

**THE CITY OF ASHLAND CONDUCTS THEIR MEETINGS IN PERSON at
CITY HALL COUNCIL CHAMBERS, 601 MAIN STREET WEST, ASHLAND, WI
WITH THE AVAILABILITY TO ATTEND VIRTUALLY**

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Please contact the Clerk's office if you require accommodations to attend the meeting.

**ASHLAND CITY COUNCIL MEETING
Tuesday, March 14, 2023 – 6:00 PM
*AMENDED AGENDA***

1. CALL TO ORDER

A. Roll Call, Moment of Silence and Pledge of Allegiance

2. APPROVAL OF AGENDA

3. APPROVAL OF MINUTES

A. February 28, 2023 City Council and Committee of the Whole Meeting Minutes

4. CITIZEN PARTICIPATION PERIOD

5. MAYOR'S REPORT

A. Announcements

B. Appointments

C. Recognition of Local Achievements

6. CONSENT AGENDA

A. Miscellaneous Minutes

7. NEW BUSINESS

**A. Formally Approve Purchase Offer for 514 Main Street West from Ashland County
(Administration) Roll**

**B. Approve an Agreement for Professional Services between the City of Ashland and Short
Elliot Hendrickson, Inc. (SEH) for the 2023 Sanitary Sewer Replacement and 2023
Sanitary Sewer Collection System Repair (CIPP) Projects (Public Works) Roll**

- C. Approve an Agreement for Professional Services between the City of Ashland and Short Elliott Hendrickson, Inc. (SEH) to Complete Watermain Replacement for the 2024 Prentice Avenue Phase 1 Reconstruction Project (*Public Works*) Roll
 - D. Approve an Agreement for Professional Services between the City of Ashland and Short Elliot Hendrickson, Inc (SEH) for Safe Drinking Water Loan Program Grant Administration Services for the 2023 MacArthur Avenue Reconstruction Project (*Public Works*) Roll
 - E. Approve a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Environmental Improvement Fund for SFY2024 MacArthur Avenue Reconstruction Project (*Public Works*) Roll
 - F. Approve a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Environmental Improvement Fund for SFY2024 New Lake Superior Water Intake Project (*Public Works*) Roll
 - G. Approve a Contract Agreement between the City of Ashland and Hydro Klean, LLC for the 2023 Sanitary Sewer Cleaning & Televising Project (*Public Works*) Roll
8. **CLOSED SESSION (Roll)** Council may return to Open Session and take action on any item discussed during Closed Session.
- A. **Amended*
PURSUANT TO SEC. 19.85(1)(g): Conferring with legal counsel who either orally or in writing will advise governmental body on strategy to be adopted with respect to current or likely litigation. (*City Attorney*) (*A to Z Plumbing & Heating, Inc., Zygmund Jablonski, Jr., included but not limited to Cases No. 23CV08, 22FO04, 22FO03, 21SC239, 21SC250, and 21FO429*)
 - B. Return to Open Session (Voice)
 - C. Report of Action Taken during Closed Session

9. ADJOURNMENT

The City of Ashland does not discriminate on the basis of sex, race, creed, color, national origin, sexual orientation, age or disability in employment or provision of services, programs or activities.

NOTE: Upon reasonable notice, the City of Ashland will accommodate the needs of disabled individuals or individuals with limited English proficiency through auxiliary aids or services. For additional information or to request this service, contact Denise Oliphant at 715-682-7071 (not a TDD telephone number) or FAX: 715-682-7048

MEETING MINUTES
ASHLAND CITY COUNCIL
Tuesday, February 28, 2023 – 6:00 PM
Ashland City Hall Council Chambers

1. CALL TO ORDER

The Tuesday, February 28, 2023 Ashland City Council meeting was called to order by Mayor Matt Mac Kenzie at 6:00 p.m.

A. Roll Call, Moment of Silence and Pledge of Allegiance

Roll call was taken, a Moment of Silence was held, and the Pledge of Allegiance was recited.

PRESENT: Kevin Seefeldt, Sarah Jackson, Ana Tochterman, Andrew Goyke, Laura Graf, Charlie Ortman

ABSENT: Dick Pufall

ALSO PRESENT: Mayor Matthew MacKenzie, City Administrator Brant Kucera, Deputy Clerk Chelsea List, City Attorney Tyler Wickman, Public Works Director John Butler, Parks Director Sara Hudson, Public Works Administrative Manager David Garrington, and other interested citizens.

2. APPROVAL OF AGENDA

Seefeldt moved, seconded by Graf to approve the agenda as presented. The motion carried unanimously by voice vote.

3. APPROVAL OF MINUTES

A. February 14, 2023 City Council and Committee of the Whole Meeting Minutes

Tochterman moved, seconded by Seefeldt to approve the minutes. The motion carried unanimously by voice vote.

4. CITIZEN PARTICIPATION PERIOD

There were no Citizens present wishing to address the Council.

5. MAYOR'S REPORT

A. Announcements

MacKenzie noted that he and Council President Ortman are working to bring back discussion about updating the recycling ordinance, starting first with input from the Sustainability Committee. Additionally, he stated that last week State Representatives Robert Romaine Quinn and Chanz Green visited Ashland at the Vaughn Public Library. During that visit, MacKenzie invited both Quinn and Green to a Council meeting for introductions. MacKenzie extended a thank you to staff and election officials for the completion of the 2023 February Spring

Primary Election. MacKenzie then spoke about the Book Across the Bay and Winter Market on Vaughn that were hosted the previous weekend. This year's Book Across the Bay had over 2,500 competitors and positive feedback. There was also lots of positive feedback regarding the Winter Market on Vaughn. There were many of people on Main Street enjoying the event and the shops. Lastly, efforts for the Science Center are still active. He attended a meeting regarding the next phase of the project on February 28, 2023. At this meeting MacKenzie stated that the City would offer a letter of support for the Science Center.

6. CONSENT AGENDA

A. Miscellaneous Minutes

Seefeldt moved, seconded by Goyke approve the Consent Agenda. The motion passed unanimously by voice vote.

7. OLD BUSINESS

A. Approve to Reallocate \$10,500 from Fund 453 to Fund 481 for Professional Engineering Services for Lakebed Surveys (*Parks & Recreation*) Roll

Seefeldt moved, seconded by Graf to approve the reallocation. The motion passed unanimously by roll call vote.

8. NEW BUSINESS

A. Approve Change Order No. 2 to Ritola Inc for the 2021 Alley Sewer Replacement (*Public Works*) Roll

Seefeldt moved, seconded by Graf to approve the change order for the amount of \$28,400. The motion passed unanimously by roll call vote.

B. Approve a Proposal for Professional Services Agreement with Right of Way Professionals, Inc. for Real Estate Acquisition Services on the 2024 Prentice Avenue, Phase 1 Reconstruction Project (*Public Works*) Roll

Goyke moved, seconded by Jackson to approve the agreement for \$35,810. The motion passed unanimously by roll call vote.

C. Approve Payment to Energenecs for Supervisory Data and Acquisition Control (SCADA) Upgrades at the Knight Road Pump Station (*Public Works*) Roll

Seefeldt moved, seconded by Graf to approve payment in the amount \$53,645. The motion passed unanimously by roll call vote.

9. ADJOURNMENT

Graf moved, seconded by Tochtermann to adjourn. The motion carried unanimously by voice vote.

Respectfully Submitted,

Chelsea List, Deputy Clerk

MEETING MINUTES COMMITTEE OF THE WHOLE

The Common Council of the City of Ashland met as the Committee of the Whole on **February 28, 2023** immediately following the City Council meeting.

ITEMS FOR DISCUSSION AND POSSIBLE ACTION:

1. Roll Call

The Tuesday, February 28, 2023 City of Ashland Committee of the Whole Meeting was called to order by Council President Charlie Ortman at 6:28pm.

PRESENT: Kevin Seefeldt, Sarah Jackson, Ana Tochtermann, Andrew Goyke, Laura Graf, Charlie Ortman

ABSENT: Dick Pufall

ALSO PRESENT: Mayor Matt Mackenzie, City Administrator Brant Kucera, Deputy Clerk Chelsea List, Public Works Director John Butler, Public Works Administrative Manager David Garrington, and other interested citizens.

2. Council President's Report

Ortman noted that last week State Representatives Robert Romaine Quinn and Chanz Green visited Ashland at the Vaughn Public Library. He has calls into both representatives about having them potentially attend City Council meetings virtually. He stated that himself, the Mayor, and Administrator are looking at process improvement at least once a month. Lastly, he wanted to thank the City Clerk for her work on creating a good governance guide for the Council.

3. Administrator's Report

Kucera wanted to extend gratitude to the City employees for their efforts with snow removal this winter, especially in the downtown area. Kucera also spoke about a citizen concern that he received about the building codes at 504 10th Avenue West and the follow-up done with that citizen. Lastly, he mentioned the ruling about Dark Stores that was covered in the Ashland Daily Press and other media.

4. Approval of Agenda

Jackson moved, seconded by Tochtermann to approve. The motion passed unanimously by voice vote.

5. Committee Updates

ASHLAND ORE DOCK BOARD OF TRUSTEES: TOCHTERMAN - no report

DISABLED PARKING ENFORCEMENT COMMITTEE: GRAF - no report

HARBOR COMMISSION: PUFALL - no report, upcoming meeting on March 8, 2023
HISTORIC PRESERVATION COMMISSION: GOYKE - will meet again in April
HOUSING AUTHORITY: SEEFELDT - no report
MAIN STREET COMMITTEE - no report, will look at getting a council representative on the board
MUNICIPAL LIBRARY BOARD: JACKSON - Winter Market on Vaughn was a success, feasibility study on new library updates
PARKS & RECREATION COMMITTEE: SEEFELDT - no report
PLAN COMMISSION: TOCHTERMAN - no report
PUBLIC WORKS COMMITTEE: GOYKE - no report, will meet next week
SUSTAINABILITY COMMITTEE: GRAF - no report, meeting canceled due to weather

6. Discussion Items

A. Discussion and Possible Action Regarding Potential Unused Grant Funds to Assist Northwest Wisconsin Community Services Agency for Transitional Housing *(Councilor Seefeldt)*

Grant funding that was allocated but not used is available for communities to apply for. There is interest in applying for funding to assist Northwest Wisconsin Community Services to create transitional housing at the current community shelter property. The estimated cost to update the existing building is \$400,000, with most of this cost going toward a new boiler since the whole building is currently unconditioned. If the project is approved by Council then a Conditional Use Permit would need to be applied for and approved.

The Council would like to have Millie Rounsville from Northwest Wisconsin Community Services come and speak about the current shelter and the possibility of transitional housing.

7. Items for Future Discussion

Councilor Jackson requested that Parks and Recreation Director Sara Hudson give a report about the City of Ashland portion of Book Across the Bay and talk about the new event permit process.

8. Adjournment

Jackson moved, seconded by Seefeldt to adjourn. The motion carried unanimously by voice vote.

Respectfully Submitted,
Chelsea List, Deputy Clerk

SUBJECT: Appointments

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Mayor

CLEARANCES: Mayor

EXHIBITS:

EXPENDITURES REQUIRED: NA

AMOUNT BUDGETED:

**APPROPRIATION
REQUIRED:**

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH ORD. 51:

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

The Mayor requests Council approval of the following appointments:

JFK Memorial Airport

Lloyd Orensten, term to expire February 2029

Carol Ortman, term to expire February 2029

SUBJECT: Recognition of Local Achievements

RECOMMENDATION:

DEPARTMENT OF ORIGIN: Mayor

CLEARANCES:

EXHIBITS:

EXPENDITURES REQUIRED:

AMOUNT BUDGETED:

**APPROPRIATION
REQUIRED:**

**TREASURER'S
CERTIFICATE:**

COMPLIANCE WITH ORD. 51:

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

The Mayor would like to recognize a few local recent achievements.

Kevin Haas has been voted as Hockey News Division 3 National Broadcaster Champion, beating out a group of 41 other collegiate announcers across the country. He has been a voice for Northland College's sporting events for nearly ten years, and has done primarily play-by-play for hockey and soccer over the past three years.

Ashland's sophomore wrestler, Madison Burns, took first place at the WIAA Girls State Wrestling Championships. All of her 235-pound class matches were won by pins to finish her season undefeated.

Ashland's high school gymnastics team finished 10th among WIAA Division 2 schools at the state meet in Wisconsin Rapids.

Ashland Daily Press reporter and Council meeting frequenter, Rick Olivo, has retired after 31 years of service and storylines.

CITY OF ASHLAND
POLICE & FIRE COMMISSION MEETING
Monday, December 5, 2022 – 5:15 p.m.
Hybrid Meeting – Ashland Fire Dept. and GoTo Meeting

1. **CALL TO ORDER:**

Kate Siegler, President, called the meeting to order at 5:15 pm.

2 **ROLL CALL:**

Members Attended: Kate Siegler, Ed Monroe, Matthew Horning and Melissa O'Connor

Members Absent: Daryle Tucker

Others Attended: Police Chief Hagstrom, Fire Chief Matthias, Kelly Garro and Emily Hanson

3. **APPROVAL OF AGENDA ITEMS:**

A motion to approve the current agenda items was made by Ed Monroe, seconded by Dr. Matt Horning, and passed unanimously.

4. **APPROVAL OF MINUTES FROM SEPTEMBER 6, 2022 MEETING**

A motion to approve the minutes from the previous meeting was made by Matt Horning, seconded by Ed Monroe, and passed unanimously.

5. **DISCUSS LEAGUE OF WISCONSIN MUNICIPALITIES PFC TRAINING:**

Kate Siegler attended a full day of training geared for Police & Fire Commission members. Kate stated that they discussed hiring processes. Kate reported that the City's current manual has not been updated since 2007, so she will be working on that with the help of police and fire staff. The current interview process was discussed and Kate asked the other commission members if they would like to be involved in the interviews moving forward. Ed Monroe stated he would like to try, and Melissa O'Connor declined due to her employment schedule.

6. **POLICE DEPARTMENT BUSINESS:**

Administrative Report

Chief Hagstrom went over the Police Department report that was emailed to the commission members and available at the meeting in hardcopy. The report consisted of statistics from September 1, 2022 through November 30, 2022. There was an average of 24.3 call per day, there were 101 arrests, 9 emergency detentions and 57 accidents.

Chief Hagstrom included and summarized some patrol/investigation incidents that involved the use of force by officers.

Chief Hagstrom reported that the department currently has three openings, but are not in a rush to hire as they are heavily screening candidates in hopes to ensure the right choices.

Chief Hagstrom stated that the department has received a grant for body cams, and all officers should be equipped with one by next Spring.

CITY OF ASHLAND
POLICE & FIRE COMMISSION MEETING
Monday, December 5, 2022 – 5:15 p.m.
Hybrid Meeting – Ashland Fire Dept. and GoTo Meeting

7. FIRE DEPARTMENT BUSINESS:

Administrative Report

Chief Matthias went over the Fire Department report that was emailed to the commission members and available at the meeting in hardcopy. The report consisted of statistics from September 1, 2022 through November 30, 2022. The department responded to 615 incidents, including 14 fire calls and 533 EMS calls.

Chief Matthias reported there are a lot of things currently happening at the department; all staff is back at full-time status (nobody is currently on medical leave or extended vacations), they have replaced IV pumps in the ambulances, there are two new ambulances coming within the next couple months, they are currently pushing fire inspections, training exercises to help staff pass the CPAT is being done in-house, and they are currently updating the records management system.

Chief Matthias stated that the department received a \$27,000 radio grant that will be used for mobiles and portables. They also received a \$13,000 flex grant that will be used for two CPR machines for the ambulances.

A discussion was had regarding MMC interfacility transfers. The department hasn't been able to take all the requested transfers due to staffing. MMC is now wanting a trained RN to accompany the patient in the ambulance on these types of transfers.

A motion to approve both Chief Hagstrom's and Chief Matthias' reports and place them on file was made by Matt Horning, seconded by Ed Monroe, and passed unanimously.

8. NEXT REGULAR MEETING DATE:

The Police & Fire Commission will now be meeting every three months. The next regular meeting will be held on Monday, March 6, 2023 at 5:15 p.m. This will be a hybrid meeting; those that choose to attend in-person can do so at the Ashland Fire Department, and others will have the option to attend virtually via GoTo Meeting.

9. CLOSED SESSION:

A motion to enter into closed session was made by Ed Monroe, seconded by Matt Horning, and approved unanimously.

Kate Siegler, President, announced that they will enter into closed session per Wisconsin State Statute 19.85(1)(c). "To consider employment, promotion, compensation or performance evaluation data of any public employee over which the commission has jurisdiction or exercises responsibility."

CITY OF ASHLAND
POLICE & FIRE COMMISSION MEETING
Monday, December 5, 2022 – 5:15 p.m.
Hybrid Meeting – Ashland Fire Dept. and GoTo Meeting

Chief Hagstrom and Chief Matthias attended the closed session due to their presence being necessary for the business at hand.

10. RETURN TO OPEN SESSION:

A motion to return to open session was made by Matt Horning, seconded by Ed Monroe, and passed unanimously.

11. REPORT ACTION TAKEN IN CLOSED SESSION:

Probation and Personnel Reports were given by both Chief Hagstom and Chief Matthias. The reports were approved unanimously by the commission in closed session.

12. ADJOURNMENT:

A motion to adjourn the meeting was made by Matt Horning, seconded by Ed Monroe, and approved unanimously. Meeting was adjourned at 6:25 p.m.

Respectfully Submitted
Emily Hanson, Admin. Asst.

SUBJECT: **Formally Approve Purchase Offer for 514 Main Street West from Ashland County
(Administration) Roll**

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Administrator

CLEARANCES: City Attorney

EXHIBITS:

1.	Commercial Offer to Purchase
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EXPENDITURES REQUIRED: \$80,000.00

AMOUNT BUDGETED: \$0

**APPROPRIATION
REQUIRED:** \$80,000 from ARPA funds

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH ORD. 51: Section 51.26 (b) of Chapter 51, Ashland City Ordinances, permit the Mayor and/or Clerk to schedule items directly for Council action when a timely decision is needed by the City. The Mayor and/or City Clerk has chosen to direct this item directly to Council pursuant to the authority granted to them in Chapter 51, Ashland City Ordinances.

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

On March 8, 2023, Ashland County approved the City's \$80,000 offer for the 514 Main Street West property. Council must now formally accept the signed purchase offer in order for staff to proceed with the purchase of the building. If approved, a structural analysis of the building will be performed and Council will be notified if there is a need for further negotiations.

Page 14 of 78

57 All earnest money shall be delivered to and held by (~~listing Firm~~) (~~drafting Firm~~) (other identified as
58 the law firm of Anich, Wickman & Lindsey, S.C.) [STRIKE THOSE NOT APPLICABLE]
59 (listing Firm if none chosen; if no listing Firm, then drafting Firm; if no Firm then Seller).

60 **CAUTION: If a Firm does not hold earnest money, an escrow agreement should be drafted by the Parties or an**
61 **attorney as lines 64-84 do not apply. If someone other than Buyer pays earnest money, consider a special**
62 **disbursement agreement.**

63 ■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise agreed in writing.
64 ■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM:** If negotiations do not result in an accepted offer and the
65 earnest money is held by a Firm, the earnest money shall be promptly disbursed (after clearance from payer's depository
66 institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall
67 be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according
68 to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been
69 delivered to the Firm holding the earnest money within 60 days after the date set for closing, that Firm may disburse the
70 earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller;
71 (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; (4)
72 upon authorization granted within this Offer; or (5) any other disbursement required or allowed by law. The Firm may retain
73 legal services to direct disbursement per (1) or to file an interpleader action per (2) and the Firm may deduct from the
74 earnest money any costs and reasonable attorneys' fees, not to exceed \$250, prior to disbursement.

75 ■ **LEGAL RIGHTS/ACTION:** The Firm's disbursement of earnest money does not determine the legal rights of the Parties
76 in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest
77 money. At least 30 days prior to disbursement per (1), (4) or (5) above, where the Firm has knowledge that either Party
78 disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disburse by certified
79 mail. If Buyer or Seller disagrees with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order
80 regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of
81 residential property with one-to-four dwelling units. Buyer and Seller should consider consulting attorneys regarding their
82 legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good
83 faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional
84 Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

85 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3)
86 occupancy; (4) date of closing; (5) contingency Deadlines [STRIKE AS APPLICABLE] and all other dates and Deadlines in
87 this Offer except:

88 _____. If "Time is of the Essence" applies to a date or Deadline,
89 failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence" does not apply to a date
90 or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

91 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has
92 no notice or knowledge of Conditions Affecting the Property or Transaction (lines 104-173) other than those identified in
93 ~~Seller's disclosure report dated~~ _____ and a Real Estate Condition Report, if applicable, dated
94 _____, which was/were received by Buyer prior to Buyer signing this Offer and which is/are made a part of this
95 offer by reference [COMPLETE DATE OR STRIKE AS APPLICABLE] and _____
96 _____
97 _____

98 [INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S)].

99 **CAUTION: If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures**
100 **provided in Wis. Stat. § 709.03 may be required. Excluded from this requirement are sales of property that has**
101 **never been inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed**
102 **fiduciaries, for example, personal representatives, who have never occupied the Property. Buyer may have**
103 **rescission rights per Wis. Stat. § 709.05.**

104 "Conditions Affecting the Property or Transaction" are defined to include:

- 105 a. Defects in the structure or structural components on the Property, e.g. roof, foundation (including cracks, seepage, and
106 bulges), basement or other walls.
- 107 b. Defects in mechanical systems, e.g. HVAC (including the air filters and humidifiers), electrical, plumbing, septic, wells,
108 fire safety, security or lighting.
- 109 c. Defects in a well on the Property or in a well that serves the Property, including unsafe well water, a joint well serving
110 the Property or any Defect related to a joint well serving the Property.
- 111 d. Water quality issues caused by unsafe concentrations of or unsafe conditions relating to lead.
- 112 e. Defects in septic system or other private sanitary disposal system on or serving the Property or any out-of-service
113 septic system serving the Property not closed or abandoned according to applicable regulations.
- 114 f. Underground or aboveground storage tanks presently or previously on the Property for storage of flammable or
115 combustible liquids, including but not limited to gasoline and heating oil, or any Defects in such tanks presently or previously
116 on the Property; LP tanks on the Property or any defects in such LP tanks.
- 114 g. Defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, lead in paint, lead in soil,

- 118 presence of asbestos or asbestos-containing materials, radon, radium in water supplies, mold, pesticides or other potentially
119 hazardous or toxic substances on the Property.
- 120 h. Manufacture of or spillage of methamphetamine (meth) or other hazardous or toxic substances on the Property.
- 121 i. Zoning or building code violations, any land division involving the Property for which required state or local permits had
122 not been obtained, nonconforming structures or uses, conservation easements.
- 123 j. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority
124 to impose assessments against the real property located within the district.
- 125 k. Proposed, planned or commenced construction of public improvements which may result in special assessments or
126 otherwise materially affect the Property or the present use of the Property.
- 127 l. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition, such as orders to
128 correct building code violations.
- 129 m. Flooding, standing water, drainage problems or other water problems on or affecting the Property.
- 130 n. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides.
- 131 o. Nearby airports, freeways, railroads or landfills, or significant odor, noise, water intrusion or other irritants emanating
132 from neighboring property.
- 133 p. Current or previous termite, powder post beetle, or carpenter ant infestations or Defects caused by animal, reptile, or
134 insect infestations.
- 135 q. Property or portion of the Property in a floodplain, wetland or shoreland zoning area under local, state or federal
136 regulations.
- 137 r. Property is subject to a mitigation plan required under administrative rules of the department of Natural Resources
138 related to county shoreland zoning ordinances, which obligates the owner of the Property to establish or maintain certain
139 measures related to shoreland conditions and which is enforceable by the county.
- 140 s. Nonowners having rights to use part of the Property, other than public rights-of-way, including, but not limited to, private
141 rights-of-way and private easements, other than recorded utility easements; lack of legal access or access restrictions;
142 restrictive covenants and deed restrictions; shared fences, walls, wells, driveways, signage or other shared usages; or
143 leased parking.
- 144 t. Boundary or lot line disputes, encroachments, or encumbrances affecting the Property.
- 145 u. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the
146 Property.
- 147 v. Structure on the Property designated as a historic building, all or any part of the Property located in a historic district, or
148 burial sites or archeological artifacts on the Property.
- 149 w. All or part of the land has been assessed as agricultural land, the owner has been assessed a use-value conversion
150 charge or the payment of a use-value conversion charge has been deferred.
- 151 x. All or part of the Property is subject to, enrolled in or in violation of a certified farmland preservation zoning district or a
152 farmland preservation agreement, or a Forest Crop, Managed Forest Law (see disclosure requirements in Wis. Stat. §
153 710.12), Conservation Reserve or a comparable program.
- 154 y. A pier is attached to the Property that is not in compliance with state or local pier regulations, a written agreement
155 affecting riparian rights related to the Property; or the bed of the abutting navigable waterway is owned by a hydroelectric
156 operator.
- 157 z. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will
158 be transferred with the Property because the dam is owned collectively by a homeowners' association, lake district, or
159 similar group of which the Property owner is a member.
- 160 aa. Government investigation or private assessment/audit of environmental matters conducted.
- 161 bb. Presence of or a Defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous
162 or toxic substances on neighboring properties.
- 163 cc. Owner's receipt of notice of property tax increases, other than normal annual increases, or notice or knowledge of a
164 pending property reassessment, remodeling that may increase the property's assessed value, or pending special
165 assessments.
- 166 dd. Agreements that bind subsequent owners of the property, such as a lease agreement or an extension of credit from
167 an electric cooperative.
- 168 ee. Remodeling, replacements, or repairs affecting the Property's structure or mechanical systems that were done or
169 additions to the Property that were made during the owner's period of ownership without the required permits.
- 170 ff. Rented items located on the Property or items affixed to or closely associated with the Property.
- 171 gg. Owner is a foreign person as defined in the Foreign Investment in Real Property Tax Act in 26 IRC § 1445(f).
- 172 hh. Other Defects affecting the Property, including, without limitation, drainage easement or grading problems; or excessive
173 sliding, settling, earth movement or upheavals.

174 **PROPOSED USE CONTINGENCIES:** This Offer is contingent upon Buyer obtaining, at Buyer's expense, the reports or
175 documentation required by any optional provisions checked on lines 185-197 below. The optional provisions checked on
176 lines 185-197 shall be deemed satisfied unless Buyer, within _____ days ("30" if left blank) after acceptance, delivers: (1)
177 written notice to Seller specifying those optional provisions checked below that cannot be satisfied and (2) written evidence
178 substantiating why each specific provision referred to in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice,
179 this Offer shall be null and void. Seller agrees to cooperate with Buyer as necessary to satisfy the contingency provisions
180 checked at lines 185-197.

181 **Proposed Use:** Buyer is purchasing the Property for the purpose of: _____

182 _____
183 _____ [insert proposed use and type and
184 size of building, if applicable; e.g. restaurant/tavern with capacity of 350 and 3 second floor dwelling units].

185 ☐ **ZONING:** Verification of zoning and that the Property's zoning allows Buyer's proposed use described at lines
186 181-183.

187 ☐ **EASEMENTS AND RESTRICTIONS:** Copies of all public and private easements, covenants and restrictions
188 affecting the Property and a written determination by a qualified independent third party that none of these prohibit or
189 significantly delay or increase the costs of the proposed use or development identified at lines 181-183.

190 ☐ **APPROVALS:** All applicable governmental permits, approvals and licenses, as necessary and appropriate, or
191 the final discretionary action by the granting authority prior to the issuance of such permits, approvals and licenses, for
192 the following items related to Buyer's proposed use: _____

193 _____ or delivering written notice
194 to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which significantly increase the
195 cost of Buyer's proposed use described at lines 181-183.

196 ☐ **ACCESS TO PROPERTY:** Written verification that there is legal vehicular access to the Property from public
197 roads.

198 ☐ **LAND USE APPROVAL/PERMITS:** This Offer is contingent upon (Buyer)(Seller) ☐ **STRIKE ONE** ("Buyer" if neither
199 stricken) obtaining the following, including all costs: a ☐ **CHECK ALL THAT APPLY** ☐ rezoning; ☐ conditional use permit;
200 ☐ variance; ☐ other _____ for the Property for its proposed use described at lines 181-183.
201 Seller agrees to cooperate with Buyer as necessary to satisfy this contingency. Buyer shall deliver, within _____ days of
202 acceptance, written notice to Seller if any item cannot be obtained, in which case this Offer shall be null and void.

203 ☐ **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing) ☐ **STRIKE ONE** ("Seller
204 providing" if neither is stricken) a _____ survey
205 (ALTA/NSPS Land Title Survey if survey type is not specified) dated subsequent to the date of acceptance of this Offer and
206 prepared by a registered land surveyor, within _____ days ("30" if left blank) after acceptance, at (Buyer's)
207 (Seller's) ☐ **STRIKE ONE** ("Seller's" if neither is stricken) expense. The map shall show minimum of _____ acres,
208 maximum of _____ acres, the legal description of the Property, the Property's boundaries and dimensions, visible
209 encroachments upon the Property, the location of improvements, if any, and: _____

210 _____
211 ☐ **STRIKE AND COMPLETE AS APPLICABLE** Additional map features which may be added include, but are not limited to:
212 staking of all corners of the Property; identifying dedicated and apparent streets; lot dimensions; total acreage or square
213 footage; utility installations; easements or rights-of-way. Such survey shall be in satisfactory form and accompanied by any
214 required surveyor's certificate sufficient to enable Buyer to obtain removal of the standard survey exception(s) on the title
215 policy.

216 **CAUTION: Consider the cost and the need for map features before selecting them. Also consider the time required**
217 **to obtain the map when setting the deadline.**

218 This contingency shall be deemed satisfied unless Buyer, within 5 days after the deadline for delivery of said map, delivers
219 to Seller a copy of the map and a written notice which identifies: (1) a significant encroachment; (2) information materially
220 inconsistent with prior representations; (3) failure to meet requirements stated within this contingency; or (4) the existence
221 of conditions that would prohibit the Buyer's intended use of the Property described at lines 181-183. Upon delivery of
222 Buyer's notice, this Offer shall be null and void. Once the deadline for delivery has passed, if Seller was responsible to
223 provide the map and failed to timely deliver the map to Buyer, Buyer may terminate this Offer if Buyer delivers a written
224 notice of termination to Seller prior to Buyer's Actual Receipt of said map from Seller.

225 ☐ **DOCUMENT REVIEW CONTINGENCY:** This Offer is contingent upon Seller delivering the following documents to
226 Buyer within _____ days ("30" if left blank) after acceptance: ☐ **CHECK THOSE THAT APPLY; STRIKE AS APPROPRIATE**

227 ☐ Documents evidencing the sale of the Property has been properly authorized, if Seller is a business entity
228 ☐ A complete inventory of all furniture, fixtures, equipment and other personal property included in this transaction which
229 is consistent with representations made prior to and in this Offer.

230 ☐ Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property
231 to be free and clear of all liens, other than liens to be released prior to or at closing.

232 ☐ Rent roll.

233 ☐ Other _____

234

Additional items which may be added include, but are not limited to: building, construction or component warranties, previous environmental site assessments, surveys, title commitments and policies, maintenance agreements, other contracts relating to the Property, existing permits and licenses, recent financial operating statements, current and future rental agreements, notices of termination and non-renewal, and assessment notices.

All documents Seller delivers to Buyer shall be true, accurate, current and complete. Buyer shall keep all such documents confidential and disclose them to third parties only to the extent necessary to implement other provisions of this Offer. Buyer shall return all documents (originals and any reproductions) to Seller if this Offer is terminated.

■ **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within _____ days ("5" if left blank) after the deadline for delivery of the documents, delivers to Seller a written notice indicating this contingency has not been satisfied. Such notice shall identify which document(s) have not been timely delivered or do not meet the standard set forth for the document(s). Upon delivery of such notice, this Offer shall be null and void.

□ **ENVIRONMENTAL EVALUATION CONTINGENCY:** This Offer is contingent upon a qualified independent environmental consultant of Buyer's choice conducting an Environmental Site Assessment of the Property (see lines 274-291), at (Buyer's) (Seller's) expense [STRIKE ONE] ("Buyer's" if neither is stricken), which discloses no Defects.

NOTE: "Defect" as defined on lines 523-525 means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

For the purpose of this contingency, a Defect is defined to also include a material violation of environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of contaminating the Property due to future migration from other properties. Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer.

■ **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within _____ days ("30" if left blank) after acceptance, delivers to Seller a copy of the Environmental Site Assessment report and a written notice listing the Defect(s) identified in the Environmental Site Assessment report to which Buyer objects (Notice of Defects).

CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.

■ **RIGHT TO CURE:** Seller (shall) (shall not) [STRIKE ONE] ("shall" if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by:

- (1) delivering written notice to Buyer within _____ ("10" if left blank) days after Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects;
- (2) curing the Defects in a good and workmanlike manner; and
- (3) delivering to Buyer a written report detailing the work done no later than three days prior to closing.

This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written Environmental Site Assessment report and:

- (1) Seller does not have a right to cure; or
- (2) Seller has a right to cure but:
 - (a) Seller delivers written notice that Seller will not cure; or
 - (b) Seller does not timely deliver the written notice of election to cure.

■ **ENVIRONMENTAL SITE ASSESSMENT:** An "Environmental Site Assessment" (also known as a "Phase I Site Assessment") may include, but is not limited to: (1) an inspection of the Property; (2) a review of the ownership and use history of the Property, including a search of title records showing private ownership of the Property for a period of 80 years prior to the visual inspection; (3) a review of historic and recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property (5) an evaluation of results of any environmental sampling and analysis that has been conducted on the Property; and (6) a review to determine if the Property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment including the National Priorities List, the Department of Nature Resources' (DNR) Registry of Waste Disposal Sites, the DNR's Contaminated Lands Environmental Action Network, and the DNR's Remediation and Redevelopment (RR) Sites Map including the Geographical Information System (GIS) Registry and related resources. Any Environmental Site Assessment performed under this Offer shall comply with generally recognized industry standards (e.g. current American Society of Testing and Materials "Standard Practice for Environmental Site Assessments"), and state and federal guidelines, as applicable.

CAUTION: Unless otherwise agreed an Environmental Site Assessment does not include subsurface testing of the soil or groundwater or other testing of the Property for environmental pollution. If further investigation is required, insert provisions for a Phase II Site Assessment (collection and analysis of samples), Phase III Environmental Site Assessment (evaluation of remediation alternatives) or other site evaluation at lines 620-650 or attach as an addendum per line 676.

INSPECTIONS AND TESTING: Buyer may only conduct inspections or tests if specific contingencies are included as a part of this Offer. An "inspection" is defined as an observation of the Property, which does not include an appraisal or testing of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or

building materials from the Property for laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors, testers and appraisers reasonable access to the Property upon advance notice, if necessary, to satisfy the contingencies in this Offer. Buyer or licensees or both may be present at all inspections and testing. Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property.

NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the test (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the contingency.

Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller. Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

☒ **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 292-306).

(1) This Offer is contingent upon a qualified independent inspector(s) conducting an inspection(s) of the Property which discloses no Defects.

(2) This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of foundation, roof, and entire structure by a certified engineer or architect

(list any Property feature(s) to be separately inspected, e.g., dumpsite, etc.) which discloses no Defects.

(3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided they occur prior to the Deadline specified at line 320. Each inspection shall be performed by a qualified independent inspector or independent qualified third party.

Buyer shall order the inspection(s) and be responsible for all costs of inspection(s).

CAUTION: Buyer should provide sufficient time for the primary inspection and/or any specialized inspection(s), as well as any follow-up inspection(s).

This contingency shall be deemed satisfied unless Buyer, within _____ days ("20" if left blank) after acceptance, delivers to Seller a copy of the inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the Defect(s) identified in the inspection report(s) to which Buyer objects (Notice of Defects).

CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.

For the purpose of this contingency, Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer.

NOTE: "Defect" as defined on lines 523-525 means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

RIGHT TO CURE: Seller (shall)(shall not) STRIKE ONE ("shall" if neither is stricken) have the right to cure the Defects.

If Seller has the right to cure, Seller may satisfy this contingency by:

(1) delivering written notice to Buyer within 10 days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects;

(2) curing the Defects in a good and workmanlike manner; and

(3) delivering to Buyer a written report detailing the work done no later than three days prior to closing.

This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and:

(1) Seller does not have the right to cure; or

(2) Seller has the right to cure but:

(a) Seller delivers written notice that Seller will not cure; or

(b) Seller does not timely deliver the written notice of election to cure.

IF LINE 342 IS NOT MARKED OR IS MARKED N/A LINES 392-403 APPLY.

☐ **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written _____ [loan type or specific lender, if any] first mortgage loan commitment as described

below, within _____ days after acceptance of this Offer. The financing selected shall be in an amount of not less than \$ _____ for a term of not less than _____ years, amortized over not less than _____ years. Initial

monthly payments of principal and interest shall not exceed \$ _____. Buyer acknowledges that lender's

required monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums. The mortgage shall not include a prepayment premium. Buyer agrees

to pay discount points in an amount not to exceed _____ % ("0" if left blank) of the loan. If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 620-650 or in an addendum attached

per line 676. Buyer agrees to pay all customary loan and closing costs, wire fees, and loan origination fees, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. Seller agrees to allow

lender's appraiser access to the Property.

LOAN AMOUNT ADJUSTMENT: If the purchase price under this Offer is modified, any financed amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.

357 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 358 or 359.**358 ☐ **FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____%.359 ☐ **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed _____%. The initial interest rate
360 shall be fixed for _____ months, at which time the interest rate may be increased not more than _____% ("2" if
361 left blank) at the first adjustment and by not more than _____% ("1" if left blank) at each subsequent adjustment.362 The maximum interest rate during the mortgage term shall not exceed the initial interest rate plus _____% ("6" if
363 left blank). Monthly payments of principal and interest may be adjusted to reflect interest changes.364 **NOTE: If purchase is conditioned on Buyer obtaining financing for operations or development consider adding a**
365 **contingency for that purpose.**366 ■ **SATISFACTION OF FINANCING COMMITMENT CONTINGENCY:** If Buyer qualifies for the loan described in this Offer
367 or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of a written loan commitment.368 This contingency shall be satisfied if, after Buyer's review, Buyer delivers to Seller a copy of a written loan commitment
369 (even if subject to conditions) that is:

370 (1) signed by Buyer; or

371 (2) accompanied by Buyer's written direction for delivery.

372 Delivery of a loan commitment by Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy
373 this contingency.374 **CAUTION: The delivered loan commitment may contain conditions Buyer must yet satisfy to obligate the lender to**
375 **provide the loan. Buyer understands delivery of a loan commitment removes the Financing Commitment**
376 **Contingency from the Offer and shifts the risk to Buyer if the loan is not funded.**377 ■ **SELLER TERMINATION RIGHTS:** If Buyer does not deliver a loan commitment on or before the Deadline on line 344.
378 Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of
379 written loan commitment from Buyer.380 ■ **FINANCING COMMITMENT UNAVAILABILITY:** If a financing commitment is not available on the terms stated in this
381 Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall
382 promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of
383 unavailability.384 ☐ **SELLER FINANCING:** Seller shall have 10 days after the earlier of:

385 (1) Buyer delivery of written notice of evidence of unavailability as noted in lines 380-383; or

386 (2) the Deadline for delivery of the loan commitment set on line 344

387 to deliver to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same
388 terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly.389 If Seller's notice is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to
390 cooperate with and authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit
391 worthiness for Seller financing.392 **IF THIS OFFER IS NOT CONTINGENT ON FINANCING COMMITMENT** Within _____ days ("7" if left blank) after
393 acceptance, Buyer shall deliver to Seller either:394 (1) reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at
395 the time of verification, sufficient funds to close; or396 (2) _____
397 _____ [Specify documentation Buyer agrees to deliver to Seller].398 If such written verification or documentation is not delivered, Seller has the right to terminate this Offer by delivering written
399 notice to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written verification. Buyer may or may not obtain
400 mortgage financing but does not need the protection of a financing commitment contingency. Seller agrees to allow Buyer's
401 appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject
402 to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of
403 access for an appraisal constitute a financing commitment contingency.404 ☐ **APPRAISAL CONTINGENCY:** This Offer is contingent upon Buyer or Buyer's lender having the Property appraised
405 at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated
406 subsequent to the date stated on line 1 of this Offer, indicating an appraised value for the Property equal to or greater than
407 the agreed upon purchase price.408 This contingency shall be deemed satisfied unless Buyer, within _____ days after acceptance, delivers to Seller a copy
409 of the appraisal report indicating an appraised value less than the agreed upon purchase price, and a written notice objecting
410 to the appraised value.411 ■ **RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.412 If Seller has the right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase
413 price to the value shown on the appraisal report within _____ days ("5" if left blank) after Buyer's delivery of the appraisal
414 report and the notice objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated
415 by either Party after delivery of Seller's notice, solely to reflect the adjusted purchase price.

416 This Offer shall be null and void if Buyer makes timely delivery of the notice objecting to appraised value and the written
417 appraisal report and:

418 (1) Seller does not have the right to cure; or

419 (2) Seller has the right to cure but:

420 (a) Seller delivers written notice that Seller will not adjust the purchase price; or

421 (b) Seller does not timely deliver the written notice adjusting the purchase price to the value shown on the appraisal
422 report.

423 ☐ **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon
424 delivery of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer
425 notice prior to any Deadline, nor is any particular secondary buyer given the right to be made primary ahead of other
426 secondary buyers. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to
427 delivery of Seller's notice that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than _____ days ("7"
428 if left blank) after acceptance of this Offer. All other Offer Deadlines that run from acceptance shall run from the time this
429 Offer becomes primary.

430 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:
431 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners or homeowners
432 association assessments, fuel and _____
433 _____

434 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**

435 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

436 Real estate taxes shall be prorated at closing based on **CHECK BOX FOR APPLICABLE PRORATION FORMULA**:

437 ☐ The net general real estate taxes for the preceding year, or the current year if available (Net general real estate
438 taxes are defined as general property taxes after state tax credits and lottery credits are deducted). NOTE: THIS CHOICE
439 APPLIES IF NO BOX IS CHECKED.

440 ☐ Current assessment times current mill rate (current means as of the date of closing).

441 ☐ Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior
442 year, or current year if known, multiplied by current mill rate (current means as of the date of closing).

443 ☐ _____
444 **CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be**
445 **substantially different than the amount used for proration especially in transactions involving new construction,**
446 **extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local**
447 **assessor regarding possible tax changes.**

448 ☐ Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on
449 the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5
450 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall
451 re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation
452 and is the responsibility of the Parties to complete, not the responsibility of the real estate Firms in this transaction.

453 **TITLE EVIDENCE**

454 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed
455 (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as
456 provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements
457 entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use
458 restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's disclosure report,
459 and Real Estate Condition Report, if applicable, and in this Offer, general taxes levied in the year of closing and
460 _____

461 _____
462 _____ (insert other allowable exceptions from title, if any) that constitutes
463 merchantable title for purposes of this transaction. Seller, at Seller's cost, shall complete and execute the documents
464 necessary to record the conveyance and pay the Wisconsin Real Estate Transfer Fee.

465 **WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements**
466 **may prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates**
467 **making improvements to Property or a use other than the current use.**

468 ■ **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of
469 the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall
470 pay all costs of providing title evidence to Buyer. Buyer shall pay the costs of providing the title evidence required by Buyer's
471 lender and recording the deed or other conveyance.

472 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's)
473 **STRIKE ONE** ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded
474 after the commitment date of the title insurance commitment and before the deed is recorded, subject to the title insurance
475 policy conditions, exclusions and exceptions, provided the title company will issue the coverage. If a gap endorsement or

476 equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 482-
477 489).

478 ■ **DELIVERY OF MERCHANTABLE TITLE:** The required title insurance commitment shall be delivered to Buyer's attorney
479 or Buyer not more than _____ days ("15" if left blank) after acceptance showing title to the Property as of a date
480 no more than 15 days before delivery of such title evidence to be merchantable per lines 454-464, subject only to liens
481 which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions.

482 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of
483 objections to title within _____ days ("15" if left blank) after delivery of the title commitment to Buyer or Buyer's attorney. In
484 such event, Seller shall have _____ days ("15" if left blank) from Buyer's delivery of the notice stating title objections, to
485 deliver notice to Buyer stating Seller's election to remove the objections by the time set for closing. If Seller is unable to
486 remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the
487 objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall
488 be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable
489 title to Buyer.

490 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced
491 prior to the date stated on line 1 of this Offer shall be paid by Seller no later than closing. All other special assessments
492 shall be paid by Buyer. "Levied" means the local municipal governing body has adopted and published a final resolution
493 describing the planned improvements and the assessment of benefits.

494 **CAUTION: Consider a special agreement if area assessments, property owners association assessments, special**
495 **charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are**
496 **one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments)**
497 **relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all**
498 **sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact**
499 **fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).**

500 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights
501 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the
502 (written) (oral) **STRIKE ONE** lease(s), if any, are _____

503
504 _____ Insert additional terms, if any, at lines 620-650 or attach as an addendum per line 676.

505 ☐ **ESTOPPEL LETTERS:** Seller shall deliver to Buyer no later than _____ days ("7" if left blank) before closing, estoppel
506 letters dated within _____ days ("15" if left blank) before closing, from each non-residential tenant, confirming the lease term,
507 rent installment amounts, amount of security deposit, and disclosing any defaults, claims or litigation with regard to the lease
508 or tenancy.

509 **DEFINITIONS**

510 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document
511 or written notice physically in the Party's possession, regardless of the method of delivery. If the document or written notice
512 is electronically delivered, Actual Receipt shall occur when the Party opens the electronic transmission.

513 ■ **BUSINESS DAY:** "Business Day" means a calendar day other than Saturday, Sunday, any legal public holiday under
514 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive
515 registered mail or make regular deliveries on that day.

516 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by
517 excluding the day the event occurred and by counting subsequent calendar days. The Deadline expires at Midnight on the
518 last day. Additionally, Deadlines expressed as a specific number of Business Days are calculated in the same manner
519 except that only Business Days are counted while other days are excluded. Deadlines expressed as a specific number of
520 "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by
521 counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific
522 event, such as closing, expire at Midnight of that day. "Midnight" is defined as 11:59 p.m. Central Time.

523 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would
524 significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would
525 significantly shorten or adversely affect the expected normal life of the premises.

526 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

527 ■ **PARTY:** "Party" means the Buyer or the Seller; "Parties" refers to both Buyer and Seller.

528 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-8.

529 **INCLUSION OF OPTIONAL PROVISIONS** Terms of this Offer that are preceded by an OPEN BOX (☐) are part of
530 this offer ONLY if the box is marked such as with an "X". They are not part of this offer if marked "N/A" or are left blank.

531 **PROPERTY DIMENSIONS AND SURVEYS** Buyer acknowledges that any land, building or room dimensions, or total
532 acreage or building square footage figures, provided to Buyer by Seller or by a broker, may be approximate because of
533 rounding, formulas used or other reasons, unless verified by survey or other means.

534 **CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land,**
535 **building or room dimensions, if material.**

536 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of
537 the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the
538 transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession
539 data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession
540 information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts,
541 to appraisers researching comparable sales, market conditions and listings, upon inquiry; and (iv) distribute copies of this
542 Offer to the seller, or seller's agent, of another property that Seller intends on purchasing.

543 **MAINTENANCE** Seller shall maintain the Property and all personal property included in the purchase price until the earlier
544 of closing or Buyer's occupancy, in materially the same condition it was in as of the date on line 1 of this Offer, except for
545 ordinary wear and tear and changes agreed upon by Parties.

546 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** If, prior to closing, the Property is damaged in an
547 amount not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer
548 in writing, and will be obligated to restore the Property to materially the same condition it was in as of the date on line 1 of
549 this Offer. Seller shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than
550 closing. If the amount of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer in writing of
551 the damage and this Offer may be terminated at option of Buyer. Should Buyer elect to carry out this Offer despite such
552 damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the Property, plus a credit
553 towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed
554 by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring
555 the Property.

556 **BUYER'S PRE-CLOSING WALK-THROUGH** Within three days prior to closing, at a reasonable time pre-approved by
557 Seller or Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no
558 significant change in the condition of the Property, except for ordinary wear and tear and changes agreed upon by Parties,
559 and that any Defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

560 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in
561 this Offer at lines 620-650 or in an addendum attached per line 676. At time of Buyer's occupancy, Property shall be in
562 broom swept condition and free of all debris, refuse, and personal property except for personal property belonging to current
563 tenants, or sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

564 **DEFAULT** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and
565 conditions of this Offer. A material failure to perform any obligation under this Offer is a default that may subject the defaulting
566 party to liability for damages or other legal remedies.

567 If Buyer defaults, Seller may:

- 568 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or
569 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual
570 damages.

571 If Seller defaults, Buyer may:

- 572 (1) sue for specific performance; or
573 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

574 In addition, the Parties may seek any other remedies available in law or equity. The Parties understand that the availability
575 of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts. If either Party
576 defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above.
577 By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the
578 arbitration agreement.

579 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES**
580 **SHOULD READ THIS DOCUMENT CAREFULLY. THE FIRM AND ITS AGENTS MAY PROVIDE A GENERAL**
581 **EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR**
582 **OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT**
583 **CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.**

584 **ENTIRE CONTRACT** This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller
585 regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds
586 and inures to the benefit of the Parties to this Offer and their successors in interest.

587 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons
588 registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.doc.wi.gov>
589 or by telephone at (608) 240-5830.

590 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)** Section 1445 of the Internal Revenue Code (IRC)
591 provides that a transferee (Buyer) of a United States real property interest must pay or withhold as a tax up to 15% of the
592 total "Amount Realized" in the sale if the transferor (Seller) is a "Foreign Person" and no exception from FIRPTA withholding
593 applies. A "Foreign Person" is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign

estate. The "Amount Realized" is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer.

CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer may be held directly liable by the U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.

Seller hereby represents that Seller is a non-Foreign Person, unless (1) Seller represents Seller is a Foreign Person in a condition report incorporated in this Offer per lines 93-95, or (2) no later than 10 days after acceptance, Seller delivers notice to Buyer that Seller is a Foreign Person, in which cases the provisions on lines 607-609 apply.

IF SELLER IS A NON-FOREIGN PERSON. Seller shall, no later than closing, execute and deliver to Buyer, or a qualified substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's non-foreign status in accordance with IRC § 1445. If Seller fails to timely deliver certification of Seller's non-foreign status, Buyer shall: (1) withhold the amount required to be withheld pursuant to IRC § 1445; or, (2) declare Seller in default of this Offer and proceed under lines 571-578.

IF SELLER IS A FOREIGN PERSON. If Seller has represented that Seller is a Foreign Person, Buyer shall withhold the amount required to be withheld pursuant to IRC § 1445 at closing unless the Parties have amended this Offer regarding amounts to be withheld, any withholding exemption to be applied, or other resolution of this provision.

COMPLIANCE WITH FIRPTA. Buyer and Seller shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement needed to comply with FIRPTA, including withholding forms. If withholding is required under IRC § 1445, and the net proceeds due Seller are not sufficient to satisfy the withholding required in this transaction, Seller shall deliver to Buyer, at closing, the additional funds necessary to satisfy the applicable withholding requirement. Seller also shall pay to Buyer an amount not to exceed \$1,000 for actual costs associated with the filing and administration of forms, affidavits, and certificates necessary for FIRPTA withholding and any withholding agent fees.

Any representations made by Seller with respect to FIRPTA shall survive the closing and delivery of the deed.

Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding FIRPTA.

ADDITIONAL PROVISIONS/CONTINGENCIES

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TAX DEFERRED EXCHANGE If this Property is purchased or sold to accomplish an IRC § 1031 Tax Deferred exchange of like-kind property, both Parties agree to cooperate with any documentation necessary to complete the exchange. The exchangor shall hold the cooperating party harmless from any and all claims, costs or liabilities that may be incurred as a result of the exchange.

655 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and
 656 written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines
 657 658-673.

658 (1) **Personal**: giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at
 659 660 or 661.

660 Name of Seller's recipient for delivery, if any: _____

661 Name of Buyer's recipient for delivery, if any: _____

662 ☐ (2) **Fax**: fax transmission of the document or written notice to the following number:

663 Seller: (_____) Buyer: (_____) _____

664 ☐ (3) **Commercial**: depositing the document or written notice, fees prepaid or charged to an account, with a
 665 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's
 666 address at line 669 or 670.

667 ☐ (4) **U.S. Mail**: depositing the document or written notice, postage prepaid, in the U.S. Mail, addressed either to the
 668 Party, or to the Party's recipient for delivery, for delivery to the Party's address.

669 Address for Seller: _____

670 Address for Buyer: _____

671 ☒ (5) **Email**: electronically transmitting the document or written notice to the email address.

672 Email Address for Seller: dan.grady@co.ashland.wi.us, with cc to mlindsey@ncis.net

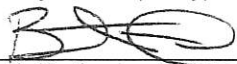
673 Email Address for Buyer: bkucera@coawi.org, with cc to mlindsey@ncis.net

674 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller
 675 constitutes personal delivery to, or Actual Receipt by, all Buyers or Sellers.

676 ☐ **ADDENDA**: The attached _____ is/are made part of this Offer.

677 This Offer was drafted by [Licensee and Firm] Attorney Max T. Lindsey, Anich, Wickman & Lindsey, S.C.

678 Buyer Entity Name (if any): _____ City of Ashland

679 (x)  BRANT KUCERA / CITY ADMINISTRATOR 3/3/23
 680 Buyer's/Authorized Signature ▲ Print Name/Title Here ▶ Brant Kucera, City Administrator Date ▲

681 (x)  Dan Grady / County Administrator 3/9/23
 682 Buyer's/Authorized Signature ▲ Print Name/Title Here ▶ Dan Grady, County Administrator Date ▲

683

684 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS**
 685 **OFFER SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE**
 686 **PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A**
 687 **COPY OF THIS OFFER.**

688 Seller Entity Name (if any): _____ Ashland County

689 (x)  Dan Grady 3-9-23
 690 Seller's/Authorized Signature ▲ Print Name/Title Here ▶ Dan Grady, County Administrator Date ▲

691 (x) _____

692 Seller's/Authorized Signature ▲ Print Name/Title Here ▶ _____ Date ▲

693 This Offer was presented to Seller by [Licensee and Firm] _____

694 _____ on _____ at _____ a.m./p.m.

695 This Offer is rejected _____ This Offer is countered [See attached counter] _____

696 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

SUBJECT: Approve an Agreement for Professional Services between the City of Ashland and Short Elliot Hendrickson, Inc. (SEH) for the 2023 Sanitary Sewer Replacement and 2023 Sanitary Sewer Collection System Repair (CIPP) Projects (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director
Utility Manager

EXHIBITS:

1.	Agreement for Professional Services between the City of Ashland and Short Elliot Hendrickson Inc.
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EXPENDITURES REQUIRED: \$ 87,500.00 Design Services
\$198,000.00 Construction Management Services
\$ 38,500.00 Clean Water Loan Program Administration
\$324,000.00 Total Fund 690 Wastewater Utility

AMOUNT BUDGETED: \$324,000.00 WI DNR Clean Water Loan Program

**APPROPRIATION
REQUIRED:** \$0

**TREASURER'S
CERTIFICATE:** The Treasurer's Office has certified on March 6 2023, that Short, Elliot, Hendricksen is in compliance with the provisions of Ordinance 923.10 Ashland City Ordinances.

COMPLIANCE WITH ORD. 51: The Mayor and/or Clerk have consented to placement of this agenda item on the Council agenda as timely action is needed.

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: The proposed construction project conforms to the goals and community values identified in the City of Ashland's Comprehensive Plan.

SUMMARY STATEMENT:

The 2023 Sanitary Sewer Replacement Project consists of the replacement via direct excavation of approximately 6 blocks of sanitary sewer mains and associated manholes.

The 2022 Sanitary Sewer Collection System Repair project consists of the rehabilitation of approximately 3.8 miles (~57 blocks) of sanitary sewer mains. Rehabilitation is completed using cure in place pipe (CIPP) technology.

Both projects are located in Districts 4,5,11,12 and 13 which previous studies have identified as significant contributors of infiltration and inflow (I&I) within the City of Ashland's sanitary sewer collection system.

District 5 includes several pipes that have a high frequency of sewage back ups and cannot be improved via CIPP, requiring replacement. Both projects will be funded by the Wisconsin Department of Natural Resources' (WI DNR) Clean Water Loan Program (CWLP).

The combined scope of both projects is expected to be approximately \$1.6 million with construction expected to begin in Fall 2023 and be completed in Summer 2024. Completion of 3.8 miles of CIPP and 6 blocks of pipe replacement will allow the City to catch up on the recommended level of asset renewal/replacement recommended for a sanitary sewer collection system over the past 20 yrs. The City has been able to catch up on deferred asset renewal/replacement from 2020-2024 through the use of CIPP technologies.

The scope of the construction engineering services provided by SEH will include surveying for construction layout/staking, contract administration, as-built record drawings and the provision of a full time (12 hours per day, 5 days per week for 12 weeks) representative responsible for construction observation and oversight throughout project construction. These services will be especially important during pipe excavation associated with the sewer replacement project.

The Public Works Department recommends accepting the proposal for professional services with SEH for design, construction management, and WI DNR CWLP administration services at a cost of \$324,000. The cost of the professional services will be included in the CWLP funding.

Agreement for Professional Services

This Agreement is effective as of March 1, 2023, between City of Ashland (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **2023 Sanitary Sewer Collection System Repairs**.

Client's Authorized Representative: John Butler, PE
Address: 2020 6th Street East
Ashland, WI 54806
Telephone: 715.685.1648 **email:** jbutler@coawi.org

Project Manager: Bryan Cunningham, PE
Address: 326 South Main Street, Suite 100
Rice Lake, WI 54868
Telephone: 715.861.4987 **email:** bcunningham@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 05.15.22), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

The Consultant will provide analysis, design, bidding, construction, and Clean Water Fund related services for the Sewer Collection System Repair project, as follows:

1. Project Analysis - Finalize the review as initiated with the project scoping done in conjunction with WDNR Clean Water Fund ITA/PERF, of the City's priority lists and GIS utility mapping, along with applicable televising inspections and condition reports of pipe segments. Our review will:
 - (a) Finalize sanitary sewers planned for open-cut replacement
 - (b) Prioritize pipes for Cure in Place Pipe (CIPP) lining
 - (c) Prepare a rough preliminary estimate of the total of open cut and pipe lining elements combined, to target a total project cost of \$1.6 million, in line with the City's DNR Clean Water Fund (CWF) application.
2. Prepare two sets of design **plans and specifications** for separate bidding contracts, containing plan sheets and project manual, with pipes and structures identified and selected by SEH and City staff.
 - (a) Design and plans for a **CIPP project** to include:
 1. Determination of what general preparation work the contractor will need to complete for each segment before they can begin CIPP work.
 2. Review application of the cure method of the new pipe, considering hot water or steam.
 3. Prepare a tabulation which describes the CIPP preparation work, and the CIPP work, for each segment of pipe. Temporary conveyance will be assessed only for critical areas.
 4. Prepare plan sheets utilizing aerial photography with manhole locations from City GIS mapping, incorporating notes as required for bidding. GIS, televising and other record data will be used to develop CIPP plans but no field survey will be required for this portion of the project.
 5. It is anticipated that this CIPP project includes approximately 20,000 feet of sanitary sewer piping, in various locations within Districts 4, 5, 11, 12 and 13. If the length, size, or location of these sewers is substantially different, requiring more design effort, SEH may look to negotiate for additional services.
 - (b) Design and plans for an **open-cut sewer replacement project** to include:

1. Topographic survey of areas identified for open-cut pipe replacement, processed into CAD drawings of existing conditions. This will be confirmed through initial project analysis, but is anticipated to include the following areas:
 - a. Pipe segment 09-631-630, across the ravine near Bretting Manufacturing.
 - b. Four alley areas in Districts 4 and 5, totaling approximately 1100 feet.
 - i. Pipe segments 04-68-67, 04-50A-50, 04-80-79, and 05-33-28
 - c. Three street areas in District 5, totaling approximately 600 feet.
 - i. Pipe segment 05-W14-W13 in 18th Ave W.
 - ii. Pipe segment 05-30-31 in 16th Ave W.
 - iii. Pipe segment 05-37-39 in Main St.
 - d. Addition of manholes on dead-end pipes near structures 632 and 650.
 2. Prepare plan sheets utilizing topographic survey and aerial photography (where applicable). Drawings would include plan and profile sheets indicating sewer layout and grades, and surface restoration, replacing disturbed areas in kind.
 3. Plans will show extent of service lateral replacement where applicable in coordination with City's policies. It is assumed that City of Ashland will coordinate any individual contact or discussions with property owners regarding sewer lateral replacement.
 4. It is anticipated that this project includes approximately 2000 feet of sanitary sewer piping and manhole installation, in 10 separate locations. If the length, size, or location of these sewers is substantially different, requiring more survey or design effort, SEH may look to negotiate for additional services.
 5. Prepare WDNR Construction Site Stormwater Management Permit if project disturbs more than one acre. Expected fee of \$250-\$350 is included in project costs.
- (c) The Consultant will coordinate with private utilities for locations, and provide a copy of the proposed plans, for their review.
 - (b) Prepare an opinion of probable total cost for each project.
 - (c) Provide DNR submittal for Sanitary Sewer permit for each project, and one engineering report/facility plan as required for CWF approval
 - (d) This task includes three (3) virtual/online meeting with City staff.
3. Bidding assistance and **Bidding documents**
 - (a) Prepare final bidding documents, Ad for Bid, online plan distribution, bidders list and answer contractor bidding questions for both projects
 - (b) Prepare bid tabulations and a Recommendation to Award for each project
 4. **Construction engineering and administration**
 - (a) Schedule, send invitations, prepare agendas, attend the two pre-construction conferences, provide minutes of the meetings.
 - (b) Provide construction staking for open-cut project (CIPP project will have no field staking)
 - (c) Provide Resident Project Representative services of construction activities (approximately 2-3 days per week, totaling an estimated 400 hours of field staff on site) for CIPP project.
 - (d) Provide full time Resident Project Representative services of construction activities for open-cut sewer replacement project (approximately 450 hours of field staff on site).
 - (e) Document pay quantities, review and approve Applications for Payment requests
 - (f) Provide final construction quantities and costs for properties served with new sewer laterals for the City to use in their Special Assessment process.
 - (g) Respond to contractor questions and requests
 - (h) Review pre-lining televising footage prior to lining and coordinate with Contractor on lateral reinstatement locations, potential repair or pre-liner locations
 - (i) Review post-lining televising footage for final acceptance of the rehabilitation work
 - (j) Provide record plans for open-cut and CIPP projects
 5. **WDNR Clean Water Fund Loan (CWF) application and administration for the 2023 (SFY2024) CIPP project**
 - (a) Sub-Task 1- SFY2024 **CWF Application**

1. Submit completed CWF application to WDNR prior to the September 30, 2023 application deadline, for funding in State Fiscal Year 2024 (SFY2024).
 2. Assemble required documentation. SEH will work with the Ashland staff, Financial Advisor, Bond Counsel, Attorney, and other professionals as required to assemble required documentation for the CWF application.
 3. Draft resolution and work with the Client on adoption of the WDNR required Reimbursement Resolution by the City Council.
 4. Complete the Financial Assistance Application to the WDNR through the electronic filing system.
 5. Coordinate with Client and submit necessary financial documentation.
 6. Submit necessary documentation for Disadvantaged Business Enterprise (DBE), American Iron and Steel, and Green Project Reserve certification.
 7. Coordinate the application-related submission of plans, specifications and engineering report.
- (b) Sub-Task 2- SFY2024 **CWF Administration**.
1. General Administration.
 - a. Set up a complete set of file folders that meet WDNR requirements.
 - b. Review proposed contract between the Client and WDNR. Propose revisions to contract.
 2. Financial Management.
 - a. Draft all financial management forms.
 - b. Complete all drawdown requests to the WDNR.
 - c. Maintain required records.
 - d. Final reporting.
 3. Equal Opportunity and Procurement Requirements.
 - a. Ensure compliance with MBE/WBE requirements.
 - b. Maintain compliance with Executive Order 11246, 11914 and 11250 and the Age Discrimination Act (P.L. 94-135).
 - c. Ensure all required federal and state forms are in all bidding documents, as appropriate.
 4. Document compliance with Drug-Free Workplace Act, (P.L. 100-690).
 5. Assist the City in documenting compliance with the Real Property Acquisition Policies Act.
 6. American Iron and Steel Requirement Compliance.
 7. Assist in Central Contractor Registration requirements.
 8. Labor Standards.
 - a. Ensure proper Davis Bacon Wage Rates are inserted in all bid documents.
 - b. Assist with Davis Bacon requirements.
 - c. Review payrolls on a weekly basis.
 - d. Document payroll violations.
 - e. Work with contractor to correct wage underpayments (if applicable).
 9. Document compliance with lobbying restrictions (Section 319 (P.L. 101-121)).
 10. Audit Requirements. Determine what level of Audit (if any) is required. Coordinate and submit audit. Audits and Audit costs are the responsibility of the Client.
 11. Loan Closing. Coordination of loan closing between the Client, WDNR and DOA. (Tasks associated with CWF loan closing will occur upon acceptance of funding application from WDNR, which would be known after WDNR publication of the project funding list typically expected in November or December 2023)
 12. Close Out. Complete Close out documentation. Schedule and participate in WDNR monitoring visit (if required by the WDNR).
 13. The fee for Sub-task 2 – CWF Administration is based on a construction period of up to 18 months requiring two bid packages, each with a single general contractor. This also assumes SEH is performing Design and Construction Engineering for the project. If this changes, then the scope, schedule and/or fee will need to be adjusted.

Additional Services: These services are not included in the estimated fee. If requested by the Community, SEH will complete them on a time and materials basis at SEH's current rates.

1. **Highways or areas requiring significant Traffic Control:** The project does not anticipate any work on CIPP or open-cut pipes within Highway 2 or other major roadways, except for small segments of Main Street. Any expansion of the project which would require WisDOT permitting, or design of major traffic control or detour routes, would require additional services.
2. **Bypass pumping plans:** It is anticipated that the pipes included in the projects are not major trunk sewer lines that would require pre-arranged detailed bypass pumping plans designed by the Engineer, and construction documents will require the Contractor to make bypass pumping arrangements.
3. **Manhole Lining:** The project is not intended to include lining of any existing manholes for rehabilitation in conjunction with the CIPP lining.
4. **Underwater pipes:** SEH may not be able to make recommendations for certain pipes if inspections were incomplete due to submerged televising. If supplementary investigations are required, additional services may be necessary.
5. **Detailed Historical/Archeological Review:** This section applies to providing documentation above and beyond the original submittal that is required to accompany the CWF Financial Assistance Application. Projects that are determined to impact historic or potentially historic properties, or are located in historic districts may have a higher standard of review. This may include documentation of compliance with 36 CFR Part 800, Protection of Historic Properties (also known as Section 106 Compliance). This is in addition to any local ordinance compliance with the Community's Municipal Code or other requirements associated with development in the historic districts
6. **Detailed Floodplain/Wetland Review:** This applies to providing documentation above and beyond the original submittal that is required to accompany the CWF Financial Assistance Application. If portions of this project occur in an area identified as flood hazard areas, wetland encroachment, or impacting water resources, further study will be required and documentation provided as an additional service.
7. **Publication of Notices** required by the grant application or administration process. Publishing arrangements and all costs associated with any required public notices shall be a direct expense of the City.
8. **Labor Standards:** As of the time of this contract, field interviews to determine compliance with Federal Labor Standards are not required by DNR. Should such requirement change, or should there be evidence of failure by contractor(s) to comply with wage requirements and field interviews are required, SEH can complete said interviews as an additional service.
9. **Build America, Buy America (BABA):** As of the time of this contract, this project is not deemed to be a federal equivalency project, therefore is not required to comply with BABA for the purchase of products and construction materials. Should this project be determined to require federal equivalency, additional work will be required.
10. **Accounting, Financial Advisor or Legal fees** that may be required as part of the grant application or administration process.
11. **Easements or Property Owner Coordination:** Where sewers may cross private property or appear to run outside of established alley or street right-of-way, SEH will rely on City for locating, coordinating, or establishing property interest documentation. City will also make arrangements and notifications regarding sewer laterals according to their policies.
12. **Field Survey:** SEH has planned for topographic survey to cover approximately 2000 feet of open-cut sewer replacement. This assumes that the plans for the CIPP portion can be developed based on existing GIS, televising, and record drawings, and would not require field survey. If substantially more field survey is required, it will be considered an additional service.
13. **Flow Monitoring:** SEH will not perform pre- and post-project flow monitoring services to document inflow and infiltration (I/I) in the sewer system before and after the improvements.

Resident Project Representative Services: Part-time RPR services will be provided for the CIPP construction project, with full-time RPR services for the open-cut project, in accordance with attached Exhibit B.

Schedule: The Consultant will commence work on the design phase for the 2023 CIPP project as soon as authorized by the City. CIPP Bidding documents could be completed to allow bidding in early summer 2023, and allow construction in 2023 or early 2024. Topographic survey for the open-cut project would take place in spring 2023, which would allow design and preparation of bid documents to move forward. Bidding of open-cut work could take place summer/fall 2023, for construction in late 2023 or early 2024.

CWF tasks would take place according to WDNR schedule, with the application due September 30, 2023, with additional coordination for the submittal of required documents will continue until loan closing. WDNR Clean Water Fund Administration is ongoing during construction and will be completed approximately 90-days after final construction. If there are delays in the Project that are beyond Consultant's control, Client agrees to grant additional time to complete the services.

Payment: The total project fee is **\$324,000**. The fee for design and construction is hourly estimated to be **\$285,500**, including expenses and equipment. The detailed cost breakdown for each task is as follows:

- | | |
|--------------------------------|------------|
| 1. Project design and bidding- | \$ 87,500 |
| 2. Construction services- | \$ 198,000 |

The fee for CWF related tasks will be tracked with a separate SEH project number and invoices, with a lump sum of **\$38,500**, including expenses and equipment.

- | | |
|--|-----------------------|
| 3. Clean Water Fund (CWF) grant application- | \$ 6,500 (Sub-task 1) |
| 4. Clean Water Fund grant administration- | \$32,000 (Sub-task 2) |

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-1, Exhibit A-2, and Exhibit B.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
Section IV Paragraph C. Limitations on Consultant's Liability: Modify Paragraph 1. by changing the amount from five hundred thousand dollars (\$500,000) to one million dollars (\$1,000,000) at no additional cost to contract.

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Short Elliott Hendrickson Inc.

City of Ashland

By:



Daniel A. Penzkover PE (WI, MI)

Title:

Client Service Manager

By: _____

Title: _____

General Conditions of the Agreement for Professional Services

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Services"). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.
2. If Client has requested changes in the scope, extent, or character of the Project or the Services to be provided by Consultant, the time of performance and compensation for the Services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform the Services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for the Services, then Consultant shall promptly notify the Client regarding the need for additional Services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional Services and to an extension of time for completion of additional Services absent written objection by Client.
2. Additional Services, including delivery of documents, CAD files, or information not expressly included as deliverables, shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon seven days written notice or, at its option, accept an equitable adjustment of compensation provided for elsewhere in this Agreement to reflect costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the Services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for Services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the Services provided by Consultant and access to all public and private lands required for Consultant to perform its Services.

2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling, and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's Services, such as previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning; deed; and other land use restrictions; as-built drawings; and electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.

3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's Services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements, and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide Services in a timely manner.

4. Client shall require all utilities with facilities within the Project site to locate and mark said utilities upon request, relocate and/or protect said utilities to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review, and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.

5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

6. Client agrees to reasonably cooperate, when requested, to assist Consultant with the investigation and addressing of any complaints made by Consultant's employees related to inappropriate or unwelcomed actions by Client or Client's employees or agents. This shall include, but not be limited to, providing access to Client's employees for Consultant's investigation, attendance at hearings, responding to inquiries and providing full access to Client files and information related to Consultant's employees, if any. Client agrees that Consultant retains the absolute right to remove any of its employees from Client's facilities if Consultant, in its sole discretion, determines such removal is advisable. Consultant, likewise, agrees to reasonably cooperate with Client with respect to the foregoing in connection with any complaints made by Client's employees.

7. Client acknowledges that Consultant has expended significant effort and expense in training and developing Consultant's employees. Therefore, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services under this Agreement, whichever is longer, Client shall not directly or indirectly: (1) hire, solicit or encourage any employee of Consultant to leave the employ of Consultant; (2) hire, solicit or encourage any consultant or independent contractor to cease work with Consultant; or (3) circumvent Consultant by conducting business directly with its employees. The two-year period set forth in this section shall be extended commensurately with any amount of time during which Client has violated its terms.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Services or deliverables until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding Services, deliverables, or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable

- costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
 3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its Services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods, or procedures of construction. Consultant's Services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. Consultant's Opinions of Probable Construction Cost are provided if agreed upon in writing and made on the basis of Consultant's experience and qualifications. Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions. Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Probable Construction Cost prepared by Consultant. If Client wishes greater assurance as to construction costs, Client shall employ an independent cost estimator.

B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter, or disposer of hazardous or toxic substances. Therefore the Client agrees to hold harmless, indemnify, and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims; losses; damages; liability; and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.

C. Limitations on Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars (\$500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including without limitation lost rentals; increased rental expenses; loss of use; loss of income; lost profit, financing, business, or reputation; and loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them. Consultant expressly disclaims any duty to defend Client for any alleged actions or damages.
3. It is intended by the parties to this Agreement that Consultant's Services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or

asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

4. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, not later than either the date of Substantial Completion for acts or failures to act occurring prior to substantial completion or the date of issuance of the final invoice for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Services are substantially completed.

D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

E. Dispute Resolution

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or the Services (except for unpaid invoices which are governed by Section III) shall be submitted to mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.
2. Any dispute not settled through mediation shall be settled through litigation in the state and county where the Project at issue is located.

SECTION V – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service"). Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Notwithstanding anything to the contrary, Consultant shall retain all of its rights in its proprietary information including without limitation its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge, and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be work product or work for hire and Consultant shall not be restricted in any way with respect thereto. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its Services, Client shall have the right in the form of a nonexclusive license to use Instruments of Service delivered to Client exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of Services, including subpoenas directed from or on behalf of Client are available to Client subject to Consultant's current rate schedule. Consultant shall not be required to provide CAD files or documents unless specifically agreed to in writing as part of this Agreement.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify, and hold harmless Consultant from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.

Exhibit A-1
to Agreement for Professional Services
Between City of Ashland, Wisconsin (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated March 1, 2023

Payments to Consultant for Services and Expenses
Using the Hourly Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Hourly Basis Option

The Client and Consultant select the hourly basis for payment for services provided by Consultant. Consultant shall be compensated monthly. Monthly charges for services shall be based on Consultant's current billing rates for applicable employees plus charges for expenses and equipment.

Consultant will provide an estimate of the costs for services in this Agreement. It is agreed that after 90% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

Compensation to Consultant based on the rates is conditioned on completion of the work within the effective period of the rates. Should the time required to complete the work be extended beyond this period, the rates shall be appropriately adjusted.

B. Expenses

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client. Their costs are not included in the hourly charges made for services and shall be paid for as described in this Agreement but instead are reimbursable expenses required in addition to hourly charges for services:

1. Transportation and travel expenses.
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.
3. Lodging and meal expense connected with the Project.
4. Fees paid, in the name of the Client, for securing approval of authorities having jurisdiction over the Project.
5. Plots, Reports, plan and specification reproduction expenses.
6. Postage, handling and delivery.
7. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
8. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Client.
9. All taxes levied on professional services and on reimbursable expenses.
10. Other special expenses required in connection with the Project.
11. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses.

C. Equipment Utilization

The utilization of specialized equipment, including automation equipment, is recognized as benefiting the Client. The Client, therefore, agrees to pay the cost for the use of such specialized equipment on the project. Consultant invoices to the Client will contain detailed information regarding the use of specialized equipment on the project and charges will be based on the standard rates for the equipment published by Consultant.

The Client shall pay Consultant monthly for equipment utilization.

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Exhibit A-2
to Agreement for Professional Services
Between City of Ashland, Wisconsin (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated March 1, 2022

Payments to Consultant for Services and Expenses
Using the Lump Sum Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Lump Sum Basis Option

The Client and Consultant select the Lump Sum Basis for Payment for services provided by Consultant. During the course of providing its services, Consultant shall be paid monthly based on Consultant's estimate of the percentage of the work completed. Necessary expenses and equipment are provided as a part of Consultant's services and are included in the initial Lump Sum amount for the agreed upon Scope of Work. Total payments to Consultant for work covered by the Lump Sum Agreement shall not exceed the Lump Sum amount without written authorization from the Client.

The Lump Sum amount includes compensation for Consultant's services and the services of Consultant's Consultants, if any for the agreed upon Scope of Work. Appropriate amounts have been incorporated in the initial Lump Sum to account for labor, overhead, profit, expenses and equipment charges. The Client agrees to pay for other additional services, equipment, and expenses that may become necessary by amendment to complete Consultant's services at their normal charge out rates as published by Consultant or as available commercially.

B. Expenses Not Included in the Lump Sum

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client and shall be paid for as described in this Agreement.

1. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
2. Other special expenses required in connection with the Project.
3. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses not included in the Lump Sum amount.

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Exhibit B
to Agreement for Professional Services
Between City of Ashland, Wisconsin (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated March 1, 2023

A Listing of the Duties, Responsibilities and
Limitations of Authority of the Resident Project Representative

Through more extensive on site observations of the construction work in progress and field checks of materials and equipment by the Resident Project Representative (RPR), Consultant shall endeavor to provide further protection for Client against defects and deficiencies in the work of contractor (Work); but, the furnishing of such services will not make Consultant responsible for or give Consultant control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for contractor's failure to perform the Work in accordance with the Contract Documents. Contract Documents are the documents that govern or are pertinent to contractor's Work including but not limited to the agreement between Client and contractor, the contractor's bid, the bonds, specs, drawings, field orders, addenda, clarifications, interpretations, approved shop drawings and reports collectively called the Contract Documents. The duties and responsibilities of the RPR are further defined as follows:

A. General

RPR is an agent of Consultant at the site, will act as directed by and under the supervision of Consultant, and will confer with Consultant regarding RPR's actions. RPR's dealings in matters pertaining to the on site work shall in general be with Consultant and contractor keeping the Client advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of contractor. RPR shall generally communicate with Client with the knowledge of and under the direction of Consultant.

B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, schedule of shop drawing submittals and schedule of values prepared by Contractor and consult with Consultant concerning acceptability.
2. Conferences and Meetings: Attend meetings with contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - (a) Serve as Consultant's liaison with contractor, working principally through contractor's superintendent and assist in understanding the intent of the Contract Documents; and assist Consultant in serving as Client's liaison with contractor when contractor's operations affect Client's on-site operations.
 - (b) Assist in obtaining from Client additional information, when required for proper execution of the Work.
4. Shop Drawings and Samples*:
 - (a) Record date of receipt of shop drawings and samples.
 - (b) Receive samples furnished at the site by contractor, and notify Consultant of availability of samples.
 - (c) Advise Consultant and contractor of the commencement of any Work requiring a shop drawing or sample if the submittal has not been approved by Consultant.
5. Review of Work, Observations and Tests:
 - (a) Conduct on-site observations of the Work in progress to assist Consultant in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - (b) Report to Consultant whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Consultant of

Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

- (c) Determine if tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to Consultant appropriate details relative to the test procedures and start-ups.
 - (d) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Consultant.
- 6. Interpretation of Contract Documents: Report to Consultant when clarification and interpretations of the Contract Documents are requested by contractor and transmit to contractor clarifications and interpretations as issued by Consultant.
 - 7. Modifications: Consider and evaluate contractor's suggestions for modifications in drawings or specifications and report with RPR's recommendations to Consultant. Transmit to contractor decisions as issued by Consultant.
 - 8. Records:
 - (a) Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original Contract Documents including all addenda, change orders, field orders, additional drawings issued subsequent to the execution of the construction contract, Consultant's clarifications and interpretations of the Contract Documents, progress reports, and other related documents.
 - (b) Keep a diary or log book, recording contractor hours on the job site, weather conditions, data relative to questions of change orders, or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Consultant.
 - (c) Record names, addresses and telephone numbers of all contractors, subcontractors and major suppliers of materials and equipment.
 - 9. Reports:
 - (a) Furnish Consultant periodic reports as required of progress of the Work and of contractor's compliance with the progress schedule and schedule of shop drawing and sample submittals.
 - (b) Consult with Consultant in advance of scheduled major tests, inspections or start of important phases of the Work.
 - (c) Draft proposed change orders and Work, obtaining backup material from contractor and recommend to Consultant change orders, and field orders.
 - (d) Report immediately to Consultant and Client upon the occurrence of any accident.
 - 10. Payment Requests: Review applications for payment with contractor for compliance with the established procedure for their submission and forward with recommendations to Consultant, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.
 - 11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Consultant for review and forwarding to Client prior to final payment for the Work.
 - 12. Completion:
 - (a) Before Consultant issues a certificate of substantial completion, submit to contractor a list of observed items requiring completion or correction.
 - (b) Conduct final inspection in the company of Consultant, Client, and contractor and prepare a final list of items to be completed or corrected.
 - (c) Observe that all items on final list have been completed or corrected and make recommendations to Consultant concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by Client.
2. Shall not exceed limitations of Consultant's authority as set forth in the Agreement for Professional Services.
3. Shall not undertake any of the responsibilities of contractor, subcontractors or contractor's superintendent.
4. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
5. Shall not accept shop drawing or sample submittals from anyone other than contractor.
6. Shall not authorize Client to occupy the Project in whole or in part.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Consultant.

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SUBJECT: Approve an Agreement for Professional Services between the City of Ashland and Short Elliott Hendrickson, Inc. (SEH) to Complete Watermain Replacement for the 2024 Prentice Avenue Phase 1 Reconstruction Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS:

1.	Agreement for Professional Services between the City of Ashland and Short Elliott Hendrickson Inc.
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EXPENDITURES REQUIRED: \$ 56,500.00 - Design Services
\$ 37,000.00 - Safe Drinking Water Loan Program Administration
\$ 93,500.00 Total Fund 680 Water Utility

AMOUNT BUDGETED: \$93,500.00 - WI DNR Safe Drinking Water Loan Program

**APPROPRIATION
REQUIRED:** \$0

**TREASURER'S
CERTIFICATE:** The Treasurer's Office has certified on March 6, 2023, that Short Elliott Hendrickson Inc. is in compliance with the provisions of Ordinance 923.10 Ashland City Ordinances.

COMPLIANCE WITH ORD. 51: The Mayor and/or Clerk has consented to placement of this agenda item on the Council agenda as timely action is needed.

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: The proposed construction project conforms to the goals and community values identified in the City of Ashland's Comprehensive Plan.

SUMMARY STATEMENT:

The 2024 Prentice Avenue Phase 1 Reconstruction Project consists of the reconstruction of Prentice Avenue from 6th Street East to 11th Street East. At the September 8, 2020 meeting, the Council approved a State Municipal Agreement (SMA) with the Wisconsin Department of Transportation (WI DOT) for the project, which has a total estimated cost of \$1.935 million. At the June 14, 2022 meeting, the Council approved a three party agreement with the WI DOT and Short Elliot, Hendrickson (SEH) for engineering design services.

The project is scheduled for construction in the summer of 2024. WI DOT is providing \$1.247 million for 80% of the cost of roadway construction. The City will be responsible for a 20% match of roadway construction costs, totaling \$312,358. In addition, the WI DOT considers costs associated with drinking water infrastructure to be non-participating work, so the City will replace the existing water main in coordination with the road construction at an estimated cost of \$400,000.

SEH was selected for the three party agreement by a committee consisting of the Public Works Director, a previous City engineering staff member, and a member of the Public Works Committee. On May 22, 2022, staff approved an agreement with SEH to complete preliminary design of the watermain replacement work described above, as SEH is best positioned to complete this work in coordination with the WI DOT funded street reconstruction.

SEH will also assist the City in securing Wisconsin Department of Natural Resources (WI DNR) Safe Drinking Water Loan Program (SDWLP) funding for the watermain replacement work in state FY2025.

Public Works is requesting Council's approval of the agreement with SEH to allow adequate design, planning and coordination of the watermain replacement with the WI DOT and WI DNR for the 2024 construction season. The total cost of the agreement is \$93,500 and the cost of these professional services will be included in the WI DNR SDWLP funding.

Agreement for Professional Services

This Agreement is effective as of March 1, 2023, between City of Ashland (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **Prentice Avenue Water Main Design and SDW Application and Administration**.

Client's Authorized Representative: John Butler, PE

Address: 2020 6th Street East
Ashland, WI 54806

Telephone: 715.685.1648 **email:** jbutler@coawi.org

Project Manager: Bryan Cunningham, PE (WI)

Address: 326 South Main Street, Suite 100
Rice Lake, WI 54868

Telephone: 715.861.4987 **email:** bcunningham@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 05.15.22), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

Approximately 1,800 feet of new water main to be replaced on Prentice Avenue, between 11th Street E. and 6th Street E. The final water main plans will be included in the WisDOT Local Program project (Project ID 8995-00-14) plans for the Prentice Avenue roadway reconstruction project.

1. Water Main **60% Design** for Plan, Specification, and Estimate (PS&E) submittal
 - (a) Coordination with City staff for any comment or direction based on their review of the 30% plans as previously prepared
 - (b) Coordination with preliminary 60% design CAD files of proposed street layout and elevations being produced by SEH under separate contract
 - (c) Updated layout of water main to replace existing water main, hydrants, and lateral service connections.
 - (d) Pipe profiles based on proposed street grades
 - (e) Preparation of preliminary plan drawing documents
 1. 60% water main plans, including plan & profile sheets and details
 2. Incorporate 60% water main plans in with WisDOT submittal by April 1, according to overall project schedule
 - (f) 60% submittal of preliminary specifications including water related sections in WisDOT Special Provision format
 - (g) 60% preliminary construction cost estimate incorporating WisDOT bid item structure
 - (h) Project meetings and administration
 1. One (1) virtual City coordination meeting
 2. One (1) virtual plan review meeting upon completion of 60% plans
2. Water Main **Final Design** – Prepare water main plans for submittal according to WisDOT schedule
 - (a) 90% PS&E documents – Expected by August 1, 2023
 1. Coordination with City staff for any comment or direction based on their review of the 60% PS&E
 2. Coordinate with WisDOT for any comments based on their review of the 60% PS&E

3. Updating of plan drawing documents
 - a. 90% water main plans, including plan & profile sheets and details
 - b. Create estimated quantity tabulation sheets according to WisDOT format and category divisions for inclusion in overall plan set
 - c. Incorporate 90% water main plans in with WisDOT submittal according to overall project schedule.
 4. 90% submittal of specifications including water related sections in WisDOT Special Provision format with numbering coordinated with overall project specifications.
 5. 90% construction cost estimate incorporating WisDOT bid item structure.
 - (b) Final PS&E – Expected by November 1, 2023
 1. Coordination with City staff for any comment or direction based on their review of the 90% PS&E
 2. Coordinate with WisDOT for any comments based on their review of the 90% PS&E
 3. Finalizing of plan drawing documents
 - a. Final water main plan drawings, including plan & profile sheets, details, and tabulations of estimated quantities.
 - b. Incorporate final water main plans in with WisDOT final PS&E
 4. Final specifications including water related sections in WisDOT Special Provision format with numbering coordinated with overall project specifications.
 5. Construction cost estimate incorporating WisDOT bid item structure.
 - (c) WDNR Plan coordination
 1. Preparation and submittal of Engineering Report to satisfy WDNR Safe Drinking Water Loan requirements
 2. Coordinate with City staff to perform a field fire flow test to facilitate completion of WDNR Water Main submittal forms. Alternately may coordinate to receive water model output from City's electronic water modeling system.
 3. Preparation and submittal of WDNR Water Main Extension forms
 - (d) Project meeting and administration
 1. One (1) virtual City coordination meeting
2. **WDNR Safe Drinking Water Loan (SDW) application and administration for the 2024 (SFY2025) project**
- (a) **Sub-Task 1- SFY2025 SDW Loan Application**
 1. Work with Client to determine the scope of the project for submittal to the WDNR – Replace water main on Prentice Avenue from 11th Street East to 6th Street East.
 2. Assemble required documentation. Consultant will work with the Client Staff, Financial Advisor, Bond Counsel, Engineer, Attorney, and other professionals as required to assemble required documentation for the SDW application.
 3. Draft resolution and work with Client to on adoption of required Reimbursement Resolution.
 4. Complete the Financial Assistance Application and submit to the Wisconsin Department of Natural Resources (DNR) through the electronic filing system.
 5. Submit required documentation for Disadvantaged Business Enterprise (DBE), American Iron and Steel (AIS) Compliance, and Green Project Reserve certification.
 6. Coordinate with the Engineer submission of plans, specifications, and engineering report.
 7. Coordinate with Client and submit necessary financial documentation.
 - (b) **Sub-Task 2- SFY2025 SDW Loan Administration**
 1. Loan Closing. Coordination of loan closing between the Client, WDNR and DOA.
 - a. *SDW loan closing tasks under Task 3.(b) will be completed upon acceptance of funding application from WDNR.*
 2. General Administration.
 - a. Set up a complete set of file folders that meet WDNR requirements.

- b. Review proposed contract between the Client and DNR. Propose revisions to contract.
3. Financial Management.
 - a. Draft all financial management forms.
 - b. Complete all drawdown requests for submittal to DNR.
 - c. Maintain required records.
 - d. Final reporting.
4. Equal Opportunity and Procurement Requirements.
 - a. Ensure compliance with MBE/WBE requirements.
 - b. Maintain compliance with Executive Order 11246, 11914 and 11250 and the Age Discrimination Act (P.L. 94-135).
 - c. Ensure all required federal and state forms are in all bidding documents, as appropriate.
5. Document compliance with Drug-Free Workplace Act, (P.L. 100-690).
6. Assist the Client in documenting compliance with the Real Property Acquisition Policies Act.
7. American Iron and Steel (AIS) Compliance.
8. Assist in Central Contractor Registration requirements.
9. Labor Standards.
 - a. Ensure proper Davis Bacon Wage Rates are inserted in all bid documents.
 - b. Assist with Davis Bacon requirements.
 - c. Review payrolls on a weekly basis.
 - d. Document payroll violations.
 - e. Work with contractor to correct wage underpayments (if applicable).
10. Document compliance with lobbying restrictions (Section 319 (P.L. 101-121)).
11. Audit Requirements. Determine what level of Audit (if any) is required. Coordinate and submit audit. Audits and Audit costs are the responsibility of the Client.
12. Close Out. Complete Close out documentation. Schedule and participate in DNR monitoring visit (if required by DNR).

The fee for Task 3b – SDW Administration is based on a construction period of one construction season (up to 8 months) requiring one bid package, with a single general contractor.

Additional Services: Only those items listed in the above scope are included in the engineering services for the project. Other services which are not included, but may be added with a corresponding adjustment to the professional services fee, include:

1. Design of sanitary sewer, storm sewer, or work related to Trans 220 utility coordination as part of the overall WisDOT project.
2. Special assessment related items, such as reports, hearings, notices, or waiver documents.
3. Additional meetings, notifications, press releases, or extra distribution of information for public or property owners. Preparation of displays, exhibits, renderings, or other text, graphics, or drawings beyond what is described above.
4. Construction engineering, Resident Project Representation (RPR), staking, or other construction related tasks such as precon attendance, shop drawing review, pay application or quantity review, or as-built record plans.
5. **Detailed Historical/Archeological Review:** This section applies to providing documentation above and beyond the original submittal that is required to accompany the Financial Assistance Application. Projects that are determined to impact historic or potentially historic properties or are located in historic districts may have a higher standard of review. This may include documentation of compliance with 36 CFR Part 800, Protection of Historic Properties (also known as Section 106 Compliance). This is in addition to any local ordinance compliance with the Client's Municipal Code or other requirements associated with development in the historic districts.

6. **Detailed Floodplain/Wetland Review:** This applies to providing documentation above and beyond the original submittal that is required to accompany the Financial Assistance Application. If portions of this project occur in an area identified as flood hazard areas, further study will be required, and documentation provided as an additional service.
7. **Publication of Notices** required by the grant application or administration process: Publishing arrangements and all costs associated with any required public notices shall be a direct expense of the Client.
8. **Labor Standards:** As of the time of this contract, field interviews to determine compliance with Federal Labor Standards is not required by WDNR. Should such requirements change, or should there be evidence of failure by contractor(s) to comply with wage requirements and field interviews are required, Consultant will complete said interviews as an additional service.
9. **Build America, Buy America (BABA):** As of the time of this contract, this project is not deemed to be a federal equivalency project, therefore is not required to comply with BABA for the purchase of products and construction materials. Should this project be determined to require federal equivalency, additional work will be required.
10. **Accounting, Financial Advisor or Legal fees** that may be required as part of the grant application or administration process.

Schedule: Consultant is prepared to complete this scope of work and begin these efforts upon receipt of Client's written authorization. The Consultant will complete the submittal of plans and preliminary 60% design documents by April 1, 2023, with subsequent design tasks to follow the WisDOT schedule.

SDW tasks would take place according to WDNR schedule, with the SDW loan application due June 30, 2024. WDNR Safe Drinking Water loan administration is ongoing during design as required to include relevant insertions into WisDOT specifications, and will extend through construction and be completed approximately 90-days after the final construction invoices are provided by WisDOT. If there are delays in the Project that are beyond Consultant's control, Client agrees to grant additional time to complete the services.

Payment: The total fee under this agreement is **\$93,500**.

The fee for design is hourly estimated to be **\$56,500**, including expenses and equipment.

The fee for SDW related tasks will be tracked with a separate SEH project number and invoices, with a lump sum of **\$37,000**, including expenses and equipment.

1. Safe Drinking Water Loan (SDWL) grant application- \$ 9,000 (Sub-task 1)
2. Safe Drinking Water Loan (SDWL) grant administration- \$28,000 (Sub-task 2)

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-1 and Exhibit A-2.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

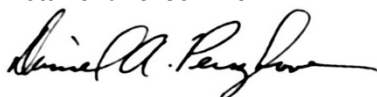
Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:

Section IV Paragraph C. Limitations on Consultant's Liability: Modify Paragraph 1. by changing the amount from five hundred thousand dollars (\$500,000) to one million dollars (\$1,000,000) at no additional cost to contract.

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Short Elliott Hendrickson Inc.

City of Ashland

By: 

By: _____

Daniel A Penzkover, PE (WI, MI, IL)

Title: Client Service Manager | Principal

Title: _____

General Conditions of the Agreement for Professional Services

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Services"). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.
2. If Client has requested changes in the scope, extent, or character of the Project or the Services to be provided by Consultant, the time of performance and compensation for the Services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform the Services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for the Services, then Consultant shall promptly notify the Client regarding the need for additional Services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional Services and to an extension of time for completion of additional Services absent written objection by Client.
2. Additional Services, including delivery of documents, CAD files, or information not expressly included as deliverables, shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon seven days written notice or, at its option, accept an equitable adjustment of compensation provided for elsewhere in this Agreement to reflect costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the Services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for Services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the Services provided by Consultant and access to all public and private lands required for Consultant to perform its Services.

2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling, and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's Services, such as previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning; deed; and other land use restrictions; as-built drawings; and electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.

3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's Services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements, and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide Services in a timely manner.

4. Client shall require all utilities with facilities within the Project site to locate and mark said utilities upon request, relocate and/or protect said utilities to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review, and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.

5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

6. Client agrees to reasonably cooperate, when requested, to assist Consultant with the investigation and addressing of any complaints made by Consultant's employees related to inappropriate or unwelcomed actions by Client or Client's employees or agents. This shall include, but not be limited to, providing access to Client's employees for Consultant's investigation, attendance at hearings, responding to inquiries and providing full access to Client files and information related to Consultant's employees, if any. Client agrees that Consultant retains the absolute right to remove any of its employees from Client's facilities if Consultant, in its sole discretion, determines such removal is advisable. Consultant, likewise, agrees to reasonably cooperate with Client with respect to the foregoing in connection with any complaints made by Client's employees.

7. Client acknowledges that Consultant has expended significant effort and expense in training and developing Consultant's employees. Therefore, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services under this Agreement, whichever is longer, Client shall not directly or indirectly: (1) hire, solicit or encourage any employee of Consultant to leave the employ of Consultant; (2) hire, solicit or encourage any consultant or independent contractor to cease work with Consultant; or (3) circumvent Consultant by conducting business directly with its employees. The two-year period set forth in this section shall be extended commensurately with any amount of time during which Client has violated its terms.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Services or deliverables until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding Services, deliverables, or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable

- costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
 3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its Services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods, or procedures of construction. Consultant's Services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. Consultant's Opinions of Probable Construction Cost are provided if agreed upon in writing and made on the basis of Consultant's experience and qualifications. Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions. Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Probable Construction Cost prepared by Consultant. If Client wishes greater assurance as to construction costs, Client shall employ an independent cost estimator.

B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter, or disposer of hazardous or toxic substances. Therefore the Client agrees to hold harmless, indemnify, and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims; losses; damages; liability; and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.

C. Limitations on Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars (\$500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including without limitation lost rentals; increased rental expenses; loss of use; loss of income; lost profit, financing, business, or reputation; and loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them. Consultant expressly disclaims any duty to defend Client for any alleged actions or damages.
3. It is intended by the parties to this Agreement that Consultant's Services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or

asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

4. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, not later than either the date of Substantial Completion for acts or failures to act occurring prior to substantial completion or the date of issuance of the final invoice for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Services are substantially completed.

D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

E. Dispute Resolution

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or the Services (except for unpaid invoices which are governed by Section III) shall be submitted to mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.
2. Any dispute not settled through mediation shall be settled through litigation in the state and county where the Project at issue is located.

SECTION V – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service"). Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Notwithstanding anything to the contrary, Consultant shall retain all of its rights in its proprietary information including without limitation its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge, and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be work product or work for hire and Consultant shall not be restricted in any way with respect thereto. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its Services, Client shall have the right in the form of a nonexclusive license to use Instruments of Service delivered to Client exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of Services, including subpoenas directed from or on behalf of Client are available to Client subject to Consultant's current rate schedule. Consultant shall not be required to provide CAD files or documents unless specifically agreed to in writing as part of this Agreement.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify, and hold harmless Consultant from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.

Exhibit A-1
to Agreement for Professional Services
Between City of Ashland, Wisconsin (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated March 1, 2023

Payments to Consultant for Services and Expenses Using the Hourly Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Hourly Basis Option

The Client and Consultant select the hourly basis for payment for services provided by Consultant. Consultant shall be compensated monthly. Monthly charges for services shall be based on Consultant's current billing rates for applicable employees plus charges for expenses and equipment.

Consultant will provide an estimate of the costs for services in this Agreement. It is agreed that after 90% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

Compensation to Consultant based on the rates is conditioned on completion of the work within the effective period of the rates. Should the time required to complete the work be extended beyond this period, the rates shall be appropriately adjusted.

B. Expenses

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client. Their costs are not included in the hourly charges made for services and shall be paid for as described in this Agreement but instead are reimbursable expenses required in addition to hourly charges for services:

1. Transportation and travel expenses.
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.
3. Lodging and meal expense connected with the Project.
4. Fees paid, in the name of the Client, for securing approval of authorities having jurisdiction over the Project.
5. Plots, Reports, plan and specification reproduction expenses.
6. Postage, handling and delivery.
7. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
8. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Client.
9. All taxes levied on professional services and on reimbursable expenses.
10. Other special expenses required in connection with the Project.
11. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses.

C. Equipment Utilization

The utilization of specialized equipment, including automation equipment, is recognized as benefiting the Client. The Client, therefore, agrees to pay the cost for the use of such specialized equipment on the project. Consultant invoices to the Client will contain detailed information regarding the use of specialized equipment on the project and charges will be based on the standard rates for the equipment published by Consultant.

The Client shall pay Consultant monthly for equipment utilization.

Exhibit A-2
to Agreement for Professional Services
Between City of Ashland, Wisconsin (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated March 1, 2023

Payments to Consultant for Services and Expenses
Using the Lump Sum Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Lump Sum Basis Option

The Client and Consultant select the Lump Sum Basis for Payment for services provided by Consultant. During the course of providing its services, Consultant shall be paid monthly based on Consultant's estimate of the percentage of the work completed. Necessary expenses and equipment are provided as a part of Consultant's services and are included in the initial Lump Sum amount for the agreed upon Scope of Work. Total payments to Consultant for work covered by the Lump Sum Agreement shall not exceed the Lump Sum amount without written authorization from the Client.

The Lump Sum amount includes compensation for Consultant's services and the services of Consultant's Consultants, if any for the agreed upon Scope of Work. Appropriate amounts have been incorporated in the initial Lump Sum to account for labor, overhead, profit, expenses and equipment charges. The Client agrees to pay for other additional services, equipment, and expenses that may become necessary by amendment to complete Consultant's services at their normal charge out rates as published by Consultant or as available commercially.

B. Expenses Not Included in the Lump Sum

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client and shall be paid for as described in this Agreement.

1. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
2. Other special expenses required in connection with the Project.
3. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses not included in the Lump Sum amount.

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SUBJECT: Approve an Agreement for Professional Services between the City of Ashland and Short Elliot Hendrickson, Inc (SEH) for Safe Drinking Water Loan Program Grant Administration Services for the 2023 MacArthur Avenue Reconstruction Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS:

1.	Agreement for Professional Services between the City of Ashland and Short Elliott Hendrickson Inc.
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EXPENDITURES REQUIRED: \$ 33,000.00 - Safe Drinking Water Loan Program Administration

AMOUNT BUDGETED: \$33,000.00 - WI DNR Safe Drinking Water Loan Program

**APPROPRIATION
REQUIRED:** \$0

**TREASURER'S
CERTIFICATE:** The Treasurer's Office has certified on March 6, 2023, that Short, Elliot, Hendrickson, Inc. is in compliance with the provisions of Ordinance 923.10 Ashland City Ordinances.

COMPLIANCE WITH ORD. 51: The Mayor and/or Clerk has consented to placement of this agenda item on the Council agenda as timely action is needed.

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: The proposed construction project conforms to the goals and community values identified in the City of Ashland's Comprehensive Plan.

SUMMARY STATEMENT:

The 2023 MacArthur Avenue Reconstruction Project consists of the Reconstruction of MacArthur Avenue from 6th Street West to 11th Street West. The work area will also include 8th Street West between MacArthur Avenue and Chapple Avenue. Construction is slated for 2023. At the December 13, 2022 meeting, the Council approved an agreement with Cedar Corporation to complete project design. Staff also anticipates requesting approval for Cedar Corporation to provide construction management services. The City is providing funding for street, storm water, and sidewalk construction and funding for watermain replacement will be provided by the Wisconsin Department of Natural Resources (WI DNR) Safe Drinking Water Loan Program (SDWLP).

Short Elliot Hendrickson (SEH) has staff specializing in administration of both the SDWLP and Clean Water Loan Program (CWLP). City staff and SEH have successfully completed two projects funded by the CWLP and are pursuing a third. Council approval of SEH services for SDWLP administration for the MacArthur Ave Reconstruction Project is requested in order to allow the SDWLP application and associated oversight to be

coordinated with similar CWLP activities.

SEH will coordinate with Cedar Corporation to ensure that the project design and contract administration meets SDWLP requirements and administer the loan associated with the project.

Public Works is requesting Council's approval of the agreement with SEH to provide funding for watermain replacement through the SDWLP. The total cost of the agreement is \$33,000 and the cost of these professional services will be included in the WI DNR SDWLP funding.

Agreement for Professional Services

This Agreement is effective as of March 2, 2023, between City of Ashland (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **SFY24 SDW Application/Administration – McArthur Ave Reconstruction.**

Client's Authorized Representative: John Butler, PE
Address: 2020 6th Street East
Ashland, WI 54806
Telephone: 715.685.1648 **email:** jbutler@coawi.org

Project Manager: Brea Grace
Address: 326 S. Main Street, Suite 100
Rice Lake, WI 54868
Telephone: 608.977.0002 **email:** bgrace@sehinc.com

Project Understanding:

Consultant understands that the City of Ashland would like to apply to the Wisconsin Department of Natural Resources (WDNR) Safe Drinking Water (SDW) Loan Program to assist with financing water utility components which will be replaced during the reconstruction of McArthur Avenue. This agreement covers the SDW loan application and administration.

Scope: The Basic Services to be provided by Consultant:

Task 1: Safe Drinking Water (SDW) Loan Application

1. Work with Client to determine the scope of the project for submittal to the WDNR – Replace undersized and aging water lines along McArthur Avenue.
2. Assemble required documentation. Consultant will work with the Client Staff, Financial Advisor, Bond Counsel, Engineer, Attorney, and other professionals as required to assemble required documentation for the SDW application.
3. Draft resolution and work with Client to on adoption of required Reimbursement Resolution.
4. Complete the Financial Assistance Application and submit to the Wisconsin Department of Natural Resources (DNR) through the electronic filing system.
5. Submit required documentation for Disadvantaged Business Enterprise (DBE), American Iron and Steel (AIS) Compliance, and Green Project Reserve certification.
6. Coordinate with the Engineer submission of plans, specifications, and engineering report.
7. Coordinate with Client and submit necessary financial documentation.

SDW loan closing tasks under Task 2 will be completed upon acceptance of funding application from WDNR.

Task 2: SDW Loan Administration

1. Loan Closing. Coordination of loan closing between the Client, DNR and DOA.
2. General Administration.
 - a. Set up a complete set of file folders that meet DNR requirements.
 - b. Review proposed contract between the Client and DNR. Propose revisions to contract.

3. Financial Management.
 - a. Draft all financial management forms.
 - b. Complete all drawdown requests for submittal to DNR.
 - c. Maintain required records.
 - d. Final reporting.
4. Equal Opportunity and Procurement Requirements.
 - a. Ensure compliance with MBE/WBE requirements.
 - b. Maintain compliance with Executive Order 11246, 11914 and 11250 and the Age Discrimination Act (P.L. 94-135).
 - c. Ensure all required federal and state forms are in all bidding documents, as appropriate.
5. Document compliance with Drug-Free Workplace Act, (P.L. 100-690).
6. Assist the Client in documenting compliance with the Real Property Acquisition Policies Act.
7. American Iron and Steel (AIS) Compliance.
8. Assist in Central Contractor Registration requirements.
9. Labor Standards.
 - a. Ensure proper Davis Bacon Wage Rates are inserted in all bid documents.
 - b. Assist with Davis Bacon requirements.
 - c. Review payrolls on a weekly basis.
 - d. Document payroll violations.
 - e. Work with contractor to correct wage underpayments (if applicable).
10. Document compliance with lobbying restrictions (Section 319 (P.L. 101-121).
11. Audit Requirements. Determine what level of Audit (if any) is required. Coordinate and submit audit. Audits and Audit costs are the responsibility of the Client.
12. Close Out. Complete Close out documentation. Schedule and participate in DNR monitoring visit (if required by DNR).

The fee for Task 2 – SDW Administration is based on a construction period of one construction season (up to 8 months) requiring one bid package, with a single general contractor.

Additional Services: These services are not included in the estimated fee. If requested by the Client, Consultant will complete them on a time and materials basis at Consultant's current rates.

1. **Detailed Historical/Archeological Review:** This section applies to providing documentation above and beyond the original submittal that is required to accompany the Financial Assistance Application. Projects that are determined to impact historic or potentially historic properties or are located in historic districts may have a higher standard of review. This may include documentation of compliance with 36 CFR Part 800, Protection of Historic Properties (also known as Section 106 Compliance). This is in addition to any local ordinance compliance with the Client's Municipal Code or other requirements associated with development in the historic districts.
2. **Detailed Floodplain/Wetland Review:** This applies to providing documentation above and beyond the original submittal that is required to accompany the Financial Assistance Application. If portions of this project occur in an area identified as flood hazard areas, further study will be required, and documentation provided as an additional service.
3. **Publication of Notices** required by the grant application or administration process: Publishing arrangements and all costs associated with any required public notices shall be a direct expense of the Client.
4. **Labor Standards:** As of the time of this contract, field interviews to determine compliance with Federal Labor Standards is not required by DNR. Should such requirements change, or should there be evidence of failure by contractor(s) to comply with wage requirements and field interviews are required, Consultant will complete said interviews as an additional service.

5. **Build America, Buy America (BABA):** As of the time of this contract, this project is not deemed to be a federal equivalency project, therefore is not required to comply with BABA for the purchase of products and construction materials. Should this project be determined to require federal equivalency, additional work will be required.
6. **Accounting, Financial Advisor or Legal fees** that may be required as part of the grant application or administration process.

Schedule: Our services will begin promptly upon the approval of this agreement. Task 1 will be complete by June 30, 2023, to meet the WDNR SDW application deadline. Task 2 to include additional coordination for the submittal of required documents through loan closing. WDNR SDW Administration is ongoing during construction. If there are delays in the Project that are beyond Consultant's control, Client agrees to grant additional time to complete the services.

Payment:

The lump sum fee for Task 1 is \$9,000 including expenses and equipment.
The lump sum fee for Task 2 is \$24,000 including expenses and equipment.

The payment method, basis, frequency, and other special conditions are set forth in attached Exhibit A-2.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
Section IV Paragraph C. Limitations on Consultant's Liability: Modify Paragraph 1. by changing the amount from five hundred thousand dollars (\$500,000) to one million dollars (\$1,000,000) at no additional cost to contract.

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Short Elliott Hendrickson Inc.

City of Ashland

By: 
Daniel A. Penzkoverr PE (WI, MI, IL)
Title: Client Service Manager

By: _____
Title: _____

General Conditions of the Agreement for Professional Services

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Services"). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.
2. If Client has requested changes in the scope, extent, or character of the Project or the Services to be provided by Consultant, the time of performance and compensation for the Services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform the Services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for the Services, then Consultant shall promptly notify the Client regarding the need for additional Services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional Services and to an extension of time for completion of additional Services absent written objection by Client.
2. Additional Services, including delivery of documents, CAD files, or information not expressly included as deliverables, shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon seven days written notice or, at its option, accept an equitable adjustment of compensation provided for elsewhere in this Agreement to reflect costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the Services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for Services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the Services provided by Consultant and access to all public and private lands required for Consultant to perform its Services.

2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling, and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's Services, such as previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning; deed; and other land use restrictions; as-built drawings; and electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's Services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements, and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide Services in a timely manner.
4. Client shall require all utilities with facilities within the Project site to locate and mark said utilities upon request, relocate and/or protect said utilities to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review, and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.
6. Client agrees to reasonably cooperate, when requested, to assist Consultant with the investigation and addressing of any complaints made by Consultant's employees related to inappropriate or unwelcomed actions by Client or Client's employees or agents. This shall include, but not be limited to, providing access to Client's employees for Consultant's investigation, attendance at hearings, responding to inquiries and providing full access to Client files and information related to Consultant's employees, if any. Client agrees that Consultant retains the absolute right to remove any of its employees from Client's facilities if Consultant, in its sole discretion, determines such removal is advisable. Consultant, likewise, agrees to reasonably cooperate with Client with respect to the foregoing in connection with any complaints made by Client's employees.
7. Client acknowledges that Consultant has expended significant effort and expense in training and developing Consultant's employees. Therefore, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services under this Agreement, whichever is longer, Client shall not directly or indirectly: (1) hire, solicit or encourage any employee of Consultant to leave the employ of Consultant; (2) hire, solicit or encourage any consultant or independent contractor to cease work with Consultant; or (3) circumvent Consultant by conducting business directly with its employees. The two-year period set forth in this section shall be extended commensurately with any amount of time during which Client has violated its terms.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Services or deliverables until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding Services, deliverables, or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable

- costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
 3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its Services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods, or procedures of construction. Consultant's Services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. Consultant's Opinions of Probable Construction Cost are provided if agreed upon in writing and made on the basis of Consultant's experience and qualifications. Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions. Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Probable Construction Cost prepared by Consultant. If Client wishes greater assurance as to construction costs, Client shall employ an independent cost estimator.

B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter, or disposer of hazardous or toxic substances. Therefore the Client agrees to hold harmless, indemnify, and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims; losses; damages; liability; and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.

C. Limitations on Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars (\$500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including without limitation lost rentals; increased rental expenses; loss of use; loss of income; lost profit, financing, business, or reputation; and loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them. Consultant expressly disclaims any duty to defend Client for any alleged actions or damages.
3. It is intended by the parties to this Agreement that Consultant's Services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or

asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

4. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, not later than either the date of Substantial Completion for acts or failures to act occurring prior to substantial completion or the date of issuance of the final invoice for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Services are substantially completed.

D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

E. Dispute Resolution

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or the Services (except for unpaid invoices which are governed by Section III) shall be submitted to mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.
2. Any dispute not settled through mediation shall be settled through litigation in the state and county where the Project at issue is located.

SECTION V – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service"). Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Notwithstanding anything to the contrary, Consultant shall retain all of its rights in its proprietary information including without limitation its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge, and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be work product or work for hire and Consultant shall not be restricted in any way with respect thereto. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its Services, Client shall have the right in the form of a nonexclusive license to use Instruments of Service delivered to Client exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of Services, including subpoenas directed from or on behalf of Client are available to Client subject to Consultant's current rate schedule. Consultant shall not be required to provide CAD files or documents unless specifically agreed to in writing as part of this Agreement.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify, and hold harmless Consultant from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.

Exhibit A-2
to Agreement for Professional Services
Between City of Ashland (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated March 2, 2023

Payments to Consultant for Services and Expenses
Using the Lump Sum Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Lump Sum Basis Option

The Client and Consultant select the Lump Sum Basis for Payment for services provided by Consultant. During the course of providing its services, Consultant shall be paid monthly based on Consultant's estimate of the percentage of the work completed. Necessary expenses and equipment are provided as a part of Consultant's services and are included in the initial Lump Sum amount for the agreed upon Scope of Work. Total payments to Consultant for work covered by the Lump Sum Agreement shall not exceed the Lump Sum amount without written authorization from the Client.

The Lump Sum amount includes compensation for Consultant's services and the services of Consultant's Consultants, if any for the agreed upon Scope of Work. Appropriate amounts have been incorporated in the initial Lump Sum to account for labor, overhead, profit, expenses and equipment charges. The Client agrees to pay for other additional services, equipment, and expenses that may become necessary by amendment to complete Consultant's services at their normal charge out rates as published by Consultant or as available commercially.

B. Expenses Not Included in the Lump Sum

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client and shall be paid for as described in this Agreement.

1. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
2. Other special expenses required in connection with the Project.
3. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10 percent markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses not included in the Lump Sum amount.

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SUBJECT: Approve a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Environmental Improvement Fund for SFY2024 MacArthur Avenue Reconstruction Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS:

1.	Proposed Resolution 17712
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EXPENDITURES REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH ORD. 51: The Mayor and/or Clerk has consented to placement of this agenda item on the Council agenda as timely action is needed.

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: The proposed construction conforms to the goals and community values identified in the City of Ashland's Comprehensive Plan.

SUMMARY STATEMENT:

The City of Ashland is working to develop a plan to address the condition of the Water Utility's distribution system (ie water mains) and lead service laterals (LSLs). Nearly 1/3 of the City's 60 mile distribution system relies on watermains installed prior to 1900. Roughly 300 LSLs are located throughout the City. Staff has been prioritizing street reconstruction projects based on an effort completed in 2017 that used pre-1900 watermains as a major selection criteria.

Public Works has identified the Wisconsin Department of Natural Resources' (WI DNR) Safe Drinking Water Loan Program (SDWLP) as a source of funding for these projects due to the low interest rate, 30 year payback period, and opportunity for principal forgiveness.

The MacArthur Avenue Reconstruction Project includes replacement of five blocks of pre-1900 water main and replacement of roughly 24 LSLs. The Council has previously approved various aspects of the project process, including funding and technical design services.

The Council is asked to adopt the attached Resolution to insure that it will be possible to reimburse municipal

funds from the future SDWLP to support municipal investments required for the 2023 MacArthur Avenue Reconstruction Project. Adoption of the resolutions is recommended as soon as possible as the projects are ongoing and this action is recommended by SEH to ensure all costs are eligible for reimbursement through the WI DNR SDWLP.

The City is not guaranteed approval of SDWLP funds but has remained in contact with WI DNR staff about the application and need for the project. The SDWLP has recently received an increase in funding available as a result of the Bipartisan Infrastructure Law (BIL).

RESOLUTION No. 17712

RESOLUTION DECLARING OFFICIAL INTENT TO REIMBURSE EXPENDITURES FROM PROCEEDS OF BORROWING THROUGH THE STATE OF WISCONSIN ENVIRONMENTAL IMPROVEMENT FUND FOR SFY2024 MACARTHUR AVENUE RECONSTRUCTION PROJECT

WHEREAS, the City of Ashland, Wisconsin intends to file an application for state financial assistance for water main replacements/system improvements on MacArthur Avenue (6th Street West to 11th Street West) and 8th Street West (MacArthur Avenue to Chapple Avenue) WDNR project number _____ (referred to as the “Project”), under the Wisconsin Environmental Improvement Fund; and

WHEREAS, the City of Ashland expects to finance the Project on a long-term basis by issuing tax-exempt bonds or promissory notes (the "Bonds"); and

WHEREAS, because the Bonds will not be issued prior to of April 2023, the City of Ashland City Council may need to provide interim financing to cover costs of the Project incurred prior to receipt of the proceeds of the Bonds; and

WHEREAS, it is necessary, desirable, and in the best interests of the City of Ashland to advance moneys from its funds on hand on an interim basis to pay the costs of the Project until the Bonds are issued.

BE IT THEREFORE RESOLVED by the City of Ashland City Council that:

Section 1) Expenditure of Funds. The City of Ashland City Council shall make expenditures as needed as needed from its funds on hand to pay the costs of the Project until Bond proceeds become available.

Section 2) Declaration of Official Intent. The City of Ashland City Council hereby officially declares its intent under Treas. Regs. Section 1.150-2 to reimburse said expenditures with proceeds of the Bonds, the principal amount of which is not expended to exceed an estimated amount of \$1,000,000 for the water main replacements/system improvements on MacArthur Avenue and 8th Street West; and

Section 3) Unavailability of Long-Term Funds. No funds for payment of the Project from sources other than the Bonds are, or are reasonably expected to be, reserved, allocated on a long term basis, or otherwise set aside by the Municipality pursuant to its budget or financial policies.

Section 4) Public Availability of Official Intent Resolution. This Resolution shall be made available for public inspection at the City Clerk’s office within 30 days after its approval in compliance with applicable State law governing the availability of records of official acts including Subchapter II of Chapter 19, and shall remain available for public inspection until the Bonds are issued.

Section 5) Effective Date. This Resolution shall be effective upon its adoption and approval.

Passed and adopted this 14th day of March, 2023, City of Ashland, Ashland County, Wisconsin

Charles Ortman, City Council President

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

SUBJECT: Approve a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Environmental Improvement Fund for SFY2024 New Lake Superior Water Intake Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS:

1.	Proposed Resolution 17713
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EXPENDITURES REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH ORD. 51: The Mayor and/or Clerk has consented to placement of this agenda item on the Council agenda as timely action is needed.

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: The proposed construction conforms to the goals and community values identified in the City of Ashland's Comprehensive Plan.

SUMMARY STATEMENT:

The City of Ashland is working with Greeley & Hansen, LLC to design and construct a new replacement drinking water intake in Chequamegon Bay to serve the City's public water system as the primary source of water supply, which is necessary for system reliability and in order to meet Wisconsin Department of Natural Resources (WI DNR) recommendations for provision of a secondary water supply.

At the February 14, 2023 meeting, Greeley & Hanseon LLC updated the Council on the project progress, which included the identification of the WI DNR Safe Drinking Water Loan Program (SDWLP) as a source of funding for these projects due to the low interest rate, 30 yr payback period, and opportunity for principal forgiveness.

The Council is asked to adopt the attached resolution to insure that it will be possible to reimburse municipal funds from the future SDWLP to support municipal investments required for the New Lake Superior Water Intake Project. Adoption of the resolution is recommended as soon as possible as engineering of the project is ongoing and this action is recommended by Greeley & Hansen LLC to ensure all costs, including engineering, are eligible for reimbursement through the WI DNR SDWLP.

The City is not guaranteed approval of SDWLP funds but has remained in contact with WI DNR staff about the application and need for the project. The SDWLP has recently received an increase in funding available as a result of the Bipartisan Infrastructure Law (BIL).

RESOLUTION No. 17713

RESOLUTION DECLARING OFFICIAL INTENT TO REIMBURSE EXPENDITURES FROM PROCEEDS OF BORROWING THROUGH THE STATE OF WISCONSIN ENVIRONMENTAL IMPROVEMENT FUND FOR SFY2024 NEW LAKE SUPERIOR WATER INTAKE PROJECT

WHEREAS, the City of Ashland, Wisconsin intends to file an application for state financial assistance for construction of a new Lake Superior Water Intake WDNR project number _____ (referred to as the “Project”), under the Wisconsin Environmental Improvement Fund; and

WHEREAS, the City of Ashland expects to finance the Project on a long-term basis by issuing tax-exempt bonds or promissory notes (the "Bonds"); and

WHEREAS, because the Bonds will not be issued prior to of April 2023, the City of Ashland City Council may need to provide interim financing to cover costs of the Project incurred prior to receipt of the proceeds of the Bonds; and

WHEREAS, it is necessary, desirable, and in the best interests of the City of Ashland to advance moneys from its funds on hand on an interim basis to pay the costs of the Project until the Bonds are issued.

BE IT THEREFORE RESOLVED by the City of Ashland City Council that:

Section 1) Expenditure of Funds. The City of Ashland City Council shall make expenditures as needed as needed from its funds on hand to pay the costs of the Project until Bond proceeds become available.

Section 2) Declaration of Official Intent. The City of Ashland City Council hereby officially declares its intent under Treas. Regs. Section 1.150-2 to reimburse said expenditures with proceeds of the Bonds, the principal amount of which is not expended to exceed an estimated amount of \$11,000,000 for construction of a new Lake Superior water intake; and

Section 3) Unavailability of Long-Term Funds. No funds for payment of the Project from sources other than the Bonds are, or are reasonably expected to be, reserved, allocated on a long term basis, or otherwise set aside by the Municipality pursuant to its budget or financial policies.

Section 4) Public Availability of Official Intent Resolution. This Resolution shall be made available for public inspection at the City Clerk’s office within 30 days after its approval in compliance with applicable State law governing the availability of records of official acts including Subchapter II of Chapter 19, and shall remain available for public inspection until the Bonds are issued.

Section 5) Effective Date. This Resolution shall be effective upon its adoption and approval.

Passed and adopted this 14th day of March, 2023, City of Ashland, Ashland County, Wisconsin

Charles Ortman, City Council President

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

SUBJECT: Approve a Contract Agreement between the City of Ashland and Hydro Klean, LLC for the 2023 Sanitary Sewer Cleaning & Televising Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Public Works Director
Utility Manager

EXHIBITS:

1.	Contract Agreement between the City of Ashland and Hydro Klean, LLC
2.	Hydro Klean, LLC Quote
3.	Ordinance Ch 194.06 Excerpt: Maintenance Agreements

EXPENDITURES REQUIRED: \$ 46,300.80 Sewer Main Cleaning
\$ 10,767.75 Submersible Camera Sewer Main Inspections
\$ 10,000.00 Root Cutting
\$ 6,706.86 Contingency (10%)
\$ 73,775.41 Project Total

AMOUNT BUDGETED: \$100,000.00 Fund 690- 2022 Operating Budget (690-82500-400)

APPROPRIATION REQUIRED: \$0

TREASURER'S CERTIFICATE: The Treasurer's Office has certified on March 6, 2023, that Hydro Klean, LLC is in compliance with the provisions of Ordinance 923.10 Ashland City Ordinances.

COMPLIANCE WITH ORD. 51: The Mayor and/or Clerk has consented to placement of this agenda item on the Council agenda as timely action is needed.

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: N/A

SUMMARY STATEMENT:

In the past four years, the Wastewater Utility has cleaned a total of 57.9 miles or 96% of the collection system while roughly 75% of the collection system has been televised in the same time period.

This has allowed the City to meet and significantly exceed the ongoing collection system maintenance goals required by the Utility's Capacity, Management, Operation, and Maintenance (CMOM) plan for the past four years. The Wisconsin Department of Natural Resources (WI DNR) required the City to implement the CMOM in response to observed sewage overflows and the plan specifically requires the City to clean 20% (12 miles) and televise 5% (3 miles) of sewer main per year.

City staff have wanted to significantly exceed the CMOM requirements in recent years in order to address the issue of significant deferred maintenance in the sewer collection system. This has been accomplished with the use of contracted services along with City staff. Utility staff reports that the aggressive schedule for sewer main cleaning has resulted in nearly a 50% decrease in customer sewage backups in the past four years and also provided additional storage capacity within the system that has helped to prevent overflows.

Staff now feels that deferred maintenance has been adequately addressed and, in 2023, would like to complete more of the cleaning work internally. The Wastewater Utility recently filled a longtime vacant operations position that will allow more staff time to be dedicated to these tasks. In addition, key maintenance personnel will pursue training and certifications in 2023 that are necessary to complete televising work future years.

Contracted services will be utilized to clean 7.8 miles of the collection system, with the remaining 4.2 miles required for CMOM compliance to be completed by City staff. Contracted services will be utilized to televise 2.1 miles of the collection system, with the remaining 0.9 miles completed by City staff.

The scope of the contracted services also includes cleaning of sewer mains in larger pipe sizes that are deemed to be critical locations. Staff expects to continue to rely on contracted services to perform this type of maintenance on a frequent basis due to the type of equipment utilized to complete the work.

Hydro Klean, LLC has done this work for the City for the past four years and staff are satisfied with their performance. Wastewater Utility staff solicited quotes for the work from multiple contractors capable of performing the work and found Hydro Klean's pricing to be competitive. Sanitary sewer cleaning is considered a maintenance activity and, as allowed by City Ordinance Chapter 194, City staff negotiated the cost of the agreement without the need for formal bidding.

The Public Works Department recommends entering into an agreement with Hydro-Klean LLC for sewer main and manhole cleaning and inspection services at a cost of \$67,068.55 and approve a 10% contingency of \$6,706.86 for a total project budget of \$73,775.41.



CONTRACT AGREEMENT

THIS AGREEMENT is by and between The City of Ashland Wisconsin ("Owner") and Hydro Klean, LLC ("Contractor"), dated March 15, 2023.

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. - WORK

Furnishing of all labor, tools, materials, equipment and incidentals necessary for the cleaning and televised video inspection of sanitary sewer main and sanitary sewer manholes located within the City of Ashland's sanitary sewer collection system, as specified in the attached Contract Documents, including technical specifications, exhibits, appendices and all associated documents referenced there herein.

2. - THE PROJECT

2.1. The Project for which the Work under the Contract Documents is performed may be generally described as: 2023 Sewer Cleaning & Televising.

2.2. The cleaning and televised video inspection of sanitary sewer main and sanitary sewer manholes located within the City of Ashland's sanitary sewer collection system.

3. - GENERAL CONDITIONS

3.1. Protection of Work

3.1.1. The Contractor shall protect at all times the property of the Owner, existing improvements, and the work being completed by the Contractor and others from abuse, damage, dust, debris, and other objectionable materials resulting from completion of the work.

3.1.2. Any damage to the property of the Owner, including the sanitary sewer system, shall be repaired and restored back to original condition at the expense of the Contractor.

3.2 Completion of the Work

3.2.1 The Contractor is responsible for furnishing of all labor, tools, materials, equipment, and incidentals, including traffic control, necessary for the cleaning and televised video inspection of sanitary sewer main and sanitary sewer manholes as specified in the Contract Documents

3.2.2 Delivery of data collected during completion of the work shall be delivered to the City within 60 days after the date of substantial complete

4.- RESTORATION

4.1 Any damage to the existing sanitary sewer collection system or disturbance to land areas, buildings or property adjacent to the system caused by the contractor during the installation of the completion of the work shall be repaired and restored back to original condition at the expense of the contractor.

5. - OTHER REQUIREMENTS

5.1. The contractor shall work in as judicious a manner as possible. All work must be substantially completed by no later than September 15, 2022, with a Notice To Proceed distributed no later than May 1, 2020.

5.4. On a daily basis, the Contractor shall completely remove equipment, tools, materials, or other debris associated with its work from the daily work area.

5.5. The contractor shall minimize the impact of the construction on the operations of the general public by limiting project work to the hours of 7am and 5pm and coordinating directly with the Owner's representative for the completion of the work on City roadways with a designated functional classification.

6.-SAFETY

6.1. Contractor is responsible for placing and maintaining traffic and work site safety barricades and signage when performing work in or near public areas or private property and taking all other measures necessary to ensure work site safety.

7. – PROJECT REPRESENTATIVE

7.1. The Project will be administered by the City of Ashland Collection System Foreman, hereinafter called Foreman who is to act as Owner's representative. The Foreman shall assume all duties and responsibilities and have the rights and authority assigned to the Foreman in connection with completion of the Work in accordance with the Contract Documents.

7.2. The Foreman will utilize other City staff to provide onsite inspection and to support the Contractor in providing system access and other coordination necessary for completion of the work.

8. - CONTRACT TIMES

8.1 Dates for Substantial Completion and Final Payment. The work will be Substantially Complete with units installed and operating on or before September 15, 2023. The work should be completed and ready for Final Payment on or before September 15, 2023.

8.2 Liquidated Damages. Owner and Contractor recognize that time is of the essence for this Agreement and that the Owner will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with Article 8 of the Contract Agreement. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree

that as liquidated damages the Contractor shall pay Owner \$500 for each calendar day that expires after the dates specified in this agreement for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each calendar day that expires after the dates specified in this agreement for completion and readiness for final payment until the work is completed and ready for final payment.

8.3 Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time by use of a Change Order equal to the time lost due to any delay so caused.

9. - CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the contract documents an amount in current funds equal to the sum of the amounts determined pursuant to the following paragraphs:

9.1. The Contractor agrees to perform all of the work required by the Contract Documents and comply with the terms therein, unless modified by a Change Order, for the price as listed on the Contractor's Quote for 2023 Sewer Cleaning & Televising Project totaling a Bid amount of \$67,068.55.

9.2. Change Order

9.2.1 Any proposed changes by the contractor that will result in costs exceeding contractor's original bid price of \$67,068.55 will require a written change order.

9.2.2 All change orders will require the recommendation of the Foreman and approval of the expenditures by the City Administrator. The approval of change orders by the City shall be made in a timely manner that will not significantly delay the Contractor's progress. The approval or disapproval by the City of each change order shall be decided within three business days.

9.2.3. Verbal acknowledgement for changes to project work or project materials is not authorized. Acknowledgment of, or agreement to changes by any persons other than the Foreman and/or the City Administrator are not authorized.

9.2.4. Proposed changes by the contractor that are not agreed to by the Foreman and the City Administrator will be subject to review by the City Council.

10. - PAYMENT PROCEDURES

10.1. In accordance with Contractor's Proposal, the Contractor shall purchase and supply all equipment, parts and components as specified in the Contract Documents.

10.2 The contractor may request a progress payment once a month while performing the work described in the Contract. Contractor shall submit to Owner for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

10.3 Upon final completion and acceptance of the Work, Owner shall pay the Contract Price, less any completed progress payments, as recommended by the Utility Manager within 30 days of submittal. Contractor shall submit to Owner for review a final Application for Payment filled out and signed by Contractor covering the Work completed and accompanied by such supporting documentation as is required by the Contract Documents.

10.3.1 Contractor shall submit affidavit of debts and claims and affidavit of release of liens with final pay request including subcontracted work or equipment.

10.4 This contract includes a provision which allows the governmental body that is authorized to enter into the contract to make direct payment to subcontractors or to pay the prime contractor with checks that are made payable to the prime contractor and to one or more subcontractors. WI Statute (779.14(d)(1)(a)).

11. - CONTRACTOR'S REPRESENTATIONS AND ASSURANCES

Contractor makes the following representations:

11.1. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.

11.2. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

11.3 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11.4. Contractor's Liability Insurance

The City of Ashland shall be named as an additional insured, on a primary basis. The limits of liability for the insurance required shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

- i. Worker's Compensation and related coverages:
 - a. State: Statutory
 - b. Applicable Federal (e.g., Longshoreman's): Statutory
 - c. Employer's Liability:
 - 1) Bodily Injury by Accident \$500,000 Each Accident
 - 2) Bodily Injury by Disease \$500,000 Each Employee
 - 3) Bodily Injury by Disease \$500,000 Policy Limit
- ii. CONTRACTOR'S General Liability shall also include:
 - a. General Aggregate \$1,000,000
 - b. Products- Completed Operations Aggregate \$1,000,000
 - c. Personal and Advertising Injury \$1,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
 - e. Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
 - f. Excess or Umbrella Liability
 - 1) General Aggregate \$2,000,000
 - 2) Each Occurrence \$2,000,000
- iii. Automobile Liability
 - a. Combined Single Limit (Bodily Injury and Property Damage)
 - Each Accident \$1,000,000
- iv. Contractual Liability coverage shall provide coverage for not less than the following amounts:
 - a. Bodily Injury:
 - Each Accident \$1,000,000
 - Annual Aggregate \$1,000,000
 - b. Property Damage:
 - Each Accident \$1,000,000
 - Annual Aggregate \$1,000,000

11.6 Contractor shall submit a one year warranty on installation of all work on the project from final completion.

12. - ASSIGNMENTS OF CONTRACT

No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

13. - PARTNERS, SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

14 – SEVERABILITY

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

15.- ORDER OF PRECEDENCE

Any inconsistency between this Contract and the Contractor's Proposal shall be resolved by giving precedence in the following order:

1. Contract Agreement dated March 15, 2023.
2. Contractor's Quote dated January 20, 2023.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

OWNER

CONTRACTOR

City of Ashland

By: _____
Debra S. Lewis, Mayor

By: _____

By: _____
Denise Oliphant, City Clerk

Title: _____
License No: _____

By: _____
Barbara Clement, Comptroller/Treasurer

By: _____
Tyler Wickman, City Attorney



Hydro-Klean, LLC
333 NW 49th Place
Des Moines, IA, 50313
Phone: 515-283-0500

Quote

Quote Nbr.: Q006612
Order Date: 01/20/2023
Valid Until: 04/20/2023
Sales Person: Jake Nanti
Customer ID: 100260
Payment Terms: Net 30 Days

Job Site:

City of Ashland, WI
2020 Sixth Street East
Ashland WI 54806
United States of America

Bill to:

City of Ashland, WI
2020 Sixth Street East
Ashland WI 54806
United States of America

Job Description

Projected probable project cost to perform the following tasks on a unit cost basis: Variations in the work scope will require execution of a change order.

Hydro-Klean to mob to customer location to clean approx. 41,340' of 6"-21" sanitary sewer and televise 14,357' of 8"-15". All obstructions must be cleared before day(s) of operations. If required, reverse set-ups for televising will be \$75/ea. Truck access to exposed manholes, is required. Standard traffic control (i.e. cones) is included. Non-standard traffic control, bypassing or easement work will be additional. Customer to provide an adequate water source such as a fire hydrant at no additional cost. All waste and debris collected to be disposed on site at customer designated location. Standard cleaning to consist of 3 or less passes. If the standard cleaning rate of \$1.12/ft requires to be "heavy cleaned" the \$2.75/ft heavy clean rate will be charged in addition.

NO.	ITEM	QTY.	UOM	PRICE	Amount
1	Standard Clean Sanitary Sewer 6"-21"	41,340.0000	FOOT	1.1200	46,300.80
2	Heavy Cleaning 6"-24"	0.0000	FOOT	2.7500	0.00
3	Televising 8"-15"	14,357.0000	FOOT	0.7500	10,767.75
4	Root Cutting	40.0000	HOUR	250.0000	10,000.00

*NOTE: Quote does not include any applicable taxes

Prepared By: Jake Nanti
Approved By: Wade Anderson

Accepted By: _____
Date: _____
PO#: _____

*Quote Total: 67,068.55

Sec. 194.06. Exceptions. Bids are not required for the following purchases:

(a) Operating supplies and maintenance agreements, except items budgeted under series 800 object codes.

(b) Products for which only one supplier exists.

(c) Emergency purchases, such that the time spent to obtain bids would threaten health, safety, the environment, and public or private property.