Project Book Amendment describing any resulting adjustment to the Project Book Price and/or Scheduled Substantial Completion Date.

If the City proposes a Material Change Order, then it shall submit to the Manager a Notice (a “Change Order Proposal”), which shall describe in reasonable detail the proposed Material Change Order, and within ten (10) Business Days after receipt thereof (or such longer time period as may reasonably be required), the Manager shall prepare and provide to the City a proposed Project Book Amendment as described above. The City shall have ten (10) Business Days to approve and execute or reject such Project Book Amendment, and failure of the City to act within such 10-day period shall be deemed to be an approval of the Project Book Amendment and the applicable Change Order proposal.

A Site Owner may propose Change Orders as long as the City, the Manager and the Site Owner agree to the modification of the Project and as to how the costs of such Change Order are to be borne.

Disputes arising out of this Section 5.6 shall be resolved in accordance with Section 10.15 provided, however, that the Manager shall not be required to proceed with any Material Change Order proposed by the City unless adequate provision, including adequate funding, is made for the direct impact, if any, of such Change Order on the Project Book Price, and/or Scheduled Substantial Completion Date. If the City and the Manager cannot agree as to the terms of “adequate provision” as described in the preceding sentence, and if the City insists upon proceeding with the particular Material Change Order, the Manager may terminate the applicable Budgeted Project as if for an Uncontrollable Circumstance in accordance with the provisions of Section 5.6(d).

(b) Compensable Change Orders.

If an Emergency, an Uncontrollable Circumstance or City Cause results or is reasonably expected to result in a material alteration of the Work, the Manager’s costs thereof or the time to construct a Budgeted Project in such fashion as otherwise to require a Material Change Order, the Manager shall (i) be entitled to an adjustment to any or both of (A) the Project Book Price and (B) the Scheduled Substantial Completion Date, and (ii) propose a Compensable Change Order to the City. The proposed Compensable Change Order may propose (a) suspension of the Budgeted Project; (b) termination of the Budgeted Project; and/or (c) modification of the Budgeted Project, in each case with a non-binding estimate of the impacts to the financial, construction, or schedule and obligations of the Manager and a reasonable date by which the Manager requires a response from the City, and, in the case of a suspension, a description of the circumstances under which the Budgeted Project could resume. The City shall provide timely a written response to the proposed Compensable Change Order, indicating its order of preference



among or between the alternative courses of action outlined in the proposed Compensable Change Order.

(c) Resolution of Compensable Change Orders.

The Manager shall provide in writing the fixed price to (i) implement the City's preferred course of action or, (ii) if a fixed price cannot be provided on the basis of then-current information, to prepare a concept proposal with respect to the Compensable Change Order. If the City approves concept proposal for the Compensable Change Order, the Manager shall furnish a more detailed plan within fifteen (15) Business Days thereafter or such other period of time on which the Parties may mutually agree. The more detailed plan may include fixed prices where known, or may include a compensation structure based on agreed to labor rates and material mark-ups. As a guiding principle, the cost of the Compensable Change Order should reflect the original Project Book Price plus a reasonable incremental cost to address the Uncontrollable Circumstance or City Cause, plus a markup of twelve and one half percent (12.5%) for the Manager on the incremental costs.

The Compensable Change Order proposal shall describe in reasonable detail the appropriate revisions (i) to the Work and the standards, requirements and specifications, for the relevant Budgeted Project, (ii) of any obligation of either Party under this Agreement, and (iii) to the relevant Scheduled Substantial Completion Date, resulting from the Compensable Change Order (including the time periods for preparation, review and approval of said proposal). If, within ten (10) Business Days following receipt of the Manager's proposed price, or such other period of time on which the Parties may mutually agree, the City notifies the Manager that the City wishes to proceed with such Compensable Change Order, the items and obligations referred to above shall be revised, as applicable, in accordance with the Manager's proposal, and the Parties shall either execute the Compensable Change Order or prepare documentation for the City's next committee/commission agenda, if required. The Manager shall proceed with any Compensable Change Order pursuant to this Section 5.6(c) only upon receiving the City's written authorization; provided, however, the Manager is authorized, notwithstanding the provision of this paragraph, to proceed with any work necessary to address an Emergency.

(d) Failure of Parties to Agree to Compensable Change Order Terms. If the City and the Manager cannot agree to the terms of the Manager's proposal for a Compensable Change Order, or if the City elects not to proceed with a Change Order resulting from the occurrence of an Uncontrollable Circumstance or fails to provide sufficient funds therefor, the Manager may suspend Work on the Budgeted Project in part or in whole, and/or terminate such Budgeted Project, and such dispute shall be resolved in accordance with Section 10.15.

**ARTICLE VI.  
COMPENSATION**

Section 6.1 Actual Program Costs. The City shall pay and reimburse the Manager, on a monthly basis, the Direct Costs.

Section 6.2 Base Fee. The Manager's base fee for each Project ("Base Fee") shall be structured as a cost-plus fee and paid by the City to the Manager as a markup of the sum of the

actual Direct Costs payable by the City in accordance with this section, as such costs are incurred and invoiced by the Manager to the City. The Base Fee is to address a set of actions taken to make capital improvement to address LSL and to the extent possible, shall be illustrated in each Annual Plan and Project Book to maximize eligibility for financial assistance under Wis. Admin. Code ch. NR 166 and applicable Wisconsin and federal law. The Base Fee will be invoiced and paid monthly and will be a seven and one half percent (7.5%) markup of the sum of the Direct Costs. For the avoidance of doubt, the Base Fee does not include (i) the actual Project costs of Subcontractors directly relating to the planning, construction, installation and Acceptance of a Project, or (ii) the actual Program costs of Subcontractors directly relating to the implementation of the Socio Economic Development Plan set forth on Schedule 2 attached hereto.

Section 6.3 Performance-Based Fee. The Key Performance Indicators (KPIs) set forth on Schedule 3 are performance-based cost-plus fees. These fees will be derived and applied to all Direct Costs. The Manager's achievement of each of the KPIs set forth on Schedule 3 shall earn a corresponding fee in the amount of one percent (1%) Direct Costs, for a maximum of a five percent (5%) cumulative Performance-Based Fee. The details for goals and implementation of each KPI are set forth in Schedule 3. Within thirty (30) days following the end of each KPI reporting period, discussed below, the Manager shall prepare and deliver to the City a detailed report summarizing its performance and achievement with respect to the goals set forth in Schedule 3. If and to the extent the KPIs are earned by the Manager with respect to any KPI reporting period, then the amount due shall be invoiced by the Manager in its next monthly Application for Payment.

- (a) Reporting Period for Annual KPIs. The LSL Cost KPI, LSL Implementation Schedule KPI, Training Individuals and Businesses KPI shall be calculated and submitted by the Manager to the City within thirty (30) days after the end of each Construction Season.
- (b) Reporting Period for Semi-Annual KPIs. The Local Business Utilization KPI and the Target Class Business Utilization KPI shall be calculated and submitted by the Manager to the City within one hundred thirty (30) days following each June 30 and December 31 during the Term.

Section 6.4 General Requirements & Conditions. The manager shall be entitled to General Requirements and Conditions reimbursement equal to two and one half percent (2.5%) of Direct Costs which shall include the Manager's expenses associated with the program such as personnel (whether as an employee, consultant or otherwise), overhead, administrative and other internal costs of the Manager.

Section 6.5 Method of Payment by the City. With respect to items to be paid with City funds or funds administered by the City, the following procedures shall govern:

- (a) Application for Payment. On or before the eighth (8th) day of each Billing Month, the Manager shall submit to the City's Authorized Representative an application signed by the Manager ("Application for Payment") for the Direct Costs of each Project that has proceeded to construction pursuant to Article V, in each instance

for the immediately preceding Billing Month. Each Application for Payment shall include:

- (1) the Certifier's certification that the materials, supplies and labor incorporated in the applicable Project are in a percentage consistent with the Manager's Application for Payment for the applicable Billing Month;
  - (2) the Certifier's certification of KPIs delivered on a Project that has achieved Substantial Completion;
  - (3) for the applicable Billing Month, lien waivers from each Contractor for each Project, and which lien waivers shall set forth the amounts to be received from said disbursements, the official capacity of the signatory to the waivers, the name and address of the Project, and be properly acknowledged. Each such lien waiver, whether partial or final, must stipulate that all lien rights are waived with respect to the total amount disbursed up to and including the last date upon which labor or material was supplied and for which payment was made; and
  - (4) a sworn Contractor's statement, setting forth the names and addresses of all current and/or future Subcontractors and materialmen for the applicable Project including the labor to be furnished by such Subcontractors and the amounts of all subcontracts, the previous payments made on all subcontracts, the amounts due on all subcontracts for the current Application for Payment and the balance due on all subcontracts thereafter. The foregoing shall be delivered to the City on form AIA G702 or as an attachment to the Application for Payment.
- (b) General Payment Requirements. The City shall make payment for all amounts submitted for the immediately preceding Billing Month and documented in accordance with the preceding Section 6.5(a). These amounts shall include actual direct costs, the Base Fees earned and payable to the Manager, and if applicable, the Performance-Based Fee earned and payable to the Manager.

The City shall review each Application for Payment and, within ten (10) Business Days following the receipt thereof, either (a) approve such Application for Payment in the amount requested, in which case payment shall be made in thirty (30) days or (b) notify the Manager in writing of any reasons then known for withholding its approval of all or any portion of such application. In the latter case, the City shall pay the portion of the Application for Payment approved and the Manager shall resubmit the portions not approved (corrected to remove any deficiencies stated in writing by the City).

If the City shall determine that, for specified reasons, the Manager is not entitled to all or any portion of the payment sought, (a) the City shall approve that portion of the Application for Payment that is not in dispute and (b) when the grounds for withholding approval for payment have been cured to the City's reasonable satisfaction, any amount withheld shall be paid promptly by the City.

The Manager shall comply with Wis. Stat. § 66.0135 and pay Contractors no later than seven (7) days of receipt of payment by the Manager from the City.

The Manager shall include in its agreements with Contractors, including suppliers and manufacturers of equipment, the provisions and requirements of this Agreement as applicable to their part of the Work included under this Agreement, together with such provisions as may be required pursuant to Applicable Law. Nothing contained in this Agreement creates any contractual relationship between the Manager and any Subcontractor.

Section 6.6 Interim Financing. Time is of the essence in creating the Program and performing the Work. To avoid foreseeable delay, the Manager shall begin Work and administering the Program prior to the City's receipt of annual grant funding or other funding sources, subject to reimbursement from the City for costs expended by the Manager, as more particularly set forth in this Section 6.6 below.

If the Manager is required to begin Work and administering the Program prior to the City's receipt of annual grant funding or other funding sources, the Manager shall advance the costs for such Work and Program administration, which costs shall be deemed Interim Financing subject to a flat annual interest rate of eight percent (8%) for Interim Financing Costs incurred by the Manager. The City shall repay the Manager for the Interim Financing and accrued Interim Financing Costs on a monthly basis within thirty (30) days of the date of each Manager's invoice therefor. In the alternative, the City may prepay the Manager's specified costs of performing the Work and administering the Program prior to the City's receipt of annual grant funding or other funding sources.

The Parties shall endeavor for any Interim Financing to be reimbursed to the City through annual grant funding to the City in accordance with applicable Wisconsin law, specifically Wis. Admin. Code ch. NR 166.

Section 6.7 Reconciliation. Following the end of each Billing Year, the Manager shall deliver to the City an annual reconciliation and settlement statement, together with an invoice setting forth any amounts due the Manager in accordance with this Section.

## **ARTICLE VII. INDEMNIFICATION AND INSURANCE**

Section 7.1 Manager Indemnification. The Manager shall indemnify, hold harmless and defend the City and the City's agents, officers, and employees (collectively, the "City Indemnified Parties"), from and against any and all Losses on account of any negligence, recklessness, or willful misconduct (including any act of fraud) of the Manager. The Manager shall not be required to reimburse, defend, or indemnify the City Indemnified Parties for loss or claim due to the negligence or willful misconduct of such City Indemnified Parties. The Manager shall promptly notify the City of the assertion of any claim against which the City Indemnified Parties are indemnified hereunder, shall defend the City Indemnified Parties against any such claim, and shall have the right to settle such claim without the approval of the City Indemnified Parties. The City agrees that it shall promptly notify the Manager of the assertion of any claims against which the City Indemnified Parties seek to be indemnified hereunder; provided, however,

that the failure to give such notice shall not affect the Manager's indemnification obligation hereunder, except insofar as the failure to provide such notice increases the amount of the particular Losses. The extent of the Manager's indemnification shall not be limited in any way as to the amount of any insurance limits contained in any insurance policy procured or provided in connection with this Agreement.

The indemnification provided by the Manager to the City pursuant to this Section 7.1 shall not run to any Site Owner and shall not extend to any loss based upon a claim of any Site Owner other than a claim caused by the negligence, recklessness, or willful misconduct (including any act or fraud) of the Manager.

Section 7.2 Insurance. The Manager shall maintain insurance of the types and in the amounts described in this Agreement and meeting the requirements specified in Schedule 1 attached hereto. The Manager shall cause the Contractor to secure and maintain insurance as part of their contracts with the Manager in accordance with Schedule 1. Such Contractor insurance, except for professional errors and omissions policies and workers compensation policies, shall name the City as an additional insured. The City may permit the Manager to arrange for a "contractor controlled insurance program" in order to satisfy some its insurance obligations hereunder, which coverage shall be as specified in the applicable Project Book for a Budgeted Project.

## **ARTICLE VIII. CONTRACT EXTENSION**

Section 8.1 Extension Period. If any LSLs remain within the City at the expiration of the Term, the City may, upon mutual agreement of the Parties, extend the Term for additional periods (each such period, an "Extension Period"). If the City exercises its option under this Section 8.1 the City shall deliver Notice to the Manager's Authorized Representative as soon as reasonably practicable, but at least thirty (30) days prior to expiration of the Term, whereupon this Agreement shall be extended on the same terms and conditions to facilitate completion of the Project(s) underway as of the date of such Notice of the applicable Extension Period.

## **ARTICLE IX. REGIONALIZATION**

Section 9.1 Regional LSL Professional Services. The Parties agree to allow the Manager to make available to other Wisconsin municipal and local governmental entities the extension of LSL Professional Services at a per LSL line cost. The Parties recognize the difficulty of administrating a Program and seek to develop a regional hub of LSL Professional Services. Upon request to either the City or the Manager for LSL Professional Services by another municipal or local governmental entity in Wisconsin, the City agrees to enter into agreements under Wis. Stat. §§ 66.0131 and 66.0301, if necessary and subject to Wausau Common Council approval, with the other municipal and local governmental entities to facilitate the receipt and/or furnishing of LSL Professional Services under the terms of this Agreement. In no circumstance may the City enter into an intergovernmental agreement with another municipality or local governmental entity to facilitate the receipt and/or furnishing of LSL

Professional Services under the terms of this Agreement without written consent of the Manager, which consent may not be unreasonably withheld or delayed.

**ARTICLE X.  
MISCELLANEOUS**

Section 10.1 Representations, Warranties and Covenants of the Manager. Manager represents and warrants to the City and agrees and covenants with the City as of the Effective Date as follows:

- (a) All copies of documents, contracts and agreements that Manager has furnished to the City are true and correct in all material respects.
- (b) Manager has paid, and will pay when due, all federal, state and local taxes, provided, however, that the City and the Manager will work collaboratively to minimize sales tax on purchases of materials where possible, and will promptly prepare and file returns for accrued taxes prior to any taxes becoming delinquent..
- (c) Manager will timely pay, or cause to be paid, for all work performed and materials furnished for the Project.
- (d) No statement of fact by Manager contained in this Agreement and no statement of fact furnished, or to be furnished, by Manager to the City pursuant to this Agreement contains, or will contain, any untrue statement of a material fact or omits, or will omit, to state a material fact necessary in order to make the statements herein or therein contained for misleading at the time when made.
- (e) Manager is a Delaware limited liability company duly formed and validly existing, in good standing, and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Manager is duly licensed or qualified to do business and in good standing in Wisconsin.
- (f) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of Manager and constitute the valid and binding obligations of Manager enforceable in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.
- (g) The execution, delivery, and performance of Manager's obligations pursuant to this Agreement will not violate or conflict with any of Manager's organizational documents or any indenture, instrument or agreement by which Manager is bound, nor will the execution, delivery, or performance of Manager's obligations pursuant to this Agreement violate or conflict with any law applicable to Manager or the Program.

- (h) No default, or event which with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Manager is not in default (beyond any applicable cure or grace period) of any of its obligations under any other agreement or instrument entered into in connection with the Program.

Section 10.2 Representations and Warranties of the City. The City represents and warrants to Manager that:

- (a) The City is a municipal corporation and political subdivision organized under the laws of the State of Wisconsin. Wausau Water Works is a water and sewer utility serving the City and overseen by the Wausau Waterworks Commission.
- (b) The City has the authority to enter into this Agreement and carry out its obligations hereunder pursuant to the authority granted to it by the Wisconsin Constitution and State law.
- (c) The City will cooperate with Manager throughout the term of this Agreement and shall use its best efforts to promptly review and/or process all submissions and applications in accordance with applicable City ordinances and policies.
- (d) The parties below on behalf of the City have been fully authorized to execute this Agreement on behalf of the City. When executed and delivered to Manager, this Agreement shall constitute a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

Section 10.3 Notices. All notices hereunder must be in writing and must be sent by United States registered or certified mail (postage prepaid) or by an independent overnight courier service, addressed to the addresses specified below:

*Notices to Manager:*

Community Infrastructure Partners, LLC  
  
Attn: Sean Agid

*with a copy to:*

Godfrey & Kahn, S.C.  
1 East Main St, Suite 500  
Madison, WI 53703  
Attn: Mike Wittenwyler

*Notices to the City:*

City of Wausau  
407 Grant Street  
Wausau, WI 54403  
Attn: City Clerk

*with a copy to:*

City of Wausau  
407 Grant Street  
Wausau, WI 54403  
Attn: City Attorney

Wausau Water Works  
407 Grant Street  
Wausau, WI 54403  
Attn: Eric Lindman

Notices given by mail are deemed delivered within (3) three business days after the party sending the notice deposits the notice in the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the party delivering the notice timely deposits the Notice with the courier for overnight (next day) delivery.

Section 10.4 No Personal Liability. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City or the Manager have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

Section 10.5 Waiver; Amendment. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Manager, and then only to the extent specifically set forth in writing. Nothing contained in this Agreement is intended to or has the effect of releasing Manager from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

Section 10.6 Entire Agreement. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

Section 10.7 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of Manager and the City, and no third party (other than successors and assigns) shall have any rights or interest in any provision of this Agreement, or as a result of any action or inaction of the City in connection therewith.

Section 10.8 Severability. If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms, and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent by law.

Section 10.9 Governing Law. This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Marathon County, Wisconsin.

Section 10.10 Time is of the Essence; Deadlines. Time is of the essence with respect to this performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.



Section 10.11 Relationship of Parties. This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Manager.

Section 10.12 Captions and Interpretation. The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.

Section 10.13 Counterparts/Electronic Signature. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile signatures and PDF email signatures shall constitute originals for all purposes.

Section 10.14 Termination.

(a) Termination by the Manager. If the Work is stopped during the Construction Season for a cumulative period of 14 days through no fault of the Manager, the Manager may, upon seven additional days' written notice to the City, terminate the Agreement and recover from the City payment for Work executed including a twelve and one half percent (12.5%) termination fee and reimbursement of the Manager's costs incurred by reason of such termination.

(b) Termination by the City for Cause.

(1) The City may terminate the Agreement if the Manager:

- (A) refuses or fails to supply enough properly skilled workers or proper materials;
- (B) fails to make payment to Contractors for materials or labor in accordance with the respective agreements between the Manager and the Contractors;
- (C) disregards Applicable Law of a Governmental Authority;  
or
- (D) is otherwise guilty of substantial breach of a material provision of this Agreement.

(2) When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City and after giving the Manager seven days' written notice, terminate this Agreement, and:

- (A) take possession of the Project Site(s) and of all materials thereon owned by the Manager, with the cost of such materials being reimbursed by the City to the Manager within thirty (30) days, and;

(B) finish the Work by whatever reasonable method the City may deem expedient.

(3) When the City terminates the Agreement for one of the reasons stated in Section 10.14(b), the Manager shall not be entitled to receive further payment until the Work is finished.

(4) If the unpaid balance of the Base Fees and Performance-Based Fees exceeds costs of finishing the Work, such excess shall be paid to the Manager. This obligation for payment shall survive termination of the Agreement.

(c) Termination by the City for Convenience. The City may, at any time, terminate the Agreement for the City's convenience and without cause. In the event of a termination under this Section 10.14(c), the Manager shall be paid the value of the Direct Costs incurred as of the date of termination as determined pursuant to the terms of the Agreement (including materials stored off-site if approved by the City, fabricated items, specialty orders not able to be cancelled and re-stocking fees), less sums received by the Manager, plus a payment that shall include a termination fee of twelve and one half percent (12.5%) of the value of the Direct Costs as of the date the City terminates and reimbursement of the Manager's costs incurred by reason of such termination. For example, if the Manager has incurred Direct Costs of \$100,000 as of the date the City terminates under this Section 10.14(c), and the City has submitted \$10,000 for such Direct Costs, the Manager would be entitled to \$102,500.

#### Section 10.15 Dispute Resolution.

(a) Definition of Claims. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the City and the Manager arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the Claim.

(b) Notice of Claims. Claims by either the City or the Manager must be initiated by written notice to the other party. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The notice initiating such Claim shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date this is reasonably possible.

(c) Continuing Contract Performance. Pending final resolution of a Claim, the Manager shall proceed diligently with performance of the Agreement and the City shall continue to make payments in accordance with the Agreement.

(d) Mediation.

(1) Claims, disputes, or other matters in controversy arising out of or related to the Agreement, shall be subject to mediation as a condition precedent to binding dispute resolution.

(2) The Parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

(3) The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(e) Binding Dispute Resolution. For any Claim that is not resolved by mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the county in which the Project is located.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first printed above.

MANAGER:

Community Infrastructure Partners, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:

City of Wausau

By: \_\_\_\_\_  
Katie Rosenberg, Mayor

Attested to

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Wausau Water Works

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachments:**

- Schedule 1 - Insurance
- Schedule 2 - Socio Economic Development Implementation Plan
- Schedule 3 - KPIs
- Application for Payment

**Schedule 1 - Insurance**

**Manager's Insurance Coverage**

Insurance Requirements: The Manager shall provide the City with evidence of the Manager's commercial insurance coverage for the following exposures:

- (a) Commercial General Liability Coverage at least as broad as Insurance Services Office Commercial General Liability Form, including coverage for Products Liability, Completed Operations, Contractual Liability and Explosion, Collapse, Underground coverage:
  - (i.) \$1,000,000 each Occurrence limit
  - (ii.) \$1,000,000 Personal and Advertising Injury limit
  - (iii.) \$2,000,000 general aggregate (other than Products-Completed Operations) per project
  - (iv.) \$2,000,000 Products-Completed Operations aggregate
  - (v.) \$50,000 Fire Damage limit – any one fire
  - (vi.) \$5,000 Medical Expense limit – any one person
  - (vii.) Products-Completed Operations coverage must be carried for two years after Acceptance.
  
- (b) Professional Liability
  - (1) Limits
    - (i.) \$1,000,000 each claim
    - (ii.) \$2,000,000 annual aggregate
  - (2) Must continue coverage for 2 years after Acceptance.
  
- (c) Auto Liability Coverage as least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1 0 “Any auto” basis.
  
- (d) Worker's Compensation and Employer's Liability if required by Wisconsin State Statute. Must carry coverage for Statutory Worker's Compensation and an Employer's Liability with limits of:
  - (i.) \$100,000 Each Accident
  - (ii.) \$500,000 Disease-Policy Limit
  - (iii.) \$100,000 Disease-Each Employee
  - (iv.) Employer's Liability limits must be sufficient to meet umbrella liability insurance requirements.
  
- (e) Umbrella Liability Coverage at least as broad as the underlying Commercial General Liability, Automobile Liability, and Employer's Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured

retention of \$10,000. The Umbrella Liability must be primary and non-contributory to any insurance or self-insurance carried by the City.

(f) Additional Provisions

- (i.) All insurance must be primary and non-contributory to any insurance or self-insurance carried by City.
- (ii.) All sub-professionals shall be required to obtain the above coverages as applicable. The insurance shall be as broad and with the same limits and coverages (including waivers of subrogation) as those required per Manager requirements.
- (iii.) Insurance is to be placed with insurers who have an A.M. Best rating of no less than A- and a Financial Size Category rating of no less than Class VII, and who are authorized as an admitted insurance company in the State of Wisconsin.
- (iv.) The following must be named as additional insureds on all liability policies: City of Wausau, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04 and also include Products-Completed Operations additional insured coverage per ISO form CG 20 37 07 04 or their equivalents for a minimum of 2 years after acceptance of work. This does not apply to Worker's Compensation policies or Professional Liability policy.
- (v.) Waivers of subrogation in favor of the City must be endorsed onto the Worker's Compensation, Commercial General Liability, Automobile Liability, and Umbrella Liability coverages.
- (vi.) Any deductible or self-insured retention must be declared to the City.
- (vii.) Prior to execution of the Contract, the Manager shall file with the City a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. In addition, form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent on the Commercial General Liability coverage.

Special Provisions for Insurance:

1. The Manager shall forward to the City, a certificate(s) of insurance indicating the Manager's insurance and any special provisions required under the foregoing provisions. Such certificate(s) shall be in a form satisfactory to the City and shall list the various coverages and limits. Insurance companies providing the coverage must be acceptable to the City, rated A.M. Best and carry at least an "A-" Rating VIII. In addition to the aforementioned provisions; such insurance policies shall include an endorsement (provided such endorsement is reasonably commercially available) stating that such policies shall not be changed or canceled and that they will be automatically renewed upon expiration and continued in full force and effect until Substantial Completion and Acceptance of all Work covered by the Agreement, unless the City is given thirty (30) days written notice before any change or cancellation is made effective.

2. The Manager's initial and subsequent certificates of insurance shall include a description of the Project and the assigned Project number. Prior to beginning any project work, the Manager's insurance requirements as outlined must be submitted and approved in writing.
3. Manager's insurance shall be procured from insurance or indemnity companies acceptable to the City and licensed and authorized to conduct business in the State of Wisconsin. The City's approval or failure to disapprove insurance furnished by the Manager or any Contractor shall not release such parties of full responsibility for liability for damage and accidents.
4. If at any time the above required materially significant insurance policies should be canceled, terminated or modified so that the insurance is not in full-force and effect as required herein, Manager shall be considered in default of its obligations under the Agreement, and shall have ten (10) business days to cure such default to the City's reasonable satisfaction.
5. The Manager shall require each Contractor and Subcontractor, at all tiers, to provide evidence of insurance coverage required. Such coverage shall remain in full force and effect during the performance of activities under this Agreement.

## **Schedule 2 - Socio Economic Development Implementation Plan**

The Manager shall develop a Socio Economic Development Plan (the “S/E Plan”) during the Term, and will submit it to the City by **May 31, 2024**. The S/E Plan will be aligned with the goals and objectives of the Program and will have the following components:

1. Contractor Capacity Development Program. The Manager will define a plan to forge innovative partnerships, to facilitate the building of a labor force within the City for low barrier-to-entry construction and skilled trades.
2. Outreach and Inclusion Program. Increase the participation of Target Class Businesses (defined to mean a business entity that is small business, a minority-owned business, a woman-owned business, a veteran owned-business, or a union business) across all service areas and phases of the Program and meet a minimum of twenty-five percent (25%) participation goals. The plan will define several efforts to be conducted in order to meet the goals, which may include:
  - (a) Hosting outreach event(s) to increase awareness of opportunities for Target Class Businesses under the Program;
  - (b) Participating in conferences, fairs and outreach events related to Target Class Businesses;
  - (c) Advertising requirements, opportunities and support services available to Subcontractors from Target Class Businesses.
  - (d) Establishing a transfer of technology plan that educates and trains Target Class Businesses in specialized technical areas, such as sustainability, green infrastructure, stormwater management technologies and practices;
  - (e) Developing a pre-qualified pool of Subcontractors;
  - (f) Tailoring project contracts and structures so as to recognize the qualifications of Target Class Business Subcontractors and maximize their ability to participate;
  - (g) Incorporating local preference clauses in contracts and the bundling and earmarking of contracts for Target Class Business inclusion; and
  - (h) Participate in small business job fair(s) within the City.
3. Mentor Development Program (Mentor Protege). Enhance the local City workforce by developing a mentor-protege network to enhance the protege firms’ skill levels so they can compete for significant work and increase their participation by leading and filling significant roles for the Work being performed hereunder. The Manager shall develop a network of protégé firms and integrate them into the activities carried out and the opportunities provided.
4. Stakeholder & Community Engagement Program. Provide up-to-date information to City residents and provide a forum to facilitate information exchange and to coordinate



activities pertaining to the development of the Program. The Manager shall define the plan to meet with community organizations based in the City's area each Fiscal Year during the Term to provide an update on the Program.

### Schedule 3 – Key Performance Indicators

1. **LSL Cost KPI** – This KPI will be structured as a not-to-exceed price per LSL replaced. The exact cost will be set each year in the Annual Plan. During the annual planning process a detailed budget will be agreed upon by the City and the Manager. If the Manager delivers the scope at or less than the agreed upon budget, then the Manager has earned the performance-based fee for this KPI. Any savings below the agreed upon budget will be used to replace more LSLs.
2. **LSL Implementation Schedule KPI** – This KPI will be tied to replacing a minimum number of lines in a given year, as determined by the agreed upon Annual Plan and adjusted in the Project Book(s) if expected funding availability changes. It will be the Manager’s responsibility to develop an outreach program that generates property owner participation to ensure homeowners and tenants allow access to homes to enable replacement of their lead pipes.
3. **Local Business Utilization KPI** – This KPI will be tied to at least fifty percent (50%) of dollars spent on Construction Work must be awarded to Local Businesses.
4. **Target Class Business Utilization KPI** – This KPI will be tied to a percentage of dollars spent on Construction Work awarded to Target Class Businesses. The following percentages will be the KPI thresholds:
  - Year 1 (contract execution to December 31, 2024) = 20%
  - Year 2 (January 1, 2025 – December 31, 2025) = 30%
  - Years 3 & beyond (beginning January 1, 2026) = 40%
5. **Training Individuals and Businesses KPI** – The purpose of this KPI is to develop contractor capacity that enables the City to remove all ~8,000 LSLs within a five-year period. To accomplish this the Manager may work in partnership with LiUNA, Wisconsin Laborers’ Council District and other organizations to create a workforce development program that trains individuals capable of replacing lead service lines so existing businesses can hire capable employees. Another service the Manager will explore is establishing a contractor development program and recruit existing businesses, such as residential plumbers, that trains them for LSL replacement. For Year 1, the Manager will be awarded this KPI by either recruiting one (1) residential plumber (individual or firm) into the program and/or launching an LSL replacements program within Wisconsin with LiUNA and/or Wisconsin Laborer’s Council District. The KPI metrics for subsequent years will be determined in alignment with each annual plan depending on the volume of lines expected to be replaced each year.