



Take notice that the City of Ashland Common Council will meet in person in the City Hall Council Chambers, 601 Main Street W. Ashland, WI with the availability to attend virtually, to consider and act upon the following agenda.

To join the meeting from your computer, tablet or smartphone:

<https://global.gotomeeting.com/join/500263957>

Or dial in using your phone. United States (Toll Free): 1-877-309-2073 Access Code: 500-263-957

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

Thursday, April 4, 2024 Ashland City Council Meeting Agenda

1. CALL TO ORDER

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

2. APPROVAL OF AGENDA

3. APPROVAL OF MINUTES

A. March 12, 2024 City Council and Committee of the Whole Meeting Minutes

4. CITIZEN PARTICIPATION PERIOD

5. MAYOR'S REPORT

A. Announcements

6. CONSENT AGENDA

A. **Approve a Professional Service Agreement between the City of Ashland and HydroCorp for Cross Connection Services** *(Public Works/Utility)*

B. **Approve to Accept a Bid from Mika Construction & Transportation LLC for the 2024 Crushed Aggregate Contract** *(Public Works/Utility)* Roll

7. OLD BUSINESS

A. **Approve Final Resolution Requiring Installation of Sewer Laterals and Providing for Assessment of Cost Under Wisconsin State Statute 66.0911 for the 2023 Sanitary Sewer Replacement Project** *(Public Works)* Roll

B. **Approve an Ordinance to Create Chapter 136 (2024-1994) Denial of City Permits, Ashland City Ordinances** *(Clerk)* Roll



- C. **Approve an Ordinance to Amend Chapter 165 (2021-1952) Comprehensive Fee Schedule, Ashland City Ordinances, to Reflect the Necessary Increase of Residential Garbage Collection Rates** (*Administration*) Roll
- D. **Approve a Development Agreement for 514 West Main Street between the City of Ashland and Alannah and Francois Belanger, FAB, LLC dba Main Street Eatery** (*Administration*) Roll

8. NEW BUSINESS

- A. **Consider Approval of the Tentative Agreement between the City of Ashland and the Ashland Professional Police Association for 2024-2025** (*Police Department*) Roll
- B. **Consideration of a Resolution to Issue a Conditional Use Permit (CUP) to Allow an Office Use at 417 9th Avenue West, Parcel # 201-00364-0000, Zoned Mixed Residential/Commercial (MRC); Applicant: Ninth Avenue Investments, LLC/Gary LaPean** (*Planning & Development*) Roll
- C. **Consideration of a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Safe Drinking Water Loan Program for SFY2025 Prentice Avenue Phase 1 Reconstruction Project** (*Public Works*) Roll
- D. **Consider Approval of an Agreement for Professional Services between the City of Ashland and Short Elliott Hendrickson, Inc (SEH) for Safe Drinking Water Loan Program Administration Services for the 2024 Ore Dock Access Road Project** (*Public Works*) Roll
- E. **Consideration of a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Clean Water Loan Program for SFY2025 Ore Dock Access Road Project** (*Public Works*) Roll
- F. **Consider Approval of an Agreement for Professional Services between the City of Ashland and Short Elliott Hendrickson, Inc (SEH) for Clean Water Loan Program Administration Services for the 2024 Ore Dock Access Road Project** (*Public Works*) Roll
- G. **Consider to Approve a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Safe Drinking Water Loan Program for SFY2025 Ore Dock Access Road Project** (*Public Works*) Roll
- H. **Consider Approval to Enter into an Agreement for Professional Construction Engineering Services between the City of Ashland and Cedar Corporation for the 2024 Ore Dock Access Road Project** (*Public Works*) Roll

9. CLOSED SESSION

- A. **Pursuant WI Statute 19.85(1)(c): "Considering employment, promotion, compensation or performance evaluation data of any public employee**



over which the governmental body has jurisdiction or exercises responsibility." *(City Administrator Evaluation)*

- B. **Return to Open Session** *(Voice)*
- C. **Report of Action Taken During Closed Session** *Council may return to Open Session and take action on any item discussed in Closed Session.*

10. 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 the City Clerk's Office at 715-682-7071 (not a TDD telephone number) or FAX: 715-682-7048

MEETING MINUTES
ASHLAND CITY COUNCIL
Tuesday, March 12, 2024 – 6:00 PM
Ashland City Hall Council Chambers

1. CALL TO ORDER

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

The Tuesday, March 12, 2024 Ashland City Council meeting was called to order by Mayor Matt Mac Kenzie at 6:00 p.m.

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

PRESENT: Kevin Seefeldt, Sarah Jackson, Ana Tochtermann, Andrew Goyke, James Gregoire, Charlie Ortman, Dick Pufall

ABSENT: None

ALSO PRESENT: Mayor Matthew MacKenzie, City Administrator Brant Kucera, City Clerk Denise Oliphant, City Attorney Tyler Wickman, Public Works Director John Butler, Planning Director Steven Wiley, Police Chief Willis Hagstrom, and other interested citizens.

2. APPROVAL OF AGENDA

A motion by Seefeldt and seconded by Ortman to approve the agenda as presented, was carried unanimously by voice vote.

3. APPROVAL OF MINUTES

A. February 27, 2024 City Council and Committee of the Whole Meeting Minutes

A motion by Seefeldt and seconded by Ortman to approve the minutes, was carried unanimously by voice vote.

4. CITIZEN PARTICIPATION PERIOD

The Clerk read the Rules for Citizen Participation, and the following offered their comments to the Council:

Bill Sann, 521 Willis Avenue, expressed that he felt harassed by the city's property maintenance

personnel. He also suggested having a citizen patrol assigned to monitor the traffic along the waterfront trail.

5. MAYOR'S REPORT

A. Announcements

The Mayor shared the recent news regarding Northland College's efforts to raise money to maintain educational opportunities in Ashland.

6. CONSENT AGENDA

A. Miscellaneous Minutes

A motion by Goyke and seconded by Seefeldt to approve the Consent Agenda was passed unanimously by voice vote.

7. OLD BUSINESS

A. Approve a Preliminary Resolution Declaring Intent to Levy Special Assessments under Municipal Police Power Pursuant to Sec. 66.0703, WI State Statute for the 2024 Ore Dock Access Road Project (*Public Works*) Roll

A motion by Ortman and seconded by Jackson to approve the preliminary resolution was passed unanimously by roll call vote.

File #17770

B. Approve a Preliminary Resolution Declaring Intent to Levy Special Assessments under Municipal Police Power Pursuant to Sec. 66.0703, WI State Statute for the 2024 Prentice Avenue Phase 1 Reconstruction Project (*Public Works*) Roll

A motion by Goyke and seconded by Ortman to approve the preliminary resolution was passed unanimously by roll call vote.

File #17771

C. Approve to Accept Bid from Ritola, Inc and Award a Contract for the 2024 Ore Dock Access Road Project (*Public Works*) Roll

A motion by Ortman and seconded by Seefeldt to approve to accept the bid for \$1,757,622.75 from Ritola, Inc. was passed unanimously by roll call vote.

8. NEW BUSINESS

A. Consideration of a Bid Proposal from Green Bay Pipe & TV for the 2024 Sanitary Sewer Cleaning & Televising Project (*Public Works*) Roll

A motion by Ortman and seconded by Jackson to approve the bid proposal from Green Bay Pipe & TV for \$47,352.61 was passed unanimously by roll call vote.

- B. **Consider to Approve a Contract Agreement between the City of Ashland and Meyer Group Architecture to provide Architectural Design Services for the Baron Radiator Adaptive Reuse Project** (*Planning*) Roll

A motion by Ortman and seconded by Tochtermann to approve the contract with Meyer Group Architects for \$50,000 was passed unanimously by roll call vote.

- C. **Consider a Proposal from Fish Creek Restoration LLC for Assessment and Concept Plan for the Bay City Creek Riparian Restoration Project** (*Parks*) Roll

A motion by Jackson and seconded by Seefeldt to approve was passed unanimously by roll call vote.

- D. **Consider an Original Alcohol Beverage Retail License Application Submitted by The Landing LLC dba The Landing, 101 Lake Shore Drive West, Ashland, Wisconsin, and Agent Natalie Skinnies** (*Clerk*) Roll

A motion by Ortman and seconded by Seefeldt to approve was passed unanimously by roll call vote.

9. CLOSED SESSION

A motion by Pufall and seconded by Ortman to enter into Closed Session, passed unanimously by roll call vote.

Ortman moved, seconded by Goyke to allow Butler to remain during Closed Session. The motion carried unanimously by voice vote.

- A. **Pursuant to WI Stat. 19.85(1)(c):** "Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility." (*Public Works*)

- B. **Return to Open Session**

Ortman moved, seconded by Seefeldt to return to Open Session. The motion passed unanimously by voice vote.

- C. **Report of Action Taken during Closed Session**

Mackenzie reported that there was no action taken during closed session.

10. ADJOURNMENT

A motion by Ortman and seconded by Seefeldt to adjourn was passed unanimously by voice vote.

Respectfully Submitted,

Denise Oliphant,
City Clerk

MEETING MINUTES
COMMITTEE OF THE WHOLE MEETING
Tuesday, March 12, 2024 – 6:00 PM
Ashland City Hall Council Chambers

1. Roll Call

The Tuesday, March 12, 2024, City of Ashland Committee of the Whole Meeting was called to order by Council President Charlie Ortman at 7:15 p.m.

PRESENT: Kevin Seefeldt, Sarah Jackson, Ana Tochtermann, Andrew Goyke, Jim Gregoire, Charlie Ortman, Dick Pufall.

ALSO PRESENT: Mayor Matt MacKenzie, City Administrator Brant Kucera, City Clerk Denise Oliphant, City Attorney Tyler Wickman, Public Works Director John Butler, Parks Director Sara Hudson, Planning Director Steven Wiley, Police Chief Bill Hagstrom, and other interested citizens.

2. Approval of Agenda

A motion by Seefeldt and seconded by Goyke to approve the agenda passed unanimously by voice vote.

3. Council President's Report

Ortman reported on a recent Wisconsin Land and Water Conservation Association conference that he attended.

4. Administrator's Report

Kucera noted that the contract for the garbage and recycling agreement had been competed, and the subsequent rate increase would be coming back to Council. He acknowledged the announcement by Northland College that came as a surprise to the community, and had been getting a lot of calls about its effect on the City. A development agreement involving the 514 Main Street West property will be brought before Council at the next meeting. The Council Spring Retreat has been rescheduled for April 30, 2024 at the BART facility. Food will be served at 5:30 p.m. with conversation starting at 6:00 p.m.

5. DISCUSSION ITEMS

A. Recurring Discussion and Possible Action Regarding Homelessness and Current Ordinances Regarding Use of Public Spaces in the City of Ashland *(Councilor Ortman)*

Chief Hagstrom offered a report on various accumulated citations. No action was taken, and it was determined to take a break from this topic at this time.

B. Discussion and Possible Action Regarding Property Maintenance Process and Procedures *(Councilor Seefeldt)*

Councilor Seefeldt asked for the process the property maintenance department follows. Wiley discussed what is expected of the property maintenance personnel, and the steps spelled out in Chapter 750, Ashland City Ordinances.

Seefeldt moved, seconded by Jackson to allow Scott Putney speak to Council. This motion passed unanimously by voice vote.

C. Discussion and Possible Action Regarding the Recent Change in Legislative District Maps in Wisconsin (Mayor)

Mackenzie talked of the new Senate and Assembly maps of Wisconsin, and what that means for the City's representation.

D. Discussion and Possible Action Regarding Contract with Hydro Corp for Cross Connection Services (Public Works/Utility)

Butler introduced the item and answered questions from Council. A motion by Seefeldt, seconded by Goyke to forward this item to Council for formal approval carried unanimously by voice vote.

E. Discussion and Possible Action Regarding a the 2024 Crushed Aggregate Contract (Public Works/Utility) Roll

Butler spoke of the item and answered questions from Council. A motion by Seefeldt, seconded by Goyke to forward the item to Council for formal approval carried unanimously by voice vote.

F. Discussion and Possible Action Regarding Applying for and Accepting Grants (Mayor)

Mackenzie asked Council to consider the continued grant offers from Enbridge to support specific projects. Councilors asked to have representatives of both Enbridge and the Bad River Tribe come to a Council meeting for conversation. There was no action taken on this item.

6. Future Items for Discussion

There were no items noted by Council.

7. Adjournment

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

Respectfully Submitted,

Denise Oliphant,
City Clerk

SUBJECT: Approve a Professional Service Agreement between the City of Ashland and HydroCorp for Cross Connection Services (*Public Works/Utility*)

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Public Works Director
Utility Operations Manager
Approved Unanimously by Committee of the Whole, March 12, 2024

EXHIBITS: 1. Professional Service Agreement between the City of Ashland and HydroCorp

EXPENDITURES REQUIRED: \$22,608.00 Annually (2 year agreement)
\$45,216.00 Total Expenditure

AMOUNT BUDGETED: \$33,000.00 Fund 680 2024 Operating Budget (680-92300-210)

*will be included in 2025 Fund 680 Operating Budget (Water Utility)

**APPROPRIATION
REQUIRED:**

**TREASURER'S
CERTIFICATE:** The Treasurer's Office has certified on March 21, 2024, that HydroCorp is in compliance with the provisions of Ordinance 923.10 Ashland City Ordinances.

COMPLIANCE WITH ORD. 51: NA

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: This item conforms to the Ashland Comprehensive Plan in that it is "...in accordance with existing and future needs, best promote public health, safety, morals, and the general welfare..." for the City's residents and community.

SUMMARY STATEMENT:

Since 2013, HyrdoCorp has been contracted to complete inspection of commercial, industrial, multi-family and public authority users that are serviced by the public water supply for cross-connections compliance. The Water Utility staff conducts inspection of private residents. HydroCorp will perform inspections of up to 450 Non-Residential water services within the City serviced by the public water supply for cross-connections. Compliance follow up visits shall be completed by HydroCrop and are in included in the total inspections. The inspections will be conducted in accordance with the DNR Water Bureau Cross Connection Control regulations. The Utility is required to report annually to the DNR with regard to completed cross connections. HydroCorp will submit the required comprehensive management reports on a quarterly basis and prepare the State of Wisconsin, DNR Water Bureau Annual Cross Connection Control Program Activity Report assuring the Water Utility stays in compliance with the DNR regulation 810.15.

A cross-connection is any temporary or permanent connection between a public water system or consumer's potable (i.e., drinking) water system, and any source or system containing non-potable water or other substances. An example is the piping between a public water system or consumer's potable water system and an auxiliary water system, cooling system, or irrigation system. Backflow into the public water system can pollute or contaminate the water in that system (i.e., backflow into a public water system can make the water in that system unusable or unsafe to drink), and each water supplier has the responsibility to provide water that is usable and safe to drink under all foreseeable circumstances. Furthermore, consumers generally have absolute faith that water delivered to them through a public water system is always safe to drink. For these reasons, each water supplier must take reasonable precautions to protect its public water system against backflow.

At the March 12, 2024 Committee of the Whole meeting, staff presented a proposed agreement for \$47,256.00 over two years or \$23,628.00 per year. Following that meeting, staff continued negotiations with HydroCorp resulting in a revised proposed agreement for \$45,216.00 over two years or \$22,608 per year.

Public Works staff recommends approval to proceed with the agreement with HydroCorp.

PROFESSIONAL SERVICE AGREEMENT

This agreement, made and entered into this April 1st, 2024 by and between the City of Ashland organized and existing under the laws of the State of Wisconsin, referred to as “Utility”, and HydroCorp™ a Michigan Corporation, referred to as “HydroCorp”.

WHEREAS, the Utility supplies potable water throughout its corporate boundary to property owners; and desires to enter into a professional services contract for cross connection control program inspection, reporting and management services.

WHEREAS, HydroCorp is experienced in and capable of supplying professional inspection of potable water distribution systems and cross connection control program management to the Utility and the Utility desires to engage HydroCorp to act as its independent contractor in its cross connection control program.

WHEREAS, the Utility has the authority under the laws of the State of Wisconsin and its local governing body to enter into this professional services contract.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

ARTICLE I. Purpose

During the term of this Agreement, the Utility agrees to engage HydroCorp as an independent contractor to inspect and document its findings on its potable water distribution system in public, commercial and industrial facilities within the community. Each party to this Agreement agrees that it will cooperate in good faith with the other, its agents, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement. Both Parties to this Agreement recognize and acknowledge that the information presented to them is complete and accurate, yet due to the inaccessible nature of water piping or due to access constraints within water users’ facilities, complete and accurate data is not always available.

ARTICLE II. Scope of Services

The scope of services to be provided by HydroCorp under this Agreement will include the inspections/surveys, program administration, answering telephone call inquiries, scheduling of inspections, program compliance review, public education materials, preparation of quarterly management reports, and annual cross connection reports with respect to the facilities to the extent specifically set forth in this Article II (hereinafter the “Scope of Services”). Should other reports/services be included within the Scope of Services, the same shall be appended to this Agreement as Exhibit 1.

2.1 PROGRAM REVIEW/PROGRAM START UP MEETING. HydroCorp will conduct a Program Startup Meeting for the Cross-Connection Control/Backflow Prevention Program. Items for discussion/review will include the following:

- Review state & local regulations
- Review and/or provide assistance in establishing local Cross-Connection Control Ordinance
- Review/establish wording and timeliness for program notifications including:
 - Inspection Notice
 - Compliance Notice
 - Non-Compliance Notices 1-2, Penalty Notices
- Special Program Notices
- Electronic use of notices/program information
- Obtain updated facility listing, address information and existing program data from Utility
- Prioritize Inspections (City buildings, schools, high hazard facilities, special circumstances.)
- Review/establish procedure for vacant facilities



- Establish facility inspection schedule
- Review/establish procedures and protocol for addressing specific hazards
- Review/establish high hazard, complex facilities and large industrial facility inspection/containment procedures including supplemental information/notification that may be requested from these types of facilities in order to achieve program compliance.
- Review/establish program reporting procedures including electronic reporting tools
- Review/establish educational and public awareness brochures

2.2 INSPECTIONS. HydroCorp will perform initial inspections, compliance inspections, and re-inspections at individual industrial, commercial, institutional facilities and miscellaneous water users within the utility served by the public water supply for cross-connections. Inspections will be conducted in accordance with Wisconsin Department of Natural Resources (DNR) Cross Connection Control Rules.

- *Initial Inspection* – the first time a HydroCorp representative inspects a facility for cross connections. Degree of Hazard will be assigned and/or verified during this facility visit. The Degree of Hazard will dictate future re-inspection frequency/schedule of facility, (facility will be either compliant or non-compliant after this inspection).
- *Compliance Inspection* – subsequent visit by a HydroCorp representative to a facility that was non-compliant during the *Initial Inspection* to verify that corrective action was completed and meets the program requirements.
- *Re-Inspection* – Revisit by a HydroCorp representative to a facility that was previously inspected. The re-inspection frequency/schedule is based on the degree of hazard assigned to the facility during the initial inspection (two, six or ten year re-inspection cycle).

2.3 INSPECTION SCHEDULE. HydroCorp shall determine and coordinate the inspection schedule. Inspection personnel will check in/out on a daily basis with the Utility's designated contact person. The initial check in will include a list of inspections scheduled. An exit interview will include a list of inspections completed.

2.4 PROGRAM DATA. HydroCorp will generate and document the required program data for the Facility Types listed in the Scope of Services using the HydroCorp Software Data Management Program. Program Data shall remain property of the Utility; however, the HydroCorp Software Data Management program shall remain the property of HydroCorp and can be purchased for an additional fee. Data services will include:

- Prioritize and schedule inspections
- Notify users of inspections, backflow device installation and testing requirements if applicable
- Monitor inspection compliance using the HydroCorp online software management program. (Note: WI Department of Safety & Professional Services (DSPS) manages backflow prevention assembly testing notification and compliance.)
- Maintain program to comply with all DNR regulations

2.5 MANAGEMENT REPORTS. HydroCorp will submit comprehensive management reports in electronic, downloadable format on a quarterly & annual basis to the Utility. Reports to include the following information:

- Name, location and date of inspections
- Number of facilities inspected/surveyed
- Number of facilities compliant/non-compliant

2.6 REVIEW OF CROSS-CONNECTION CONTROL ORDINANCE. HydroCorp will review or assist in the development of a cross-connection control ordinance. Items for review include:

- Code adoption references, standard operational procedures, program notice documentation, reporting procedures and preference standards.
- Penalties for noncompliance.



- 2.7 VACUUM BREAKERS.** Utility will provide up to six (6) ASSE approved hose bibb vacuum breakers or anti-frost hose bibb vacuum breakers per facility as required, in order to place a facility into immediate compliance at the time of inspection if no other cross-connections are identified.
- 2.8 PUBLIC RELATIONS PROGRAM.** HydroCorp will assist the Utility with a community-wide public relations program including general awareness brochures and website cross connection control program content.
- 2.9 SUPPORT.** HydroCorp will provide ongoing support via phone, fax, text, website or email for the contract period.
- 2.10 FACILITY TYPES.** The facility types included in the program are as follows:
- Industrial
 - Institutional
 - Commercial
 - Miscellaneous Water users
 - Multifamily
- Complex Facilities.** Large industrial and high hazard complexes or facilities may require inspection/survey services outside the scope of this Agreement. (HydroCorp typically allows a maximum of up to three (3) hours of inspection time per facility.) An independent cross connection control survey (at the business owner's expense) may be required at these larger/complex facilities and the results submitted to the Utility to help verify program compliance.
- 2.11 INSPECTION TERMS.** HydroCorp will perform **(234) Initial inspections, and up to (292)** total inspections over a **two (2)** year contract period. The total inspections include all initial inspections, compliance and re-inspections. *Vacant facilities that have been provided to HydroCorp, scheduled no show or refusal of onsite inspection will count as an inspection/site visit for purposes of the contract.*
- 2.12 COMPLIANCE WITH DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE CODE.** HydroCorp will assist in compliance with DNR and Wisconsin Administrative Code cross connection control program requirements for all commercial, industrial, institutional, multifamily and public authority facilities.
- 2.13 POLICY MANUAL.** HydroCorp will review and/or develop a comprehensive cross connection control policy manual/plan and submit to WI-DNR for approval on behalf of the Utility.
- 2.14 INVENTORY.** HydroCorp shall inventory all accessible (ground level) backflow prevention assemblies and devices. Documentation will include: location, size, make, model and serial number if applicable.
- 2.15 DATA MANAGEMENT.** HydroCorp shall provide data management and program notices for all inspection services throughout the contract period.
- 2.16 ANNUAL YEAR END REVIEW.** HydroCorp will conduct an on-site annual year-end review meeting to discuss overall program status and specific program recommendations.
- 2.17 CROSS CONNECTION CONTROL BROCHURES.** HydroCorp will provide approximately **292** cross-connection control educational brochures for the duration of the Agreement.
- 2.18 INSURANCE.** HydroCorp will provide all required copies of general liability, workers compensation and errors and omissions insurance naming the Utility as an additional insured if required.



ARTICLE III. Responsibilities of the Utility

- 3.1 UTILITY'S REPRESENTATIVE.** On or before the date services are to commence under this Agreement, the Utility shall designate an authorized representative ("Authorized Representative") to administer this Agreement.
- 3.2 COMPLIANCE WITH LAWS.** The Utility, with the technical and professional assistance of HydroCorp, shall comply with all applicable local, state, and federal laws, codes, ordinances, and regulations as they pertain to the water inspection and testing, and shall pay for any capital improvements needed to bring the water treatment and delivery system into compliance with the aforementioned laws.
- 3.3 NOTICE OF LITIGATION.** In the event that the Utility or HydroCorp has or receives notice of or undertakes the prosecution of any actions, claims, suits, administrative proceedings, investigations or other proceedings in connection with this Agreement, the party receiving such notice or undertaking of such prosecution shall give the other party timely notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings
- 3.4 FACILITY LISTING.** The Utility must provide HydroCorp a complete list of facilities to be inspected, including facility name, type of service connection, address, contact person, and phone number, (if available). *Electronic file format such as Microsoft Excel, etc. is required. An additional one-time fee to manually enter facility listing will be charged at the rate of \$80.00 per hour. Incorrect facility addresses will be returned to the Utility contact and corrected address will be requested.*
- 3.5 LETTERHEAD/LOGO.** The Utility will provide HydroCorp with an electronic file copy of the utility logo or utility letterhead and all envelopes for the mailing of all official program correspondence only. (300 dpi in either .eps, or other high quality image format for printing.)

ARTICLE IV. Term, Compensation and Changes in Scope of Services

- 4.1 TERM AND TERMINATION TERM.** Services by HydroCorp under this Agreement shall commence on **April 1st, 2024** and end **two (2) years** from such date, unless this Agreement is renewed or terminated as provided herein. The terms of this Agreement shall be valid only upon the execution of this Agreement within ninety (90) days of its receipt. *Failure to execute this Agreement within the ninety (90) day period shall deem the proposed terms void.*
- 4.1 RENEWAL.** Upon the expiration of this two-year agreement, unless either party provides written notice of termination not less than 60 days prior to the expiration of the initial term (or any such renewal term) this agreement will automatically renew in (1) year term increments. Inflationary adjustments to each renewal term will be equal to the cumulative Consumer Price Index as measured in the Utilities local/regional area at the time of renewal, or 4% whichever is greater.
- 4.2 TERMINATION.** The Utility or HydroCorp may terminate this Agreement at any time and on any date in the initial and renewal terms of this Agreement, with or without any cause, by giving written notice of such intent to terminate to the other party at least thirty (30) days prior to the effective date of termination. Notice of the intent to terminate shall be given in writing by personal service, by an authorized agent, or by certified mail, return receipt requested. The Utility shall pay the balance of any outstanding accounts for work performed by HydroCorp.
- 4.3 BASE COMPENSATION.** From the Beginning thirty (30) days after execution of this Agreement, the Utility shall pay HydroCorp as compensation ("Base Compensation") for labor, equipment, material, supplies, and utilities provided and the services performed pursuant to this Agreement, the sum of **\$1,884.00** per month, **\$22,608.00** annually for a **two (2)** year contract period totaling **\$45,216.00**.
- 4.4 PAYMENT OF INVOICES.** Upon presentation of invoices by HydroCorp, all payments including base and other compensation shall be due and payable on the first day of each month (due date) after the month for which services have been rendered. All such payments shall be made no later than thirty (30) days after the due date.



Failure to pay shall be deemed a default under this Agreement. For any payment to HydroCorp which is not made within thirty (30) calendar days after the due date, HydroCorp, shall receive interest at one and one-half (1½) percent per month on the unpaid balance.

- 4.5 CHANGES IN SCOPE OF SERVICES.** In the event that the Utility requests and HydroCorp consents to perform additional work or services involving the consulting, management, operation, maintenance, and repair of the Utility's water delivery system where such services or work exceeds or changes the Scope of Services contemplated under this Agreement, HydroCorp shall be provided additional compensation. Within thirty (30) calendar days from the date of notice of such additional work or services, the parties shall mutually agree upon an equitable sum for additional compensation. This amount shall be added to the monthly sum effective at the time of change in scope. Changes in the Scope of Service include, but are not limited to, requests for additional service by the Utility or additional costs incurred in meeting new or changed government regulations or reporting requirements.
- 4.6 CLIENT CONFIDENTIALITY.** Disclosure of all communications between HydroCorp and the Utility regarding business practices and other methods and forms of doing business is subject to the provisions of Wisconsin Public Records Law, Chapter 19, Wis. Stats. HydroCorp agrees to make available for inspection and copying all records (as defined in sec. 19.32 (2), Wis. Stats.) in its possession created, produced, collected or otherwise related to this Agreement to the same extent as if the records were maintained by the Utility. HydroCorp expressly acknowledges and agrees that its obligations concerning Public Records Law and compliance under this Agreement should not be limited by copyright, license, privacy and/or confidentiality except as authorized under the Public Records Law.
- 4.7 ACCESSIBILITY.** Backflow prevention device information will be completed in full only when the identifying information (i.e. data plate, brass tag, etc.) is accessible and visible from ground level or from a fixed platform/mezzanine.
- 4.8 CONFINED SPACES.** – HydroCorp personnel will not enter confined spaces.

ARTICLE V. Risk Management and General Provisions

- 5.1 INFORMATION.** Both Parties to this Agreement recognize and acknowledge that the information presented to them is complete to the best of their knowledge, yet due to the inaccessible nature of water piping or lack of access provided by property owner/water user, complete accurate data is not always available. Cross-connection control inspection and results are documented as of a specific date. The property owner and/or water user may make modifications to the potable water system after the inspection date that may impact compliance with the program.
- 5.2 LIMITATION OF LIABILITY.** HydroCorp's liability to the Utility for any loss, damage, claim, or expense of any kind or nature caused directly or indirectly by the performance or non-performance of obligations pursuant to this Agreement shall be limited to general money damages in an amount not to exceed or within the limits of the insurance coverage provided hereunder. HydroCorp shall in no event be liable for indirect or consequential damages, including but not limited to, loss of profits, loss of revenue, or loss of facilities, based upon contract, negligence, or any other cause of action.
- 5.3 HYDROCORP INSURANCE.** HydroCorp currently maintains the following insurance coverage's and limits:
- | | | |
|--|-------------|-------------|
| | Occurrence | Aggregate |
| Comprehensive General Liability | \$1 Million | \$2 Million |
| Excess Umbrella Liability | \$5 Million | \$5 Million |
| Automobile Liability (Combined Single Limit) | \$1 Million | |
| Worker's Compensation/ Employer's Liability | \$1 Million | |
| Errors and Omissions | \$2 Million | \$2 Million |

Within thirty (30) calendar days of the start of the project, HydroCorp shall furnish the Utility with



satisfactory proof of such insurance, and each policy will require a 30-day notice of cancellation to be given to the Utility while this Agreement is in effect. The Utility shall be named as an additional insured according to its interest under the general liability policy during the term of this Agreement.

- 5.4 UTILITY INSURANCE.** The Utility will maintain liability insurance on an all risk basis and including extended coverage for matters set forth in this Agreement.
- 5.5 RELATIONSHIP.** The relationship of HydroCorp to the Utility is that of independent contractor and not one of employment. None of the employees or agents of HydroCorp shall be considered employees of the Utility. For the purposes of all state, local, and federal laws and regulations, the Utility shall exercise primary management, and operational and financial decision-making authority.
- 5.6 ENTIRE AGREEMENT AMENDMENTS.** This Agreement contains the entire Agreement between the Utility and HydroCorp, and supersedes all prior or contemporaneous communications, representations, understandings, or agreements. This Agreement may be modified only by a written amendment signed by both parties.
- 5.7 HEADINGS, ATTACHMENTS, AND EXHIBITS.** The heading contained in this Agreement is for reference only and shall not in any way affect the meaning or interpretation of this Agreement. The Attachments and Exhibits to this Agreement shall be construed as integral parts of this Agreement.
- 5.8 WAIVER.** The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.
- 5.9 ASSIGNMENT.** This Agreement shall not be assigned by either party without the prior written consent of the other unless such assignment shall be to the affiliate or successor of either party.
- 5.10 FORCE MAJEURE.** A party's performance under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of actions due to causes beyond its reasonable control such as, but not limited to, Acts of God, the acts of civil or military authority, loss of potable water sources, water system contamination, floods, quarantine restrictions, riot, strikes, commercial impossibility, fires, explosions, bombing, and all such interruptions of business, casualties, events, or circumstances reasonably beyond the control of the party obligated to perform, whether such other causes are related or unrelated, similar or dissimilar, to any of the foregoing. In the event of any such force majeure, the party unable to perform shall promptly notify the other party of the existence of such force majeure and shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned force majeure.
- 5.11 AUTHORITY TO CONTRACT.** Each party warrants and represents that it has authority to enter into this Agreement and to perform the obligations, including any payment obligations, under this Agreement.
- 5.12 GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, regardless of the fact that any of the parties hereto may be or may become a resident of a different state or jurisdiction. Any suit or action arising shall be filed in a court of competent jurisdiction within the State of Wisconsin, venue by the presiding County. The parties hereby consent to the personal jurisdiction of said court within the State of Wisconsin.
- 5.13 COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- 5.14 NOTICES.** All notices, requests, demands, payments and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by nationally recognized overnight carrier, or mailed by certified mail, postage prepaid, return receipt requested, as follows:



If to HydroCorp:

HydroCorp
c/o Craig Wolf
5700 Crooks Road, Ste. 100
Troy, MI 48337
(612) 850-8939

If to Utility:

City of Ashland
2020 6th St. East
Ashland, WI 54806

- 5.15 SEVERABILITY.** Should any part of this Agreement for any reason, be declared invalid or void, such declaration will not affect the remaining portion, which will remain in full force and effect as if the Agreement has been executed with the invalid portion eliminated.

SIGNATURES

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date first above written.

CITY OF ASHLAND

By:
Title:

HydroCorp



By: Craig Wolf



Appendix

Specific Qualifications & Experience

HydroCorp™ is a professional service organization that specializes in Cross Connection Control Programs. Cross Connection Control Program Management & Training is the main core and focus of our business. We are committed to providing water utilities and local communities with a cost effective and professionally managed cross connection control program in order to assist in protecting the public water supply.

- HydroCorp conducts over 30,000 Cross Connection Control Inspections **annually**.
- HydroCorp tracks and manages over 35,000+ backflow prevention assemblies for our Municipal client base.
- Our highly trained staff works in an efficient manner in order to achieve maximum productivity and keep program costs affordable. We have a detailed **system** and **process** that each of our field inspectors follow in order to meet productivity and quality assurance goals.
- Our municipal inspection team is committed to providing outstanding customer service to the water users in each of the communities we serve. We teach and train customer service skills in addition to the technical skills since our team members act as representatives of the community that we service.
- Our municipal inspection team has attended training classes and received certification from the following recognized Cross Connection Control Programs: UF TREEO, UW-Madison, and USC – Foundation for Cross Connection Control and Hydraulic Research, American Backflow Prevention Association (ABPA), American Society for Sanitary Engineering (ASSE). HydroCorp recognizes the importance of Professional Development and Learning. We invest heavily in internal and external training with our team members to ensure that each Field Service and Administrative team member has the skills and abilities to meet the needs of our clients.
- We have a trained administrative staff to handle client needs, water user questions and answer telephone calls in a professional, timely and courtesy manner. Our administrative staff can answer most technical calls related to the cross connection control program and have attended basic cross connection control training classes.
- HydroCorp currently serves over 200 communities in Michigan, Wisconsin, Maryland, Delaware, Virginia & Florida. We still have our first customer!
- HydroCorp and its' staff are active members in many water industry associations including: National Rural Water Association, State Rural Water Associations, National AWWA, State AWWA Groups, HydroCorp is committed to assisting these organizations by providing training classes, seminars and assistance in the area of Cross Connection Control.
- Several Fortune 500 companies have relied on HydroCorp to provide Cross Connection Control Surveys, Program Management & Reporting to assist in meeting state/local regulations as well as internal company guidelines.



SUBJECT: Approve to Accept a Bid from Mika Construction & Transportation LLC for the 2024 Crushed Aggregate Contract (*Public Works/Utility*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Public Works Director
Approved Unanimously by Committee of the Whole, March 12, 2024

EXHIBITS: 1. Bid Tabulation 2024 Gravel

EXPENDITURES REQUIRED: \$37,382.50 Fund 100 General Fund - Roadway Maintenance
\$ 9,837.50 Fund 690 WW Utility - Maintenance of Collection System
\$47,220.00 Total Expenditures Required

AMOUNT BUDGETED: \$45,000.00 Fund 100 General Fund - Roadway Maintenance 100-53311-340
\$10,000.00 Fund 690 Wastewater Utility - Maintenance of Collection
System 690-82500-400

**APPROPRIATION
REQUIRED:** N/A

**TREASURER'S
CERTIFICATE:** The Treasurer's Office has certified on March 20, 2024 that Mika Construction & Transportation LLC is in compliance with the provisions of Chapter 923.10 Ashland City Ordinances.

COMPLIANCE WITH ORD. 51: NA

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: NA

SUMMARY STATEMENT:

The Public Works Department advertised for bids for 2024 crushed aggregate (maintenance gravel). The Department anticipated that 3000 tons of crushed aggregate would be needed; 750 tons for rural road repairs, 1,250 tons for alley maintenance and the remaining 1,000 tons for miscellaneous projects. Typically, the Water Utility purchases crushed aggregate on an annual basis, but staff determined that a sufficient quantity remained in inventory due to a low frequency of recent watermain breaks.

The bids included furnishing and delivering the aggregate for the Public Works stockpile. The 1,250 tons for alley maintenance would be shared 50/50 between the Public Works roadway maintenance fund and the wastewater utility, as alleyways were used to access the majority of the sanitary sewer collection system for maintenance/repair/replacement activities. Sufficient funds were budgeted for the purchase based on estimated costs.

Bid requests were solicited from local contractors and advertised in the local paper on March 1, 2024. Bids

were submitted to Public Works staff by March 15, 2024. Seven bids were received in total, with one coming from Pennsylvania. Mika Construction & Transportation LLC was the lowest bidder, at \$15.74/ton, the same price as the lowest bid for the 2023 contract.

The Public Works Department recommended awarding Mika Construction & Transportation LLC the contract for the purchase of crushed aggregate in 2024 in the amount of \$47,220.00.

Sec. 194.04. Purchases of more than \$30,000. Purchases of more than \$30,000 may be authorized by the City Council upon advertisement, unless the advertisement requirement is waived by a majority vote of the City Council. Advertisement may be supplemented by solicitation or, upon approval by a majority vote of the City Council, may be substituted for advertisement. This section applies to the purchase of tangible personal property and to services, but does not apply to construction contracts under sec. 62.15, Wis. Stats.

BID TABULATION																	
City of Ashland 2023 Crushed Aggregate Contract Bids				Contractor A Mika Construction & Transportation		Contractor B Sipsas Trucking		Contractor C Angelo Luppino Inc		Contractor D Ritola Inc		Contractor E No. 2 Septic		Contractor F Olson Bros Contractors		Contractor G Green Dream International	
PAY ITEM	ITEM DESCRIPTION	BID QTY	UNIT	QUANTITY (TONS)	UNIT PRICE	QUANTITY (TONS)	UNIT PRICE	QUANTITY (TONS)	UNIT PRICE	QUANTITY (TONS)	UNIT PRICE	QUANTITY (TONS)	UNIT PRICE	QUANTITY (TONS)	UNIT PRICE	QUANTITY (TONS)	UNIT PRICE
BASE BID ITEM																	
305.011	Base Aggregate Dense 3/4 - Inch (Virgin Material Only)	1	EA	3000	\$15.75	3000	\$16.15	3000	\$16.25	3000	\$ 16.36	3000	\$ 16.48	3000	\$ 19.00	3000	\$ 22.80
TOTAL PRICE				\$47,250.00		\$48,450.00		\$48,750.00		\$49,080.00		\$49,440.00		\$57,000.00		\$68,400.00	

SUBJECT: Approve Final Resolution Requiring Installation of Sewer Laterals and Providing for Assessment of Cost Under Wisconsin State Statute 66.0911 for the 2023 Sanitary Sewer Replacement Project (Public Works) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
City Attorney
Public Works Director

EXHIBITS:

1. Proposed Resolution No. 17772
2. 2023 Sewer Replacement Location Map

EXPENDITURES REQUIRED:	\$ 500	Avg. Current Cost of Construction for Private Sewer Lateral Replacement to Right of Way Segment 3
	x \$ 19	Private Sewer Laterals Requiring Replacement to Right of Way
	\$ 9,500	Total Estimated Cost

AMOUNT BUDGETED: N/A

APPROPRIATION REQUIRED: N/A

TREASURER'S CERTIFICATE: N/A

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:

At the February 26, 2024 Committee of the Whole meeting, the Public Works Director presented information on upcoming processes related to property assessments as part of ongoing or planned capital improvement projects. Included in this presentation was the 2023 Sanitary Sewer Replacement Project. For this project, two blocks were completed by Jake's Excavating in Fall 2023. One block, the alley between Beaser & 12th Avenue West, is ongoing. One additional block of 16th Avenue West will be completed in later 2024.

At the March 9, 2021 City Council meeting, the Council approved an Interim Policy for Level of Service Provided to Private Sewer Laterals During Capital Construction. The policy makes provisions for the replacement of privately owned sewer laterals from the sewer main to the right of way (ROW) line when City projects include replacement of an existing sewer main via direct excavation. Per the policy, property owners are then assessed for the replacement of privately owned sewer laterals in order to effectively address the impact of infiltration and inflow (I&I) on the sewer collection system and protect public investment in the newly paved roadway.

Wisconsin State Statute 66.0911 allows the City to levy an assessment on property owners benefiting from the replacement of privately owned sewer laterals by a simple resolution. The statute also allows the City to levy assessments based on the average current cost of construction for replacement of the sewer laterals to the ROW line. The Public Works Director has determined on a reasonable basis that these costs will be described below for the 2023 Sanitary Sewer Main Replacement Project. These costs were recommended by the Public Works Committee at the February 8, 2024 meeting.

Beaser/14th Avenue West alley- \$600/ lateral @ 9 private laterals =	\$5,400
12th Avenue West/11th Avenue West alley @ 8 private laterals =	\$4,600
Beaser/12th Avenue West alley- \$575/lateral @ 11 private laterals =	\$6,325
16th Avenue West - \$1,600/lateral @ 7 private laterals =	\$11,200
Total Estimated Cost =	\$27,525

Replacement of the existing private sewer lateral will occur only where these private sewer laterals do not meet City standards for sanitary pipe material. Properties served by a private sewer lateral that complies with City standards for sanitary pipe material will be excluded from the assessments.

Per Chapter 612 Ordinance Street and Utility Construction Standards and Special Assessment Policies, property owners will be able to repay assessments over a 10 year period

Staff recommends approval of Resolution 17772. Affected property owners would receive notification of the assessments and repayment terms immediately following the March 26, 2024 City Council meeting.

The City administers the Special Assessment Hardship Policy which, in short, allows qualifying property owners to apply for deferral of special assessment repayment, if the property owner meets income requirements, until the sale or transfer of the property.

RESOLUTION No. 17772

FINAL RESOLUTION REQUIRING INSTALLATION OF SEWER LATERALS AND PROVIDING FOR ASSESSMENT OF COST UNDER WISCONSIN STATE STATUTE 66.0911 FOR THE 2023 SANITARY SEWER REPLACEMENT PROJECT

WHEREAS, Wisconsin § 66.0911 allows the City of Ashland to assess property owners benefiting from the replacement of privately-owned sewer laterals by a simple resolution; and,

WHEREAS, Wisconsin § 66.0911 also allows the City of Ashland to levy the assessments based on the average current cost of construction for replacement of the sewer laterals to the ROW line.

NOW THEREFORE BE IT RESOLVED, by the Ashland Common Council, City of Ashland, Ashland County, Wisconsin:

1. Sewer laterals shall be constructed from sewer mains in the public alleyway bounded by 11th Avenue West, 12th Avenue West, Main Street West and 3rd Street West to the lot line of each lot fronting thereon and service pipes from the ends of such laterals to all existing buildings constructed thereon intended for human habitation to allow such buildings to be served by the municipal sewer system.
2. Sewer laterals shall be constructed from sewer mains in the public alleyway bounded by Beaser Avenue, 12th Avenue West, Main Street West and 3rd Street West to the lot line of each lot fronting thereon and service pipes from the ends of such laterals to all existing buildings constructed thereon intended for human habitation to allow such buildings to be served by the municipal sewer system.
3. Sewer laterals shall be constructed from sewer mains in the public alleyway bounded by 14th Avenue West, Beaser Avenue, Main Street W and 3rd Street West to the lot line of each lot fronting thereon and service pipes from the ends of such laterals to all existing buildings constructed thereon intended for human habitation to allow such buildings to be served by the municipal sewer system.
4. Sewer laterals shall be constructed from sewer mains in 16th Avenue West from 6th Street West to 7th Street West to the lot line of each lot fronting thereon and service pipes from the ends of such laterals to all existing buildings constructed thereon intended for human habitation to allow such buildings to be served by the municipal sewer system.
5. Construction of the above referenced sewer laterals is associated with the City of Ashland, Ashland County, Wisconsin 2023 Sanitary Sewer Replacement Project, which includes replacement of an existing sewer main.
6. The Ashland Common Council shall cause construction of these laterals and service pipes to be done by contract.

7. Upon completion of the work authorized by this Resolution, the Ashland Common Council shall file a record of the cost of the construction on or in front of each lot in the office of the municipal clerk.
8. When the record of the cost of construction has been filed in the clerk's office, the clerk shall enter the average current cost of construction of sewer laterals on the tax roll as a charge against the lot or parcel served or to be served and notify the owner of each lot of the amount of the charge against the premises. The charge shall constitute a lien against the premises served or to be served until paid.
9. The final assessment shall be due within 45 days of the initial billing date. Assessments may be paid in cash or in ten annual installments to the City of Ashland Treasurer. Installments shall be placed on the next tax roll after the due date for collection and bear the rate of 4.394% (the true interest cost of the 2023A general obligation promissory note (3.394%) issue plus 1% admin fee) per annum on the unpaid balance from January 1 of the year following the installment. All assessments are due in full upon sale or transfer of property.

BE IT FURTHER RESOLVED that the Common Council of the City of Ashland hereby approves the resolution authorizing construction of sewer laterals in association with the 2023 Sanitary Sewer Replacement Project and charging lots of parcels served the average current cost of construction of sewer laterals in the City of Ashland, Ashland County, Wisconsin for the 2023 Sanitary Sewer Replacement Project

PASSED: April 4, 2024

Councilperson

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie, Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney



SUBJECT: Approve an Ordinance to Create Chapter 136 (2024-1994) Denial of City Permits, Ashland City Ordinances (*Clerk*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: City Clerk

CLEARANCES: Unanimously approved by Committee of the Whole, January 9, 2024

EXHIBITS: 1. Proposed Ordinance 2024-1994

EXPENDITURES REQUIRED: NA

AMOUNT BUDGETED:

**APPROPRIATION
REQUIRED:**

**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: NA

SUMMARY STATEMENT:

This ordinance was approved by Council on January 30, 2024 unanimously. According to [WI State Statute 62.11\(4\)](#), "...every ordinance shall be published ... within 15 days of passage, and shall take effect on the day after the publication or at a later date if expressly prescribed." The Clerk sent the required publication notices to the Ashland Daily Press for publishing on February 6, 2024 for this and two other ordinances. The Ashland Daily Press ran three notices, but two were identical and this ordinance was not published which the City just became aware of. Due to the publication error, Chapter 136 is not able to be enforced. As recommended by the City Attorney, staff is asking that Council re-approve the creation of Chapter 136 again so that it can be noticed and published according to Statute, within 15 days of its passage.

Sequential Ordinance No. 2024-1994

ORDINANCE TO CREATE CHAPTER 136 (2024-1994) DENIAL OF CITY PERMITS, ASHLAND CITY ORDINANCES

An ordinance adopted by the Common Council for the City of Ashland at a regular meeting of April 4, 2024 for the purpose of creating Chapter 136 (2024-1994) Denial of City Permits, Ashland City Ordinances.

Section I

Chapter 136 (2024-1994) Denial of City Permits *shall be created to read as follows:*

136.01 General Application

This Ordinance shall apply to all permits issued by the City.

136.02 Delinquent Payments

The City may deny a permit to an applicant if the applying party has any delinquent real or personal property taxes, any outstanding assessments, forfeitures, utility charges or indebtedness owed to the City of Ashland until the delinquency or indebtedness is paid in full. This section does not apply to deferred real estate taxes or utility bills that have been sent but are not past due.

136.03 Fraud or Misrepresentation on Permit Application

A City permit may be denied or revoked if the application for the permit contains fraud or misrepresentation. Fraud or misrepresentation on the application for a City permit shall be considered a violation of this ordinance and the permit shall be revoked or application denied. A determination by the department head of the department issuing the permit that an application contains fraud or misrepresentation shall count as a violation under Section 136.04, with the applicant having the right to file a written appeal of the determination to the City Council within 10 (ten) days of the notice. On such appeal, the burden shall be on the City to establish the fraud or misrepresentation by a preponderance of the evidence. The appeal shall be considered and decided by the Common Council within forty-five (45) days of the filing of the appeal.

136.04 Violations of City Permits

(a) If the City Administrator determines that a permittee or the permittee's employee, agent, contractor or subcontractor has violated a condition of a City permit, the City Administrator may revoke all current City permits for the violating party and prohibit the party who violated the permit condition from obtaining additional City permits for the following time periods:

- (1) Six (6) months for two violations
- (2) One (1) year for three violations
- (3) Two (2) years for four violations

(b) The number of violations shall be measured as occurring in one (1) calendar year by violation date. The prohibition period shall be measured from the date the permit is revoked.

(c) Any violations or performance of unpermitted work during the prohibition period shall result in an indefinite prohibition of City permits requiring a request to the Common Council to reinstate the privilege to obtain City permits.

(d) A party may appeal the decision to revoke or deny a permit by written appeal within ten (10) days of the date of revocation or denial. The appeal shall be considered and decided by the Common Council within forty-five (45) days of the filing of the appeal.

Section II

Effective Date. This ordinance shall take effect on the day after publication.

PASSED: April 4, 2024

PUBLISHED: April 12, 2024

ATTEST:

Aldersperson

Denise Oliphant, City Clerk

Matthew MacKenzie, Mayor

Approved as to Form:

Tyler W. Wickman, City Attorney

SUBJECT: Approve an Ordinance to Amend Chapter 165 (2021-1952) Comprehensive Fee Schedule, Ashland City Ordinances, to Reflect the Necessary Increase of Residential Garbage Collection Rates (*Administration*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Administrator

CLEARANCES: Approved Unanimously by Committee of the Whole, February 27, 2024

EXHIBITS: 1. Proposed Ordinance 2024-2000

EXPENDITURES REQUIRED: NA

AMOUNT BUDGETED: NA

**APPROPRIATION
REQUIRED:** NA

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH ORD. 51: NA

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

As you will recall, the only way we can increase fees in the solid waste system is through the collection of recycling. The Finance Department then ensures that the increased fees are split equitably between the three types of accounts.

The new proposed customer charges are:

48 Gallon	\$12.75/month
65 Gallon	\$19.15/month
96 Gallon	\$25.50/month

The proposed rates should ensure that the solid waste is paid for entirely through fees. Please remember that the contract provides for 5% annual increases, and we'll need to incorporate these increases into a future rate structure annually.

Sequential Ordinance No. 2024-2000

ORDINANCE TO AMEND CHAPTER 165 (2021-1952) COMPREHENSIVE FEE SCHEDULE, ASHLAND CITY ORDINANCES

An ordinance adopted by the Common Council for the City of Ashland at a regular meeting of April 4, 2024 for the purpose of amending Chapter 165 (2021-1952) Comprehensive Fee Schedule, Ashland City Ordinances.

Section I

Exhibit I shall be amended to read as follows:

Residential Garbage Collection

48 Gallon container	\$12.75/month
64 Gallon container	\$19.15/month
96 Gallon container	\$25.50/month
Container Replacement Fee	\$75.00

Section II

Effective Date of Ordinance: This ordinance shall take effect on April 13, 2024 upon passage and publication.

PASSED: April 4, 2024

PUBLISHED: April 12, 2024

ATTEST:

Aldersperson

Denise Oliphant, City Clerk

Matthew MacKenzie, Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

SUBJECT: Approve a Development Agreement for 514 West Main Street between the City of Ashland and Alannah and Francois Belanger, FAB, LLC dba Main Street Eatery (*Administration*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Administrator

CLEARANCES:

EXHIBITS: 1. Development Agreement between the City of Ashland and Alannah and Francois Belanger

EXPENDITURES REQUIRED: N/A

AMOUNT BUDGETED:

**APPROPRIATION
REQUIRED:**

**TREASURER'S
CERTIFICATE:** The Treasurer's Office has certified on March 21, 2024, that FAB, LLC dba Main Street Eatery 1002 7th Ave E Ashland, WI is in compliance with the provisions of Ordinance 923.10 Ashland City Ordinances.

COMPLIANCE WITH ORD. 51:

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

As a part of the strategic plan adopted in 2022, the City identified the need for economic development and redevelopment in the downtown area. Over the past two years we have been making significant acquisitions of property to insure that future uses will create more activity in the downtown.

The City purchased the building at 514 West Main Street last year from the County with the intent of selling it to a private developer and getting it back on the tax rolls. We were approached by the Belangers who plan to open a brewpub/restaurant at this location. Staff has worked with the Belangers over the past 8 months and we now have a development agreement for the property.

The Belangers are proposing to put a bar and dining area on the first and second floors, and develop the third floor into an event space that can host larger gatherings. Beer will be brewed on site. The fully built out facility will have seating for over 150 customers.

We are proposing to sell the property for \$50,000 to the Belangers. Additionally, the City will be using \$100,000 of ARPA money to remove the elevator tower and to help pay for some of the repairs to the back wall of the building.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 2024 at Ashland, Wisconsin, by and between the City of Ashland, a Wisconsin municipal corporation, 601 Main Street West, Ashland, Wisconsin, 54806 ("City") and Alannah and Francois Belanger ("Developer").

RECITALS

WHEREAS, the City and Developer enter into this contract for the transfer from the City to Developer the building identified as 514 Main Street W and legally described as Lot 19 and 20, Block 113, Vaughns Division to Ashland, City of Ashland, Wisconsin (the "Property"); and

WHEREAS, Ashland City Council, after considering public input, directed staff to pursue negotiations with the Developer at their January 30, 2024 Committee of the Whole meeting.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

A. Transfer of Property

1. **Transfer Price.** The Property, valued at approximately \$120,000, shall be transferred to the Developer for \$50,000 as one of the primary development incentives for this project.
2. **Transfer of Property.** The City shall transfer the Property to the Developer within 30-days of the completion of the following requirements:
 - a. Approval by the City of all plans for Phase 1 development consistent with Section B, including (i) development permit for zoning use of property (acquired through the Planning Department); (ii) Final site plan approval by Plan Commission and completion of all Site Plan conditions of approval; (iii) issuance of building permit by the City.
 - b. Approval by the Wisconsin Department of Safety and Professional Services for all necessary building plans for Phase 1 development, if required.
 - c. Developer must provide the City with financial assurance that it can complete the construction of Phase 1 of the development consistent with the plans approved by the City. The acceptance of the adequacy of the financial assurance commitment shall be at the discretion of the City. The financial assurance may include, but is not limited to, i) guaranteed commitments from investors; ii) irrevocable letters of credit; iii) any other proof of financial means to complete construction by Developer.
3. **Conditions of Transfer:** The transfer of the Property to Developer is subject to the following restrictions and obligations:
 - a. The deed shall contain a restriction that the first floor of the property shall remain a food and/or beverage business.
 - b. The deed shall contain a notice that the Property is subject to the terms of this Development Agreement.
 - c. The City shall have a right of first refusal ("ROFR") to repurchase the Property in the event that Developer ever decides to sell. This ROFR would not permit the City to set the price of repurchase, but it allows the City to match any third-party offer that Developer desires to accept for the sale of the property. The Developer may transfer the property to a Corporation, Limited Liability Company, or similar entity that they are majority owner

of but this right of first refusal shall survive said transfer. Additionally, the Developer may transfer/sell to their children and an entity majority owned by their children provided this ROFR transfers as well. The parties further agree a ROFR will be drafted to be recorded with the Register of Deeds that accurately reflects the above agreement.

- d. Developer is required to repair the back wall of the building. The City will reimburse the Developer for the costs associated with the back wall repairs, up to a total of \$32,000.00. Upon incurring expenses for repair of the back wall, Developer shall submit such receipts to the City and, within 30 days of receiving such receipts, the City shall reimburse Developer for such costs up to a total of \$32,000.00.

B. Plans and Permits

1. **Development Phases**. Developer has proposed to develop the Property in two separate phases. "Phase 1" consists of constructing a restaurant on the first floor. "Phase 2" consists of developing the top floor into an event space, or similar commercial use.
2. **Development plans and specifications**. Except as provided herein, Developer shall submit all information, drawings, elevations, plans, specifications, and other documents and information, and all other matters required by the City for approval of the plans and specifications for the projects described in Sections A and B of this Agreement (the "projects") in accordance with the normal practices and procedures of the City. Developer agrees to pay all standard development, license, permit, and other fees for the improvements as provided for in the City's Comprehensive Fee schedule and as required by the State of Wisconsin, and will not seek reimbursement from the City for the cost thereof, except as may otherwise be specifically provided herein. Developer shall submit and get approval for Phase 1 development plans prior to transfer of the Property to the Developer.
3. **Compliance with codes, plans and specifications**. All construction shall be in compliance with: (a) all applicable municipal ordinances of the City; (b) all other applicable laws, ordinances, regulations and requirements; and (c) all provisions of the plans and specifications relating to the projects.
4. **Site work**. Developer shall comply with all grading, erosion, and soil control requirements affecting the property in accordance with all applicable federal, state, county and City regulations, guidelines, specifications, laws, ordinances, and permits.
5. **Façade Design**. The building façade design must be reviewed and approved by the City Plan Commission.
6. **Permit copies**. Developer shall provide and submit to the City, valid copies of any and all governmental agency permits relating to the projects issued by any agency other than the City.
7. **As Builts**. Developer will provide, no later than 4 months after substantial completion of each Phase of development, a complete set of as-built drawings.

C. Indemnification

Developer will indemnify and hold harmless the City, its governing body members, officers, agents, including independent contractors, consultants, and legal counsel, servants and employees thereof

(hereinafter, for purposes of this paragraph collectively referred to as the "City Indemnified Parties") against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any breach of any duty or warranty by Developer under this Agreement or in relation to any activities authorized by this Agreement; provided that the foregoing indemnification shall not be effective for any negligent acts of the City Indemnified Parties. Except for any misrepresentation or any willful misconduct of the City Indemnified Parties, Developer will protect and defend the City Indemnified Parties from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the action or inaction of Developer (or other persons acting on its behalf or under its direction or control) under this Agreement or in relation to any activities authorized by this Agreement.

The City will indemnify and hold harmless Developer, its officers, agents, including independent contractors, consultants, and legal counsel, servants and employees thereof (hereinafter, for purposes of this paragraph collectively referred to as the "Developer Indemnified Parties") against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any breach of any duty or warranty by the City under this Agreement or in relation to any activities authorized by this Agreement; provided that the foregoing indemnification shall not be effective for any negligent acts of the Developer Indemnified Parties. Except for any misrepresentation or any willful- misconduct of the Developer Indemnified Parties, the City will protect and defend the Developer Indemnified Parties from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the action or inaction of the City (or other persons acting on its behalf or under its direction or control) under this Agreement or in relation to any activities authorized by this Agreement.

D. Default/Remedies

Event of Default

An Event of Default is any of the following:

1. The failure by Developer to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed when and as required under this Agreement. This shall be a default unless Developer cures such violation within forty-five (45) days after written notice to Developer of such failure. If such matter is not a monetary default and cannot be cured within such forty-five (45) day period but Developer commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed at the earliest reasonable date, then the event will not be an Event of Default;
2. The failure by the City to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed when and as required under this Agreement. This shall be a default unless the City cures such violation within forty-five (45) days after written notice to the City of such failure. If such matter is not a monetary default and cannot be cured within such forty-five (45) day period but the City commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed at the earliest reasonable date, then the event will not be an Event of Default;
3. Developer becomes insolvent or is the subject of bankruptcy or insolvency proceedings.

Remedies on Default. Whenever an Event of Default occurs and is continuing, the non-defaulting party may take any one or more of the following actions:

1. The non-defaulting party may take any action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the defaulting party under this Agreement. The non-defaulting party shall have the right to take over the work of the defaulting party so that the relevant work may be completed at the cost of the defaulting party;
2. Any other remedy allowed at law or in equity or by statute.

Notice Not to Commit Waste. Any party in default shall not commit waste or otherwise damage or diminish the value of the Property during the effective duration of this Development Agreement. This includes but is not limited to removing any fixture from the Property without providing for a replacement of the same. Notwithstanding this provision, any personal property belonging to the Developer may be removed from the Property at any time.

No Remedy Exclusive. No remedy or right conferred upon or reserved to the parties in this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

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

E. Assignment

No assignment of any rights or obligations under this Agreement shall be made without the written consent of the other party.

F. Amendments

The City and Developer may only amend or modify this Agreement by written agreement duly authorized and signed by the City and Developer.

G. Condition Precedent for Effectiveness of Agreement

This Agreement is only effective if the parties close on the sale by the City and the purchase by Developer of the Property, and shall be null and void if no such sale occurs.

H. Non-Development

A. Phase 1 Development. The City has agreed to sell the Property to Developer for fifty-thousand dollars with the intent that it is developed according to the plans identified for Phase 1. If Phase 1 of the

development of Lot 1 is not substantially complete according to the plans approved under Paragraph B within twenty-four months after the transfer of the Property to the Developer, the Developer shall transfer the Property back to the City at no additional cost to the City. In such event, Developer shall not remove any fixtures from the Property prior to transfer back to the City, and the City shall not be responsible for any costs, expenses, damages, time, or other damages incurred as a result of Developer's failure to complete the development in a timely manner. The City will grant Developer an additional 12-months to complete Phase 1 if the Developer shows good cause for why it was not completed within 24-months. For purposes of this section, completion of Phase 1 requires a restaurant or food service business to be open to the public on the first floor of the Property.

B. Phase 2 Development. The Developer intends to complete the Phase 2 development on the second floor of the Property within four (4) years from obtaining title to the Property. If the Developer fails to complete construction of Phase 2 within four (4) years from taking ownership of the Property, the entire Property shall be transferred back to the City at no additional cost to the City. In such event, Developer shall not remove any fixtures from the Property prior to transfer back to the City, and the City shall not be responsible for any costs, expenses, damages, time, or other damages incurred as a result of Developer's failure to complete Phase 2 of the development. The City will grant Developer an additional 12-months to complete the Phase 2 development if the Developer shows good cause for why it was not completed within four years. For purposes of this section, completion of Phase 2 requires a event space to be constructed and open for commercial or public use on the second floor of the Property. Developer may substitute the event space currently planned for Phase 2 development with a different commercial use upon approval of the City.

I. Additional Provisions

Conflicts of Interest. No member of the, governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, or the projects, or any contract, agreement, or other transaction contemplated to occur or be undertaken hereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

Incorporation by Reference. All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

No Implied Approvals. Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of Developer to obtain all necessary approvals, licenses, and permits from the City in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the City to approve or disapprove the plans and specifications, or any part thereof of the projects, or to impose any limitations, restrictions, and requirements on the development, construction, and/or use of the projects as a condition of any such approval, license, or permit; including, without limitation, requiring any and all other development and similar agreements.

Headings. Descriptive heading are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

Notices. Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, to the parties' respective addresses as follows:

To the City:

With a copy to:

City of Ashland
601 Main Street
West Ashland,
WI 54806 Attn:
City
Administrator

City of Ashland
601 Main Street
West Ashland,
WI 54806
Attn: Director of
Planning and
Development

To Developer:

Alannah and
Francois
Belanger
1002 7th Ave E
Ashland, WI
54806

With a copy to:

FAB, LLC dba
Main Street
Eatery
1002 7th Ave E
Ashland, WI
54806
Attn: Alannah
and Francois
Belanger

Notice shall be deemed delivered (a) in the case of personal delivery, on the date when personally delivered; or (b) in the case of certified or registered mail, on the third business day after the date when deposited in the United States mail with sufficient postage to effect such delivery.

Entire Agreement. This document and all other documents and agreements expressly referred to herein contain the entire agreement between Developer and the City with respect to the matters set forth herein.

Governing Law and Venue. This Agreement shall be construed in accordance with the law of the State of Wisconsin. The venue for any dispute which cannot be amicably resolved shall be the Circuit Court for Ashland County, Wisconsin.

Cooperation. The City and Developer agree to cooperate in the reasonable prosecution of applications made by any party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions and projects contemplated by this Agreement. The City and Developer each will at any time, or from time to time at the written request of the other, sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

Approved: _____

CITY OF ASHLAND

By:

Attest:

DEVELOPER

By:

SUBJECT: Consider Approval of the Tentative Agreement between the City of Ashland and the Ashland Professional Police Association for 2024-2025 (*Police Department*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Police Department

CLEARANCES: Police Chief
Administration

EXHIBITS:

1. Ashland Professional Police Association Tentative Agreement for 2024-2025
2. 2021-2023 Agreement between City of Ashland and Ashland Professional Police Officers Association WPPA/LEER Local 209
3. Letter of Agreement effective August 1, 2022

EXPENDITURES REQUIRED: As Budgeted

AMOUNT BUDGETED: As Budgeted

**APPROPRIATION
REQUIRED:**

**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: This item conforms to the Ashland Comprehensive Plan in that it is "...in accordance with existing and future needs, best promote public health, safety, morals, and the general welfare..." for the City's residents and community.

SUMMARY STATEMENT:

The City of Ashland and the Ashland Professional Police Association (APPA) bargaining teams met and reached a tentative agreement. The City's bargaining team consisted of the City Administrator, Mayor, and Police Chief. The union's bargaining committee consisted of the local union president and their representative from the MacGillis Wiemer, LLC law firm. A tentative agreement was arrived at during the negotiation session. The APPA ratified the agreement.

The agreement includes the following:

- Update the effective date of the contract.

- Eliminate Article 13.04 to not allow carry over of comp time to match the City of Ashland Employee Handbook.
- Update Article 24 to raise the uniform allowance to \$700 per year.
- Include an MOU to allow part-time officers to have up to twelve shifts per month.
- Wage increase of 4% as of January 1, 2024, 4% as of July 1, 2024, 4% as of January 1, 2025, and 4% as of July 1, 2025.



MACGILLIS WIEMER, LLC
Attorneys at Law

Tentative Agreement – Ashland Professional Police Association
March 4, 2024

Section	Proposal
	Article 13.04.
1 Article 13 – Work Day and Work Week, Overtime	4. Regardless of the duration of the employee's regular workweek, bargaining unit members may not carry over more than forty (40) hours of compensatory time into the next calendar year.
2 Article 21 – Wage Rates	Addendum I. 4% – Effective January 1, 2024 4% – Effective July 1, 2024 4% – Effective January 1, 2025 4% – Effective July 1, 2025 All Ashland Professional Police Association members employed during the year 2024 shall receive retroactive salary payments. This includes any employee who retired prior to the agreement being ratified and approved by both parties.
3 Article 24 – Uniform Allowance	Section 24.01. Increase uniform allowance to seven hundred (\$700.00) dollars annually.
4 Article 31 – Duration	Two-year agreement effective January 1, 2024, to December 31, 2025
5 MOU Regarding Shifts for Part-time Employees	Parties agree to have twelve (12) shifts reserved for part-time employees.



Brant Kucera, City Administrator

3/14/24

Date



Bryce Hall, Union President

3-12-2024

Date



2021-2023 AGREEMENT

BETWEEN

THE CITY OF ASHLAND

AND

**ASHLAND PROFESSIONAL
POLICE OFFICERS ASSOCIATION**

WPPA/LEER, LOCAL 209

**ASHLAND CITY POLICE
DEPARTMENT**

January 1, 2021 - December 31, 2023

TABLE OF CONTENTS

Article 1	Recognition & Unit of Representation	4
Article 2	Negotiations	4
Article 3	Rules and Regulations	5
Article 4	Management Rights	5
Article 5	Conduct of Business	5
Article 6	Association Bulletin Board	5
Article 7	Dues Deduction	5
Article 8	Probationary and Employment Status	6
Article 9	Seniority	7
Article 10	Layoff-Hiring	7
Article 11	Job Posting and Transfers	7
Article 12	Grievance Procedure	8
Article 13	Work Day & Work Week, Overtime	10
Article 14	Call In Pay	12
Article 15	Vacations	12
Article 16	Holidays	12
Article 17	Sick Leave, Absence From Work	13
Article 18	Funeral Leave	13
Article 19	Worker's Compensation	14
Article 20	Wisconsin Retirement Fund	14
Article 21	Wage Rates	14

Article 22	Life, Health, Dental Insurance	14
Article 23	Longevity Pay	15
Article 24	Uniform Allowance	15
Article 25	Pay Period	16
Article 26	Legal Agreement	16
Article 27	Reserve Training	16
Article 28	Response Time	16
Article 29	Post and Employment Health Plan	16
Article 30	Miscellaneous (Body Armor/EAP)	17
Article 31	Duration	17
Agreement	Signatures	17
Addendum I	Classification and Wage Rates	18

AGREEMENT

THIS AGREEMENT is effective on January 1, 2021, by and between the City of Ashland, hereinafter referred to as the "Employer," and the Ashland Professional Police Officers' Association/WPPA Law Enforcement Employee Relations Division, party of the second part, hereinafter referred to as the "Association." This Agreement will conclude on December 31, 2023.

WHEREAS, in order to increase general efficiency, to maintain the existing harmonious relationship between the Employer and the employees, to promote the morale, well-being and security of said employees, to maintain a uniform minimum scale of wages, hours and conditions of employment among the employees and to facilitate a peaceful adjustment of all grievances and disputes which may arise this contract is entered into.

NOW, THEREFORE, the parties hereto, each in consideration of the agreements herein contained of the other, hereby agree as follows:

ARTICLE 1 - RECOGNITION AND UNIT OF REPRESENTATION

- 1.01** The employer recognizes the Association as the exclusive collective bargaining representative for all sworn law enforcement personnel employed by the City of Ashland, excluding the Chief of Police and the Operations Captain for the purpose of conferences and negotiations with the above named municipal employer, or its lawfully authorized representatives, on questions of wages, hours, and conditions of employment and the adjustment of complaints and grievances of the employees.

ARTICLE 2 - NEGOTIATIONS

- 2.01** Negotiations shall proceed in the following manner: The party requesting negotiations shall notify the other party in writing of its requests by the 15th day of August of the year during which this Contract shall expire. Within thirty (30) days of the request for such meeting, an initial meeting of the parties shall be called by the party upon whom the request is made. At such meeting, the party making the request shall explain its requests and present any supporting arguments in its behalf. The party upon whom the requests are made shall have the opportunity to study such requests and make an offer or counter-offer to the requesting party within fifteen (15) days thereafter and negotiations shall continue in a reasonable manner with a view towards an amicable settlement.
- 2.02** The Employer agrees that all reasonable time spent in the conduct of grievances, negotiations and matters concerning collective bargaining shall not be deducted from the pay of delegated employee representatives of the Association. The Association will give advance notice to the Chief of the date, time, and the names of employees that will be involved in such meetings.

ARTICLE 3 - RULES AND REGULATIONS

- 3.01** The Employer shall adopt and publish rules which may be amended from time to time, provided, however, that such rules and regulations shall be first submitted to the Association for its consideration and amendments prior to adoption.
- 3.02** Provided no action is taken by the Association to amend or alter said rules within thirty (30) days of submission of the Association, they shall become effective on the thirtieth (30) day of submission to the Association. In the event of a dispute between the Association and the Employer as to such proposed rules or regulations, the dispute shall be referred to the grievance procedure for settlement.

ARTICLE 4 - MANAGEMENT RIGHTS

- 4.01** The rights, powers, duties and opportunities of management are not to be affected by the terms of this Agreement, except in those respects specifically referred to herein or which may be reasonably implied from the language of this Agreement.

ARTICLE 5 - CONDUCT OF BUSINESS

- 5.01** The Association agrees to conduct its business off the job as much as possible. This Article shall not operate as to prevent a steward or officer from the proper conduct of any grievance in accordance with the procedures outlined in this Agreement, or to prevent certain routine business such as the posting of Association notices and bulletins.
- 5.02** Business agents or representatives of the Association having business with the officers or individual members of the Association may confer with such Association officers or members during the course of the work day for a reasonable time; provided such conference does not interfere with the delivery of police services.
- 5.03** The Employer hereby agrees not to deduct such reasonable time from the pay of such employee.

ARTICLE 6 - ASSOCIATION BULLETIN BOARD

- 6.01** The Association is hereby granted permission to post notices, announcements, and other legitimate materials on the designated Association bulletin board on the premises. All notices must be relevant to Association business.

ARTICLE 7 – DUES DEDUCTION

- 7.01** The Employer agrees to deduct the monthly dues in the amount certified by the WPPA/LEER from the pay of employees who individually sign a dues deduction authorization form where the Employee is knowingly and affirmatively consenting to the deduction of dues from the employee's paycheck, including any Local Association dues which the employee has authorized to be deducted in conjunction with the WPPA/LEER dues.
- 7.02** The Employer shall deduct the combined dues amount each month for each employee

requesting such deduction, upon receipt of such form and shall remit the total of such deductions, with a list of employees from whom such sums have been deducted, to the WPPA/LEER or Local Association if applicable, in one lump sum not later than the 30th of each month.

7.03 Authorization of dues deduction by a member may be revoked upon notice in writing to the Employer, WPPA or to the Local Association and with the understanding that the deduction will cease as reasonably as practical after receipt of written notice of revocation.

7.04 No employee shall be required to join the Association, but membership shall be made available to all employees in the bargaining unit who apply consistently with either the WPPA or Local Association By-Laws. The Employer agrees to notify the WPPA office in Madison in writing of the name of any new hire into the bargaining unit. No employee shall be denied membership because of race, creed, color, sex, or other legally protected status.

7.05 It is expressly understood and agreed that WPPA/LEER will refund to the Employer or the employee involved any dues erroneously deducted by the employer and paid to WPPA/LEER and/or the Local Association. WPPA/LEER shall indemnify and hold the employer harmless against any and all third-party claims, demands, suits, order, judgements or any other forms of liability against or incurred by the Employer, including all costs of defense and attorney's fees, which may arise out of Employer's compliance with this Article.

ARTICLE 8 - PROBATIONARY AND EMPLOYMENT STATUS

8.01 All newly hired employees shall be required to take the basic police training course during the first year of service. All newly hired employees shall be considered probationary for the first twelve (12) months of their employment with the Employer. Such probationary employees may be disciplined or discharged without recourse to the grievance procedure contained in this Agreement. Satisfactory completion of probation shall be certified by the Police and Fire Commission.

8.02 For the purpose of benefit calculation, the "starting date of employment" of an employee who has satisfactorily completed probation shall date from his/her original date of employment, and he/she shall be entitled to all benefits accrued to regular employees. Hospitalization insurance coverage is available to employees on the first (1st) day of the month following completion of thirty (30) days of employment, or in accordance with the current hospitalization contract.

ARTICLE 9 - SENIORITY

9.01 It shall be the policy of the Employer to recognize seniority. Seniority shall consist of the total calendar time elapsed since the date of original employment as a regular full-time police officer, provided, however, that no time prior to a discharge for cause or quit shall be included, and provided that seniority shall not be diminished by temporary layoff or leaves of absence or contingencies beyond the control of the parties to this Agreement.

9.02 A seniority list shall be delivered to the President of the Association between the first and

tenth day of each year.

- 9.03** If a bargaining unit employee takes a non-bargaining unit position with the City of Ashland Police Department, but not sever the employee/Employer relationship, the employee shall have six (6) calendar months to return to their former position with no loss of bargaining unit benefit. The probationary period for appointment to a non-bargaining unit position shall not exceed six (6) calendar months unless mutually agreed by the Employer, Association and WPPA/LEER. If the Employer returns the employee to their former position during the probationary period, the employee shall suffer no loss in the bargaining unit benefit.

ARTICLE 10 - LAYOFF, HIRING

- 10.01** Whenever it becomes necessary to lay off employees, employees shall be laid off in inverse order of their seniority and whenever so laid off shall possess re-employment rights as hereinafter defined.
- 10.02** Whenever it becomes necessary to employ additional personnel, former employees of the Employer who have been laid off, within two (2) years prior thereto shall be entitled to be re-employed in preference to all other persons.

ARTICLE 11 - JOB POSTING AND TRANSFERS

- 11.01** Whenever a vacancy or new job is created, it shall be posted on the bulletin board for a period of five (5) calendar days. Each employee interested in applying for the job and who meets the minimum requirements shall endorse his/her name on such notice in the space provided. Promotions of employees shall be as follows:

All interested employees meeting the minimum qualifications shall take a written test. The test given will be consistent with the requirements of the job, and all questions will be job related. All the employees that pass the written test and attain the minimum score shall be considered for the promotion. The written test shall constitute from 0-25 points.

- 11.02** The employees who pass the written test by obtaining more than a minimum score as provided in Section 11.01 herein, in addition to the test score, employees shall receive additional points as follows:
- A. The written recommendations of the Chief of Police shall be worth from 0-25 points. Said recommendations of the Chief of Police shall be grievable.
 - B. An oral interview for each employee will be conducted by a panel of five (5) individuals, of which the five individuals will be selected jointly by the Police Department Association President and the Chief of Police. The oral interview shall constitute 0-25 points.
 - C. Seniority for those applicants being considered will be determined by their number of full years of service to the City of Ashland Police Department. Each full year will constitute one (1) seniority point.
- 11.03** The employee receiving the most total points should be given the position. The employer shall fill the position within 90 calendar days of the date of the initial posting. Said employee

shall serve a probationary period of six (6) months duration on the new job.

11.04 The written recommendation of the Chief of Police shall be made available upon request to each individual applicant after the results of the procedure contained herein are completed.

11.05 Each step of the procedure contained herein shall be confidential and the results of the employee's point standings shall not be made available to the Police and Fire Commission or the Chief of Police until the entire procedure has been completed.

ARTICLE 12 - GRIEVANCE PROCEDURE

12.01 The parties agree that the prompt and just settlement of grievances is of mutual interest and concern. The grieving employee shall first bring the complaint to the steward or Grievance Committee of the Association. If it is determined after investigation by the Association that a grievance does exist, it shall be processed in one of the two manners described below. The negotiations of the grievance shall begin within fifteen (15) business days of the date of the incident or the date the aggrieved employee first learned of the incident.

12.02 There shall be two grievance procedures: one for disciplinary and discharge action and one for all other grievances regarding the application or interpretation of this Agreement.

A) Grievances regarding disciplinary or discharge action:

1. The Employer agrees that employees will be discharged and/or disciplined for just cause only.
2. The Grievance Committee shall first attempt to resolve the matter with the Chief of Police.
3. If the grievance is not resolved within seven (7) business days of the attempt in Step 2 above, said grievance shall be reduced in writing and submitted to the Police and Fire Commission within ten (10) business days. The grievant and/or Grievance Committee shall set forth to the best of their knowledge the applicable facts and the sections of the contract alleged to have been violated. The Police and Fire Commission shall respond to the grievance in writing with copies to the grievant and the Grievance Committee within ten (10) business days of receipt of the written grievance.
4. If the grievance is not resolved under Step 3 above, the parties shall individually or jointly request the Wisconsin Employment Relations Commission to submit a list of five (5) arbitrators. The selection of the arbitrators shall be affected by the parties alternately striking names from the list until only one name remains. The employer shall be first to strike a number from the list. The arbitrator, after hearing both sides of the issue, shall put his decision in writing to the parties, which shall be final and binding on both parties. The policy of "winner takes all" shall prevail and the loser shall pay the entire cost of the arbitration and preparation of the transcript. Each party shall be responsible for their own legal costs and other expenses involved in the preparation of their individual case.

B) Grievances of matters regarding the application or interpretation of this Agreement:

1. The Association Grievance Committee shall first attempt to resolve the matter with the Chief of Police.
2. If the grievance is not resolved within seven (7) business days of the attempt in Step 1 above, said grievance shall be reduced in writing and submitted to the Ashland City Council Committee of the Whole within ten (10) business days. The Ashland City Council Committee of the Whole shall act on the grievance at their next regularly scheduled meeting and shall respond to the grievance in writing with copies to the grievant and Grievance Committee within ten (10) business days of their action on the grievance.
3. If the grievance is not resolved under Step 2 above, the parties shall individually or jointly request the Wisconsin Employment Relations Commission to appoint an arbitrator from their staff. The arbitrator, after hearing both sides of the issue, shall put his/her decision in writing to the parties that shall be final and binding upon both parties. Expenses, if any, shall be shared equally by the parties. Each party shall bear their own expenses involving the preparation and presentation of their case. If a transcript is prepared, the parties shall share the expense of the arbitrator's transcript and each shall bear the costs of its copy.

12.03 Any aggrieved employee shall have the right of the presence of a steward when his/her work performance, conduct, or other matters affecting his/her status as an employee is subject to discussions for the record in either procedure contained herein.

12.04 The arbitrator shall neither add to, delete from, nor modify the express terms or conditions of the Agreement in either procedure contained herein.

12.05 The time limits set forth in this Article may be extended by mutual agreement.

12.06 The parties mutually agree that Saturdays, Sundays, and contractually recognized holidays shall be excluded in the calculation of time limits in this Article.

ARTICLE 13 - WORK DAY AND WORK WEEK, OVERTIME

13.01 The regular work day for Patrol Officers shall be 12 hours each day. The regular work schedule for patrol officers shall be 4 days on, then 4 days off. With the exception of two (2) patrol officers whose regular shift will be four (4) consecutive shifts from 3:00 p.m. to 3:00 a.m., the "regular" shift shall be two (2) consecutive shifts from 6:30 a.m. to 6:30 p.m., 24 hours off, followed by two (2) consecutive shifts from 6:30 p.m. to 6:30 a.m. Then the cycle shall repeat itself. The "regular" work hours of the shift may be modified by the Chief or Operations Captain as needed. The work cycle of four (4) days on and four (4) days off may be adjusted by the Chief or Operations Captain as needed for the annual squad/sergeant change. The work day for other non-patrol division officers shall be 8 hours each day, with 5 days on followed by two days off. Then the cycle shall repeat itself. This work day will be from 8:00 a.m. to 4:00 p.m. The shift for the officer assigned to narcotics investigation shall be determined by work need.

13.02 Work shifts include a one-half (1/2) hour lunch period, however officers are subject to call during the lunch period without additional compensation.

13.03 Work schedules shall be posted for one (1) month in advance. Officers may, upon request, check the work schedules further in advance. If changes in the posted schedules are necessary, officers must be notified as far in advance as possible, but in no event less than eight (8) hours in advance except in the case of sickness or emergency.

13.04 Overtime payments will be made for all time worked outside of the work schedule. All such time shall be compensated at the employee's option either in pay at the rate of one and one half (1½) times the normal rate of pay or as compensatory time at the rate of one and one half (1½) hours off for each hour worked. Employees shall be entitled to receive said overtime payments in any combination of pay or compensatory time of their choosing but must declare their intention to request pay or compensatory time off when filing the record of hours worked outside the regular work schedule. A Premium Pay Request Form shall be used to indicate that intention. If compensatory time is chosen, it shall be scheduled upon mutual agreement between the Chief of Police or his designee and the employee involved.

1. Employees whose regular workweek is defined as forty-eight (48) hours shall be able to accumulate a maximum of ninety-six (96) hours of compensatory time.
2. Employees whose regular workweek is defined at forty (40) hours shall be able to accumulate a maximum of eighty (80) hours of compensatory time.
3. Compensatory Time in excess of the maximum accumulation shall be paid out at one and one-half (1 ½) times the officer's hourly rate.
4. Regardless of the duration of the employee's regular workweek, bargaining unit members may not carry over more than forty (40) hours of compensatory time into the next calendar year.
5. All compensatory time-off requests that do not affect minimum staffing shall be granted, barring a bona fide emergency situation. Routine absences, for example: sick leave, vacation leave or other scheduled absences shall not constitute a bona fide emergency situation.
6. In cases of a bona fide financial emergency, the employee may request payment for accrued compensatory time at any time during the calendar year. Payment shall be made on the regular payroll following approval by the Chief or his designee.

13.05 No part-time or seasonal employee shall work overtime unless all regular employees are working overtime or are unavailable to work.

13.06 Overtime opportunity other than school related functions shall be offered to the bargaining unit members by seniority ranking. School related overtime will be offered to the School Resource Officers first and then to the bargaining unit members by seniority ranking.

13.08 Employees shall have twelve hours off between shifts. This limitation shall not apply to time worked as a result of emergencies, court appearances or voluntary shift changes made at the employee's request. Overtime compensation shall be paid according to Article 13.

13.09 Effective 1/1/90, each officer shall attend up to a total of 4 hours per year for departmental meetings. Call-in provisions of the Contract do not apply to departmental meetings.

13.10 Patrol Officers who work the 12-hour shifts will be given 108 hours of time off referred to as “Kelly Days” each year. Kelly Days shall be taken at the request of the employee with approval of the Chief of Police or designee. The 108 Kelley hours are prorated based on the portion of the year an employee works. If a training date, unforeseen time-off requests, or emergency requests for time-off are made, the Officer’s Kelly Day may be changed to another day off. Vacation and compensatory time take priority over a Kelly Day. An Officer is not allowed to “carry over” any Kelly hours into the next year.

13.11 Any unused Kelley hours shall be paid out at the officer’s regular rate of pay at the end of the calendar year. Officers shall make a good faith effort to use all Kelley hours prior to the end of the year. Any Kelley day balance shall be paid out upon separation/retirement.

13.12 For training to be compensable, it must be authorized by the Chief of Police or his designee. Travel time shall only be paid to the driver pursuant to Fair Labor Standards Act regulation.

If an employee attends training in lieu of a regularly scheduled work day, at the conclusion of training held within the corporate limits of the City of Ashland, the employee shall return to work to complete the regular work day shift assignment.

Effective January 1, 2016, those bargaining unit employees scheduled to attend training and ride with another officer of the City of Ashland’s Police Department shall receive compensatory time at the straight time rate for all time spent in travel to and from the City of Ashland Police Department Headquarters. Training held thirty (30) miles outside of the corporate limits of the City of Ashland shall be considered the same as the length of a regularly scheduled duty day.

ARTICLE 14 - CALL-IN PAY

14.01 When an officer is required to appear in court, or is called to work on his/her regular off duty time, he/she shall be compensated at the overtime rate for the actual number of hours worked, with a minimum of two (2) hours for such duty.

14.02 Any officer working the 3:00 p.m. to 3:00 a.m. or 6:30 p.m. to 6:30 a.m. shift, who is required to appear in Court prior to 12:00 noon the following day, shall be compensated at the overtime rate for the actual number of hours worked with a minimum of three (3) hours for such duty.

14.03 Officers scheduled to appear in court shall contact the department before 7:00 p.m. on the day prior to said scheduled appearance to confirm the schedule. If an officer is informed that his/her presence is still scheduled, and he/she is then subsequently informed after 7:00 p.m. of the preceding day that his/her court appearance has been postponed or canceled, said officer shall be compensated a minimum of two (2) hours pursuant to Section 14.01 above.

ARTICLE 15 - VACATIONS

15.01 Vacation benefits shall be awarded on January 1 each year according to the Schedule established in the City of Ashland Handbook of Terms and Conditions of Employment.

- 15.02** The selection of vacation periods shall be according to seniority rights and employees will be allowed to take split vacations, for any vacation time over ninety-six (96) hours only.
- 15.03** In case of termination, retirement or death of an employee, the employee or the employee's estate or designated beneficiary shall receive his/her vacation pay. Such vacation pay shall be computed on a pro-rata basis, in accordance with the number of months worked during the year. Such payment shall be based upon the current earnings of such employee.
- 15.04** If for any reason a bargaining unit member cannot take his/her vacation benefit, up to 40 hours annually may be carried over into the succeeding calendar year with the permission of the Police Chief and Mayor. Any hours that are carried over under this provision must be used no later than June 30 of each year. Those hours that are not used by June 30 will be lost.

ARTICLE 16 - HOLIDAYS

- 16.01** All employees shall receive a holiday vacation. This vacation will be eighty-eight (88) hours after each year of service. Eight (8) hours shall be in pay only, not time off.
- 16.02** Employees may elect to receive time-off with pay for eighty (80) hours of the eighty-eight (88) holiday hours or a cash payment for these hours at a rate of one- and one-half times their regular rate of pay. Holiday pay shall be made on or about November 15th of each year.
- 16.03** Holiday vacation for the first year of service shall be determined by the number of city paid holidays occurring during the employee's tenure.

ARTICLE 17 - SICK LEAVE, ABSENCE FROM WORK

- 17.01** Sick leave may be used by employees for illness or injury not covered by Worker's Compensation and in the event of serious illness in the employee's family. Sick leave for serious illness in the family shall be upon approval of the Chief of Police, which shall not unreasonably be denied. The City shall comply with the provisions of the Family Medical Leave Act.
- 17.02** Sick leave shall be accumulated in the following manner: 1) Employees, assigned to non-patrol functions, shall earn sick leave at the rate of eight (8) hours for each month of employment up to ninety-six (96) hours per year. Employees, assigned to patrol functions, shall earn twelve (12) hours for each month of employment, up to one hundred and forty-four (144) hours per year; 2) Unused sick leave shall carry over and be added to the next year's accumulation until a maximum of nine hundred and sixty (960) hours of unused sick leave have been accumulated.
- 17.03** Upon retirement (per Wisconsin Retirement System) or forced retirement due to disability, the employee shall be paid for seventy-five (75%) percent of the unused sick leave remaining in the employee's account. If an employee dies while in the employ of the Employer, his/her estate shall be paid for seventy-five (75%) percent of the unused sick leave remaining in the employee's account. (also see 22.05)

ARTICLE 18 - FUNERAL LEAVE

18.01 In the event of death in the immediate family, an employee or officer may request funeral leave from his/her supervisor and will be granted three (3) working days with pay for the purpose of arranging for and attending the funeral. Immediate family, for purposes of this section, shall include the employee's or officer's spouse, children, parents, brother, sister, mother-in-law, grandparents, spouse's grandparents, grandchildren, or any relative of the employee or officer who has resided with the employee or officer immediately preceding the person's death.

In the event of a death in the extended family of an employee or officer, the employee may request funeral leave from his/her supervisor and will be granted funeral leave of up to one (1) day with pay for attending the funeral. Extended family includes the regular full-time employee's or officer's aunt, uncle, niece, nephew, brother-in-law, or sister-in-law.

Should an employee require additional time off due to the death of a member of his/her family, the supervisor may grant such time off. This may be taken without pay or vacation, compensatory time and/or sick leave may be used. In the case of other funerals which an employee or officer has an obligation to attend, time off with pay may be granted by the Department Director/Supervisor. This time off will be granted strictly to attend the funeral and the employee or officer shall work the remainder of the day. A total of seven (7) hours can be granted each year. This time cannot be accumulated from year to year.

ARTICLE 19 – WORKER’S COMPENSATION

19.01 All employees shall be covered by Worker's Compensation insurance. In the event an employee suffers compensatory injury or illness in the course of performing his/her duties, he/she shall be paid the difference between any payments under Worker's Compensation and his/her regular pay. Time paid for in this Section shall not be charged to sick leave and shall not exceed twenty-four (24) working weeks.

ARTICLE 20 - WISCONSIN RETIREMENT FUND

20.01 Employees subject to Wisconsin Retirement System, Chapter 111.70, and Section 66.90 of the Wisconsin State Statutes are required to pay a percentage contribution of their salary as set by the fund. Said share up to a maximum of seven percent (7%), shall be paid to said fund by the City.

20.02 All employees hired on or after July 1, 2011, shall comply with the statutory requirements of 2011 Wisconsin Act 32 requiring said employees to pay the employee required contributions to the Wisconsin Retirement Fund.

ARTICLE 21 - WAGE RATES

21.01 The wage rates shall be in effect for the period of the Contract and shall automatically become a part of this working agreement, see addendum. The jobs of employees and the prevailing wage shall be listed.

ARTICLE 22 - LIFE, HEALTH, DENTAL INSURANCE

- 22.01** The City agrees to pay eighty-five (85%) percent of the cost of Group Health Insurance and ninety (90%) percent of the dental insurance premiums. Employees are to pay fifteen (15%) percent of the premium of Group Health and ten (10%) percent of the premium of dental insurance. The City shall implement a Flexible Benefit Section 125 Cafeteria plan at no cost to the employee. If Section 125 Cafeteria plans are abolished, the health insurance co-pay shall revert to 90/10. Any reduction in benefit level is subject to negotiation.
- 22.02** No employee or dependent will be deleted from health insurance coverage if the carrier is changed.
- 22.03** Retiree's Health Insurance:
- For Employees Hired On or After January 1, 1987:** Only upon forced retirement due to disability to the employee, the employer shall pay the full cost for the employee's individual health insurance policy until covered by Medicare.
- 22.04** An employee retiring on the normal retirement date for reasons other than disability may continue to carry the City Group health insurance coverage after retirement at the employee's own expense. Retired Employees who cancel City health coverage will not be allowed to rejoin.
- 22.05** Sick leave benefits for each employee maybe used at the employee's option at normal retirement to pay the cost of the employee's health insurance coverage until the amount of the terminal sick leave is exhausted.
- 22.06** The City shall participate in the group life insurance program of the Department of Employee Trust Funds and shall pay the employee's premium for this insurance.

ARTICLE 23 - LONGEVITY PAY

- 23.01** The longevity program for the personnel covered by this Agreement shall be as follows:

After five (5) years of service	One (1%) percent
After ten (10) years of service	Two (2%) percent
After fifteen (15) years of service	Three (3%) percent
After twenty (20) years of service	Four (4%) percent
After twenty-five (25) years of service	Five (5%) percent

Percentages are applied to base salary only, excluding overtime benefits or other fringes. Longevity pay is calculated on a monthly basis. Longevity payments shall be made on the first payday of each month or annually on the first payroll in November, at the employee's option.

ARTICLE 24 - UNIFORM ALLOWANCE

- 24.01** All employees shall receive \$550/year beginning in 2019 to aid in maintaining appearances as ordered by the Chief of Police. The Uniform Allowance (\$550) shall be paid in full upon hire to new employees. Before December 15 of each calendar year, employees shall submit receipts to the Chief of Police for items qualifying for uniform allowance reimbursement. This includes replacement and maintenance of uniforms and off-duty weapons approved by the Chief and consistent with department policy. Any remaining uniform allowance shall be paid to the employee as taxable income before December 31.
- 24.02** Upon separation, termination or retirement the Uniform Allowance will be paid on a prorated basis for the year.
- 24.03** In the event a police officer's clothing is ripped, stolen, torn or damaged in the course of performing his/her regular duties, the City agrees to replace those items of clothing in addition to the regular clothing allowance. The City agrees to provide insurance coverage for equipment that is lost, stolen or damaged for such equipment that can be insured.
- 24.04** The City is to purchase one (1) pair of pants, one (1) shirt, one (1) jacket and one (1) hat in its discretion as to design and specification for newly hired police officers. The uniform is to be returned to the City of Ashland if the officer does not successfully complete the probationary period.

ARTICLE 25 - PAY PERIOD

- 25.01** Employees shall be paid on every other Thursday. Paychecks shall be available prior to 2:00 p.m. on each pay day.

ARTICLE 26 - LEGAL AGREEMENT

- 26.01** If any article or part of the Agreement shall be held invalid or illegal, the same shall not affect the rest of this Agreement which shall continue in force and the parties shall immediately meet to negotiate a legal settlement of the clause in question.

ARTICLE 27 - RESERVE TRAINING

- 27.01** Employees who are members of a reserve component of the military forces of the United States or State of Wisconsin shall promptly notify their Department Head/Supervisor and be granted a maximum two (2) calendar week paid leave of absence if required to participate in summer training duties. In the event of a national or state emergency, employees may take an extended military leave of absence without pay if ordered to active duty. Any employee on a military leave of absence may continue his/her participation in the insurance group, if the employee pays the full cost of such participation.

ARTICLE 28 – RESPONSE TIME

- 28.01** Employees shall be allowed to reside anywhere within a forty-five (45) minute response time to the Ashland Police Department.

ARTICLE 29 - POST EMPLOYMENT HEALTH PLAN

29.01 Post Employment Health Plan. The City of Ashland, Wisconsin (“employer”) agrees to participate in the Post-Retirement Health Plan for Collectively Bargained Public Employee (“plan”) in accordance with the terms and conditions of the Plan’s Participation Agreement, a copy of which is attached to this agreement. The parties hereto designate Public Employees Benefits Services Corporation (“PEBSCO”) to act as Plan Administrator, or its successors appointed in accordance with the Plan and Trust documents. The Employer agrees to contribute the Plan on behalf of the following category of employees: Ashland Professional Police Association, Local No. 209, WPPA/LEER.

29.02 For the term of this Agreement, the Employer shall contribute for each eligible employee the amount specified in “Addendum I”, a copy of which is attached to this Agreement, **and if there are any future wage “Catch-Up” arguments the parties shall take into consideration the value of this contribution.** In order to minimize the risk of this Plan being found discriminatory under section 105(h) of the Internal Revenue Code of 1986, as amended (“code”), the Administrator may request that a contribution amount to a highly compensated eligible employee’s account be reduced to the maximum amount contributed on behalf of a non-highly compensated eligible employee. If such a request is made, the reduction amount shall be paid to the employee in the form of wages.

ARTICLE 30 - MISCELLANEOUS

30.01 The City will provide body armor for those officers. The City will pay one hundred percent (100%) of the cost of such body armor. Upon termination the body armor will revert to the City.

30.02 The City and Association agree that an Employee Assistance Program is in their mutual best interest and hereby support the program.

ARTICLE 31 - DURATION

31.01 This Agreement shall be in full force and effect from January 1, 2021, through December 31, 2023. The Agreement shall be automatically renewed from year to year thereafter, unless the party desiring to modify, alter, or otherwise amend the Agreement or any of its provisions, gives to the other party written notice on or before August 15, of the final year of the then existing term.

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WITNESS

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, by their duly authorized representatives and committees, this 29th day of December, 2020.

FOR CITY of ASHLAND:

**FOR ASHLAND PROFESSIONAL
POLICE OFFICERS' ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE
RELATIONS DIVISION:**

Debra S. Lewis
MAYOR, CITY OF ASHLAND


UNION PRESIDENT


CITY ADMINISTRATOR

Rich Burghaus
UNION REPRESENTATIVE

Barbara E Zanella
CITY COMPTROLLER

Denise Oliphant
CITY CLERK

ADDENDUM I

Police Department Salaries

<u>Position</u>	<u>Rate per Hour</u>					
	Current	2.25% 01/01/21	1.75% 01/01/22	1.0% 07/01/22	1.5% 01/01/23	1.5% 07/01/23
Lieutenant	\$30.51	\$31.20	\$31.75	\$32.07	\$32.555	\$33.04
Detective Sergeant*	When this position becomes active the starting pay will be \$1.00 higher than the Sergeant's hourly wage and will follow the current agreement <i>Rate per Hour</i> increase schedule.					
Sergeant and FTO (while engaged in FTO duties)	\$27.74	\$28.36	\$28.86	\$29.15	\$29.59	\$30.03
Police Officer	\$25.73	\$26.31	\$26.77	\$27.04	\$27.54	\$27.86
Special Assignment	\$26.45	\$27.05	\$27.52	\$27.80	\$28.22	\$28.64
Probationary Officer	\$24.49	\$25.04	\$25.48	\$25.73	\$26.12	\$26.51
Employer Contribution/ PEHP Account	\$50.00/Month					

- Special Assignment pay shall be made for the time an officer is performing the assignment, but not for the time the officer is training for the assignment. Special assignment pay will be given only for assignments that are for more than ninety (90) days.
- Special assignments for less than ninety (90) days shall be made at the Chief's discretion. There shall be no rollover of ninety (90) day assignments.
- Special assignments of more than ninety (90) days shall be posted. The selection process shall include a review of past performance appraisals and an interview by the Police Chief, Captain(s) and Supervisor(s). The Police Chief will select the best candidate.
- Special assignments will be reposted after 4 years. Officers currently serving in the position shall be able to re-post but will be required to go through the selection process.
- Special assignments will require a minimum 2-year commitment to the position from the selected employee.

*The position of Detective Sergeant will be created once the current Lieutenant position is vacated. When the Lieutenant position is vacated the position will be permanently replaced with the position of Detective Sergeant. Upon filling the Detective Sergeant position, the hourly wage will begin at \$1.00 higher than the Sergeant position and will progress along the current *Rate per Hour* increase schedule outlined in the current agreement.

LETTER OF AGREEMENT

Between the

CITY OF ASHLAND

And

ASHLAND PROFESSIONAL POLICE ASSOCIATION

**WISCONSIN PROFESSIONAL POLICE OFFICERS ASSOCIATION WPPA/LEER,
LOCAL 209**

ASHLAND CITY POLICE DEPARTMENT

The City of Ashland ("City") and the Ashland Professional Police Officers Association, WPPA/LEER, Local 209 ("Association") hereby agree to the following:

1. The following wage table effective August 1, 2022. The new table is intended and shall supplant the current and become new Article 21, ADDENDUM "1" as follows:

2. WAGES:	Current	08/01/2022	01/01/2023	07/01/2023
		\$2.00	1.5%	1.5%
Sergeant and FTO (while engaged in FTO duties)	\$29.15	\$31.15	\$31.62	\$32.09
Police Officer	\$27.04	\$29.04	\$29.48	\$29.92
Special Assignment	\$27.80	\$29.80	\$30.25	\$30.70
Probationary Officer	\$25.73	\$27.73	\$28.15	\$28.57
Employer Contribution/ PEHP Account	\$50.00/Month			

- * Special Assignment pay shall be made for the time an officer is performing the assignment, but not for the time the officer is training for the assignment. Special assignment pay will be given only for assignments that are for more than ninety (90) days.
- * Special assignments for less than ninety (90) days shall be made at the Chief's discretion. There shall be no rollover of ninety (90) day assignments.
- * Special assignments of more than ninety (90) days shall be posted. The selection process shall include a review of past performance appraisals and an interview by the Police Chief, Captain(s) and Supervisor(s). The Police Chief will select the best candidate.
- * Special assignments will be posted after 4 years. Officers currently serving in the position shall be able to re-post but will go through the selection process.
- * Special assignments will require a minimum 2-year commitment to the position from the selected employee.

3. All other provision of the existing CBA remain unchanged.

SUBJECT: Consideration of a Resolution to Issue a Conditional Use Permit (CUP) to Allow an Office Use at 417 9th Avenue West, Parcel # 201-00364-0000, Zoned Mixed Residential/Commercial (MRC); Applicant: Ninth Avenue Investments, LLC/Gary LaPean (*Planning & Development*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Planning & Development

CLEARANCES: Plan Commission (Unanimous recommendation of approval - 03/19/2024)

EXHIBITS:

1. Proposed Resolution No. 17773
2. Plan Commission Staff Report, March 19, 2024

EXPENDITURES REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**TREASURER'S
CERTIFICATE:** N/A

COMPLIANCE WITH ORD. 51: N/A

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: This Conditional Use Permit is consistent with the goals of the Comprehensive Plan. The subject property is located within the Downtown Core and Commercial Districts. The Future Land Use Map does not rigidly define land use districts but allows some overlap and flexibility to accommodate different uses as needed. The Downtown Core and Commercial Districts zone covers the downtown and many of the areas immediately south. The Comprehensive Plan recognizes that commercial uses make up the majority of these districts and recommends that mixed-use development increasingly populate these areas. The subject property is occupied by a large commercial building that predates the Comprehensive Plan and current Unified Development Ordinance. The change of use from a daycare to an office use is consistent with the Downtown Core and Commercial Districts zone in the Future Land Use Map and the Comprehensive Plan.

SUMMARY STATEMENT:

Ninth Avenue Investments LLC/Gary LaPean requests review and approval of a Conditional Use Permit (CUP) to allow for office use at the property at 417 9th Avenue West, parcel # 201-00364-0000. Northwest CEP's offices will replace the Evergrow Learning Center in the main building of the property. The CEP offices will occupy approximately 8,000 out of 16,000 square feet in the building. The smaller building on the western portion of the site will remain general storage. No exterior site improvements are proposed for the property. The daycare use of the former Evergrow Learning Center and the office use of the Northwest CEP are both

conditional uses in the Mixed Residential/Commercial (MRC) district. Therefore, a Conditional Use Permit is required. Please see the included Plan Commission staff report for more information.

RESOLUTION No. 17773

RESOLUTION TO ISSUE A CONDITIONAL USE PERMIT (CUP) TO ALLOW AN OFFICE USE AT 417 9TH AVENUE WEST, PARCEL # 201-00364-0000, ZONED MIXED RESIDENTIAL/COMMERCIAL (MRC); APPLICANT: NINTH AVENUE INVESTMENTS, LLC/GARY LAPEAN.

WHEREAS, the Common Council of the City of Ashland is authorized to issue Conditional Use Permits; and

WHEREAS, the applicant has requested a Conditional Use Permit per Chapter 781, Ashland City Ordinances, to allow an Office use at 417 9th Ave W (parcel 201-00364-0000), zoned Mixed Residential/Commercial; and

WHEREAS, the Plan Commission held a Public Hearing on March 19, 2024 and has recommended approval of the Conditional Use Permit with the following conditions:

Staff recommends APPROVAL of the Conditional Use Permit contingent on the following conditions:

- *Approval of the Conditional Use Permit to allow an office land use at the 417 9th Ave W subject property.*
- *Conditional Use Permit is only for the office land use proposed and not for any additional uses or improvements. If any additional land uses are proposed such uses will require additional Conditional Use Permit approval through Plan Commission and the Common Council.*
- *Prior to the construction of any future improvements on the parcel, the owner(s) shall apply for and obtain any required approvals and permits.*

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Ashland that the Conditional Use Permit is in accordance with the Ashland Unified Development Ordinance and is hereby approved contingent upon compliance with the above listed conditions.

PASSED: April 4, 2024

Councilperson

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie, Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

FOR APPLICANT:

Applicant understands and accepts the conditions of approval for the CUP as indicated within this resolution, and was provided notice of Common Council approval of this resolution within 5 business days of such approval.

Applicant (Print and signature)

Date



DEPARTMENT OF
PLANNING &
DEVELOPMENT
601 Main Street West
Ashland, WI 54806

STAFF REPORT

Plan Commission – March 19th, 2024

Agenda Item # 6c: Conditional Use Permit Request to allow for an Office Land Use

Zoning District: Mixed Residential/Commercial (MRC)
Property Address: 417 9th Ave W
Parcel #: # 201-00364-0000
Applicant: Ninth Avenue Investments, LLC/Gary LaPean
Staff Contact: Steven Wiley

Background

Property owner Ninth Avenue Investments/Gary LaPean requests review and approval of a Conditional Use Permit (CUP) to allow for an office use on the property at 417 9th Ave W (Parcel # 201-00364-0000). The subject parcel is located in the central portion of the City, two blocks south of Downtown and adjacent to the 5th Street Corridor. The parcel is 2.79 acres (approximately 121,532.4 sq. ft.) in area. The parcel contains a large (approximately 16,000 square foot) single-story building that previously housed the Evergrow Learning Center. A second building is located on the western half of the property and is currently used for general storage. There are two associated parking and drive areas. Prior to serving as the home of the Evergrow Learning Center the property housed the Printing Plus business. With the closure of the Evergrow Learning Center the property owners met with Planning staff to discuss a change of land use from a daycare use to an office use. The owners entered into a lease agreement with Northwest Wisconsin CEP who will use the property to house its offices. A previous Conditional Use Permit was issued in 2018 for the Evergrow Learning Center because the Daycare land use was a conditional use in the property's Mixed Residential/Commercial (MRC) zoning district. An office land use is a conditional use in the MRC zoning district. Due to the proposed change in use from a daycare to an office facility, a new Conditional Use Permit is required.

Existing Land Use	Zoning
Former Daycare, now Offices	Mixed Residential/Commercial (MRC)

Existing Uses		Zoning
North	Single-Family Residential, Vacant	Mixed Residential/Commercial (MRC)

South	Single-Family Residential, Institutional (Saron Evangelical Lutheran Church)	Single and Two-Family Residential (R-2)
East	Ashland Housing Authority, Multi-Family Residential	Mixed Residential/Commercial (MRC)
West	Single-Family Residential, Vacant	Mixed Residential/Commercial (MRC)

Land Use Recommendation	Land Use
Future Land Use Map Recommendation	Downtown Core & Commercial Districts



The subject property is outlined in the above aerial image.

Site Design and Parking

The subject property includes a large 16,000 square foot commercial building used previously for the Evergrow Learning Center. The building includes a main entrance off of 9th Ave W and two access drives and parking areas off of 9th Ave W. Much of the northern 1/3 of the parcel is greenspace and wooded along the northern edge. A smaller separate building is located to the west of the main building. The smaller building is used for general storage and this would remain the case. No changes are currently proposed to the site. The spaces used for Northwest CEP's offices account for approximately 8,000 square feet of the building's floor area. The remaining 8,000 square feet of the building will remain vacant for the time being.

Parking

The subject property contains two surface parking areas. Ordinance requires one parking space per 300 square feet of gross floor area for an office use. There is enough parking for the office use as proposed. No changes are proposed to the existing parking.

Landscaping

The northern edge and southwestern corner of the subject property are wooded. No changes are proposed to the existing wooded areas of the site. Green space is located between the wooded area on the north and parking area. Green space is also located south of the main building on the southern portion of the site. Ordinance does not require additional landscaping because no site disturbance will occur.

Lighting

No changes are proposed to any lighting on the site at this time.

Building Elevations

No changes are proposed to the existing building exteriors.

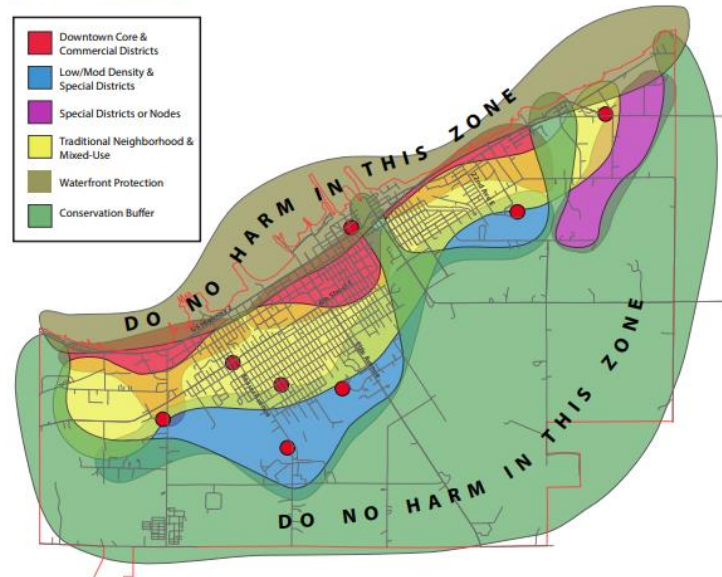
Standards for Conditional Use Review

The City of Ashland's Unified Development Ordinance Section 3.9 (C) Conditional Use Permit – Approval Criteria (and all subsections thereof), create the legal framework to regulate, administer, and enforce the conditional use standards for the City of Ashland. The following decision criteria were used to review the submitted conditional use:

1. Consistency with Comprehensive Plan.

This Conditional Use Permit is consistent with the goals of the Comprehensive Plan. The subject property is located within the Downtown Core and Commercial Districts. The Future Land Use Map does not rigidly define land use districts but allows some overlap and flexibility to accommodate different uses as needed. The Downtown Core and Commercial Districts zone covers the downtown and many of the areas immediately south. The Comprehensive Plan recognizes that commercial uses make up the majority of these districts and recommends that mixed use development increasingly populate these areas. The subject property is occupied by a large commercial building that predates the Comprehensive Plan and current UDO. The change of use from a daycare to an office use is consistent with the Downtown Core and Commercial Districts zone in the Future Land Use Map and the Comprehensive Plan.

FUTURE LAND USE PLAN



2. Compatibility.

The office use is compatible with the current Unified Development Ordinance, Mixed Residential/Commercial Zoning, and surrounding properties. The Conditional Use Permit requested would allow for the proposed

change of use from a daycare to an office use. No changes are proposed for the exterior of the property. Staff does not anticipate issues with traffic, noise, stormwater runoff, etc. If the owners or tenant(s) would want to make any interior or exterior changes to the property approvals and permits would be required prior to doing so.

3. Importance of Services to the Community.

Northwest WI CEP will maintain offices at the property and administers workforce development programs in northwest Wisconsin. Programs administered also include job seeker services, business services, and youth services. The subject property is centrally located in Ashland and according to the owners no interior or exterior changes are needed for the property to serve as offices. Northwest WI CEP fulfills an important role in the community and beyond and will benefit from having an office in a central location close to the downtown, Ashland Housing Authority, and other amenities.

4. Neighborhood Protections.

The proposed office use will operate during normal business hours from 8:30 am to 4:30 pm. Staff does not anticipate significant increases in traffic or changes in traffic patterns. No exterior changes are proposed to the property. Any changes proposed would require staff and if applicable, Plan Commission and Common Council approvals.

5. Conformance with Other Requirements:

Any additional/future improvements proposed for the parcel must conform to all other applicable City code requirements, including (but not limited to):

- a. Local and state building code requirements to ensure the property meets code standards for the proposed use(s) prior to issuance of any future Building or Occupancy Permits.
- b. The applicant shall obtain necessary zoning and building approvals along with building permits for any future improvements on the property.

Review Recommendation

Staff recommends APPROVAL of the Conditional Use Permit contingent on the following conditions:

- Approval of the Conditional Use Permit to allow an office land use at the 417 9th Ave W subject property.
- Conditional Use Permit is only for the office land use proposed and not for any additional uses or improvements. If any additional land uses are proposed such uses will require additional Conditional Use Permit approval through Plan Commission and the Common Council.
- Prior to the construction of any future improvements on the parcel, the owner(s) shall apply for and obtain any required approvals and permits.

Additionally, as a Public Hearing is scheduled for the proposed CUP review, the Plan Commission should hear all input from the public prior to making a determination. A Class 2 public notice was issued on March 5th and March 12th and discretionary letters were sent to all surrounding property owners within 200 feet of the subject property.

Approvals are based on background information provided by the applicant and known conditions. Deviations from this information may be considered a change in the application and reconsideration and possible revision to the approvals may be made by the Plan Commission and Common Council.

SUBJECT: Consideration of a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Safe Drinking Water Loan Program for SFY2025 Prentice Avenue Phase 1 Reconstruction Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS: 1. Proposed Resolution No. 17774

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 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, 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. The WI DOT is providing funding for 80% of roadway, storm sewer and sidewalk construction. The City is responsible for a 20% match of these funds as well as 100% of the cost of watermain replacement work.

At the June 14, 2022 meeting, Council approved a three-party agreement with the WI DOT and Short Elliott, Hendrickson (SEH) for engineering design services related to roadway, storm sewer and sidewalk facilities.

At the March 14, 2023 meeting, Council approved an agreement with SEH for design and administration of the WI DNR Safe Drinking Water Loan Program (SDWLP) funding for the watermain replacement work.

The project is scheduled for construction in the summer of 2024, with bidding administered by the WI DOT in May 2024. This project was included in the Water Utility Capital Improvement Plan that is being coordinated with rate increases planned for 2024.

Council is asked to adopt the attached resolution to ensure that it will be possible to reimburse municipal funds from the future SDWLP funding to support construction activities necessary for Prentice Avenue Phase 1 watermain replacement.

RESOLUTION No. 17774

RESOLUTION DECLARING OFFICIAL INTENT TO REIMBURSE EXPENDITURES FROM PROCEEDS OF BORROWING THROUGH THE STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM FOR SFY2025 PRENTICE AVENUE PHASE 1 RECONSTRUCTION PROJECT

WHEREAS, the City of Ashland, Wisconsin intends to file an application for state financial assistance for water main replacements/ system improvements on Prentice Avenue (6th St W to 11th St W) WDNR project number DNR 4759-26 (referred to as the “Project”), under the Wisconsin Safe Drinking Water Loan Program; 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 May 2024, 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.

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 4th day of April, 2024

City of Ashland, Ashland County, Wisconsin

Approved:

Councilperson

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

SUBJECT: Consider Approval of an Agreement for Professional Services between the City of Ashland and Short Elliott Hendrickson, Inc (SEH) for Safe Drinking Water Loan Program Administration Services for the 2024 Ore Dock Access Road Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS: 1. Agreement for Professional Services between City of Ashland and Short Elliott Hendrickson Inc.

EXPENDITURES REQUIRED: \$ 37,000.00 - Safe Drinking Water Loan Program Administration

AMOUNT BUDGETED: \$37,000.00 - WI DNR Safe Drinking Water Loan Program

**APPROPRIATION
REQUIRED:** \$0

**TREASURER'S
CERTIFICATE:** The Treasurer's Office has certified on March 19, 2024, 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. This item conforms to the Ashland Comprehensive Plan in that it is "...in accordance with existing and future needs, best promote public health, safety, morals, and the general welfare..." for the City's residents and community.

SUMMARY STATEMENT:

The 2024 Ore Dock Access Road Project consists of various infrastructure improvements, including the connection of Stuntz Avenue to US Highway 2, and construction of an avenue with a median and shared use path (ie trail) to the ore dock. In addition, the project will construct a pedestrian connection from Water Street to the ore dock that meets Americans with Disability (ADA) requirements.

The project also includes major water main replacement, included along the Stuntz Ave corridor, one block of St Claire and an underground crossing of Bay City Creek.

At the March 12, 2024 meeting, the Council awarded a bid to Ritola, Inc for the project. The estimated cost of upgrades to the water distribution system is approximately \$681,000, including contingency and engineering.

The City is providing funding for watermain replacement through the Wisconsin Department of Natural Resources (WI DNR) Safe Drinking Water Loan Program (SDWLP).

Short Elliott Hendrickson Inc. (SEH) has staff specializing in administration of both the SDWLP and Clean Water Loan Program (CWLP). City staff and SEH have successfully completed many projects with SDWLP and/or CWLP funding.

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 \$37,000 and the cost of these professional services will be included in the WI DNR SDWLP funding for the 2024 Ore Dock Access Road Project.

Agreement for Professional Services

This Agreement is effective as of March 1, 2024, 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: **SFY25 SDW Application/Administration - Ore Dock Access Project: Water Replacements**

Client's Authorized Representative: John Butler, PE
Address: 601 Main Street W, Ashland, Wisconsin 54806, United States
Telephone: 715.685.1648 **email:** jbutler@coawi.org

Project Manager: Brea Grace, AICP
Address: 326 South Main Street, Rice Lake, Wisconsin 54868
Telephone: 608.977.0002 **email:** bgrace@sehinc.com

Project Understanding:

Consultant understands that the Client would like to apply to the Wisconsin Department of Natural Resources (WDNR) Safe Drinking Water (SDW) Program to assist with financing the water system components of the Ore Dock Access project. This agreement covers the SDW loan application and administration.

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.

Task 1 – Safe Drinking Water (SDW) Loan Application

1. Work with Client to determine the scope of the project for submittal to the WDNR – Water system components of the Ore Dock Access project.
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 on adoption of required Reimbursement Resolution.
4. Complete the Financial Assistance Application and submit to the Wisconsin Department of Natural Resources (WDNR) through the electronic filing system.
5. Coordinate with Client and submit necessary financial documentation.
6. Coordinate with the Engineer submission of plans, specifications, and engineering report.
7. Submit required documentation including for Disadvantaged Business Enterprise (DBE), American Iron and Steel Compliance, and Green Project Reserve certification.
8. For SDW Projects – Complete Environmental Review form with SDW project application.
9. Complete and re-submit, as needed, project's Intent to Apply (ITA) and Priority Evaluation and Ranking Form (PERF) prior to annual October 31st deadline.

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, WDNR and Department of Administration (DOA), including review and finalization of the Financial Assistance Agreement (FAA).

2. General Administration. Set up a complete set of file folders and project documentation files that meet WDNR requirements.
3. Financial Management.
 - a. Draft all financial management forms.
 - b. Complete all reimbursement requests for submittal to WDNR (WDNR Form 8700-215).
 - c. Maintain required records.
 - d. Complete final reporting.
4. Coordination with Project Engineer to complete Design Life Calculation Worksheet, as needed.
5. Coordinate with Client and Client's attorney on legal opinion regarding land ownership/easement control of real property where project is located.
6. Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) requirements
 - a. Assist Client by providing language for solicitation of DBE's.
 - b. Review bidding documents and provide language for federal and state requirements and forms.
 - c. Establish and keep a bidders list.
 - d. Assist with completion of WDNR Forms: DBE Good Faith Certification (8700-294), DBE Contacts Worksheet (8700-294a), and Contract Utilization of DBEs (8700-257).
7. Assist Client with Force Account Certification (WDNR form 8700-245).
8. Assist Client in documenting compliance with American Iron and Steel (AIS). Completion of WDNR AIS/BABA Certification Form 8700-0202.
9. Assist Client with Green Project Reserve documentation and completion of WDNR Form 8700-357.
10. Davis Bacon Wage Rate Requirements.
 - a. Insert proper Davis Bacon Wage Rates in bid documents.
 - b. Assist with Davis Bacon compliance requirements.
 - c. Review payrolls on a weekly basis.
 - d. Document payroll violations.
 - e. Work with contractor to correct wage underpayments (if applicable).
11. Bipartisan Infrastructure Law (BIL) signage requirement. Include required Investing in America Signage requirement in bidding documents, and coordinate compliance with contractor.
12. Close Out. Complete Close out documentation and WDNR Project Acceptance Certification (8700-280). Schedule and participate in WDNR monitoring visit (if required by WDNR).

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. **Accounting, Financial Advisor, Bond Counsel or Legal fees** that may be required as part of the grant application, utility rate increase process, or administration process.
5. **Federal Equivalency:** 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.

Schedule: Our services will begin promptly upon the approval of this agreement. Task 1 will be complete by June 30, 2024 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 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:

Task 1: The fee is hourly estimated to be \$9,000 including expenses and equipment.

Task 2: The fee is hourly estimated to be \$28,000 including expenses and equipment.

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

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.

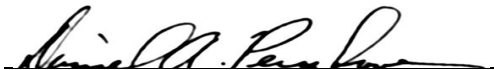
Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:

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.

Short Elliott Hendrickson Inc.

City of Ashland

By:



Full Name: Daniel A Penzkover, PE (WI, MI, IL)

Title: Client Service Manager | Principal

By:

Full Name:

Title:

Exhibit A-1
to Agreement for Professional Services
Between City of Ashland (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated March 1, 2024

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 but instead are reimbursable expenses required in addition to hourly charges for services and shall be paid for as described in this Agreement:

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.

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.
- Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
 - 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

- 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.
- 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.
- 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

- 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

- 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).
- 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.
- 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.

- 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

- 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

- 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.
- 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

- All documents, including reports, drawings, calculations, specifications, CAD 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.
- 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

- 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.
- 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

- 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.

SUBJECT: Consideration of a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Clean Water Loan Program for SFY2025 Ore Dock Access Road Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS: 1. Proposed Resolution No, 17775

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 2024 Ore Dock Access Road Project consists of various infrastructure improvements, including the connection of Stuntz Avenue to US Highway 2, and construction of an avenue with a median and shared use path (ie trail) to the ore dock. In addition, the project will construct a pedestrian connection from Water Street to the Ore Dock that meets Americans with Disability (ADA) requirements.

The project also includes some sewer main replacement, included along one half block of 7th Avenue East, a forcemain in a portion of the Stuntz Avenue corridor, and one block of an alley between St. Claire and Water Streets.

At the March 12, 2024 meeting, Council awarded a bid to Ritola, Inc for the project. The estimated cost of upgrades to the water distribution system is approximately \$293,300, including contingency and engineering.

The City is providing funding for watermain replacement through the Wisconsin Department of Natural Resources (WI DNR) Clean Water Loan Program (CWLP).

Council is asked to adopt the attached resolution to ensure that it will be possible to reimburse municipal funds from the future CWLP funding to support construction activities necessary for the Ore Dock Access Road sewer main replacement and other system improvements.

RESOLUTION No. 17775

RESOLUTION DECLARING OFFICIAL INTENT TO REIMBURSE EXPENDITURES FROM PROCEEDS OF BORROWING THROUGH THE STATE OF WISCONSIN CLEAN WATER LOAN PROGRAM FOR SFY2025 ORE DOCK ACCESS ROAD PROJECT

WHEREAS, the City of Ashland, Wisconsin intends to file an application for state financial assistance for improvements to the sanitary sewer system WDNR project number DNR 4525-22 (referred to as the “Project”), under the Wisconsin Clean Water Loan Program; 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 May 2024, 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 improvements to the sanitary sewer system.

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 4th day of April, 2024

City of Ashland, Ashland County, Wisconsin

Approved:

Councilperson

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

SUBJECT: Consider Approval of an Agreement for Professional Services between the City of Ashland and Short Elliott Hendrickson, Inc (SEH) for Clean Water Loan Program Administration Services for the 2024 Ore Dock Access Road Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS: 1. Agreement for Professional Services between City of Ashland and Short Elliott Hendrickson Inc.

EXPENDITURES REQUIRED: \$ 37,000.00 - Clean Water Loan Program Administration

AMOUNT BUDGETED: \$37,000.00 - WI DNR Clean Water Loan Program

**APPROPRIATION
REQUIRED:** \$0

**TREASURER'S
CERTIFICATE:** The Treasurer's Office has certified on March 19, 2024, 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 Ore Dock Access Road Project consists of various infrastructure improvements, including the connection of Stuntz Avenue to US Highway 2, and construction of an avenue with a median and shared use path (ie trail) to the ore dock. In addition, the project will construct a pedestrian connection from Water Street to the Ore Dock that meets Americans with Disability (ADA) requirements.

The project also includes some sewer main replacement, including along one half block of 7th Avenue, a forcemain in a portion of the Stuntz Avenue corridor, and one block of an alley between St Claire and Water Streets.

At the March 12, 2024 meeting, Council awarded a bid to Ritola, Inc for the project. The estimated cost of upgrades to the water distribution system is approximately \$293,300, including contingency and engineering.

The City is providing funding for watermain replacement through the Wisconsin Department of Natural

Resources (WI DNR) Clean Water Loan Program (CWLP).

Short Elliott Hendrickson (SEH) has staff specializing in administration of both the Safe Drinking Water Loan Program (SDWLP) and CWLP. City staff and SEH have successfully completed many projects with SDWLP and/or CWLP funding.

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 sewer main replacement through the CWLP. The total cost of the agreement is \$37,000 and the cost of these professional services will be included in the WI DNR CWLP funding for the 2024 Ore Dock Access Road Project.

Agreement for Professional Services

This Agreement is effective as of March 1, 2024, 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: **SFY2025 CWF Application/Administration - Ore Dock Access Project: Sewer Replacements**

Client's Authorized Representative: John Butler, PE
Address: 601 Main Street W, Ashland, Wisconsin 54806, United States
Telephone: 715.685.1648 **email:** jbutler@coawi.org

Project Manager: Brea Grace, AICP
Address: 326 South Main Street, Rice Lake, Wisconsin 54868
Telephone: 608.977.0002 **email:** bgrace@sehinc.com

Project Understanding:

Consultant understands that the Client would like to apply to the Wisconsin Department of Natural Resources (WDNR) Clean Water Fund (CWF) Program to assist with financing the sanitary sewer components of the Ore Dock Access project. This agreement covers the CWF loan application and administration.

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.

Task 1 – Clean Water Fund (CWF) Loan Application

1. Work with Client to determine the scope of the project for submittal to the WDNR – Sanitary sewer components of the Ore Dock Access project.
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 CWF application.
3. Draft resolution and work with Client on adoption of required Reimbursement Resolution.
4. Complete the Financial Assistance Application and submit to the Wisconsin Department of Natural Resources (WDNR) through the electronic filing system.
5. Coordinate with Client and submit necessary financial documentation.
6. Coordinate with the Engineer submission of plans, specifications, and engineering report.
7. Submit required documentation including for Disadvantaged Business Enterprise (DBE), American Iron and Steel Compliance/ Build America, Buy America (BABA) Act Compliance, and Green Project Reserve certification.
8. Complete and re-submit, as needed, project's Intent to Apply (ITA) and Priority Evaluation and Ranking Form (PERF) prior to annual October 31st deadline.

Task 2 will be completed upon acceptance of funding application from WDNR.

Task 2 – CWF Loan Administration

1. Loan Closing. Coordination of loan closing between the Client, WDNR and Department of Administration (DOA), including review and finalization of the Financial Assistance Agreement (FAA).

2. General Administration. Set up a complete set of file folders and project documentation files that meet WDNR requirements.
3. Financial Management.
 - a. Draft all financial management forms.
 - b. Complete all reimbursement requests for submittal to WDNR (WDNR Form 8700-215).
 - c. Maintain required records.
 - d. Complete final reporting.
4. Coordination with Project Engineer to complete Design Life Calculation Worksheet, as needed.
5. For CWF Projects - Coordination with Project Engineer to complete CWF Cost and Effectiveness Certification (WDNR Form 8700-375).
6. Coordinate with Client and Client's attorney on legal opinion regarding land ownership/easement control of real property where project is located.
7. Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) requirements
 - a. Assist Client by providing language for solicitation of DBE's.
 - b. Review bidding documents and provide language for federal and state requirements and forms.
 - c. Establish and keep a bidders list.
 - d. Assist with completion of WDNR Forms: DBE Good Faith Certification (8700-294), DBE Contacts Worksheet (8700-294a), and Contract Utilization of DBEs (8700-257).
8. Assist Client with Force Account Certification (WDNR form 8700-245).
9. Assist Client in documenting compliance with American Iron and Steel (AIS). Completion of WDNR AIS/BABA Certification Form 8700-0202.
10. Assist Client with Green Project Reserve documentation and completion of WDNR Form 8700-357.
11. Davis Bacon Wage Rate Requirements.
 - a. Insert proper Davis Bacon Wage Rates in bid documents.
 - b. Assist with Davis Bacon compliance requirements.
 - c. Review payrolls on a weekly basis.
 - d. Document payroll violations.
 - e. Work with contractor to correct wage underpayments (if applicable).
12. Bipartisan Infrastructure Law (BIL) signage requirement. Include required Investing in America Signage requirement in bidding documents, and coordinate compliance with contractor.
13. Close Out. Complete Close out documentation and WDNR Project Acceptance Certification (8700-280). Schedule and participate in WDNR monitoring visit (if required by WDNR).

The fee for Task 2 –CWF 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. **Accounting, Financial Advisor, Bond Counsel or Legal fees** that may be required as part of the grant application, utility rate increase process, or administration process.
5. **Federal Equivalency:** 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.

Schedule: Our services will begin promptly upon the approval of this agreement. Task 1 will be complete by September 30, 2024 to meet the WDNR CWF application deadline. Task 2 to include additional coordination for the submittal of required documents through loan closing. WDNR CWF 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:

Task 1: The fee is hourly estimated to be \$9,000 including expenses and equipment.

Task 2: The fee is hourly estimated to be \$28,000 including expenses and equipment.

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

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.

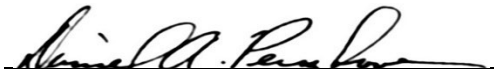
Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:

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.

Short Elliott Hendrickson Inc.

City of Ashland

By:



Full Name: Daniel A Penzkover, PE (WI, MI, IL)

Title: Client Service Manager | Principal

By:

Full Name:

Title:

Exhibit A-1
to Agreement for Professional Services
Between City of Ashland (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated March 1, 2024

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 but instead are reimbursable expenses required in addition to hourly charges for services and shall be paid for as described in this Agreement:

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.

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, CAD 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.

SUBJECT: Consider to Approve a Resolution Declaring Official Intent to Reimburse Expenditures from Proceeds of Borrowing through the State of Wisconsin Safe Drinking Water Loan Program for SFY2025 Ore Dock Access Road Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS: 1. Proposed Resolution No. 17776

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 2024 Ore Dock Access Road Project consists of various infrastructure improvements, including the connection of Stuntz Avenue to US Highway 2, and construction of an avenue with a median and shared use path (ie trail) to the ore doock. In addition, the project will construct a pedestrian connection from Water Street to the Ore Dock that meets Americans with Disability (ADA) requirements.

The project also includes major water main replacement, included along the Stuntz Avenue corridor, one block of St Claire Street and an underground crossing of Bay City Creek.

At the March 12, 2024 meeting, Council awarded a bid to Ritola, Inc for the project. The estimated cost of upgrades to the water distribution system is approximately \$681,000, including contingency and engineering.

The City is providing funding for watermain replacement through the Wisconsin Department of Natural Resources (WI DNR) Safe Drinking Water Loan Program (SDWLP).

Council is asked to adopt the attached resolution to ensure that it will be possible to reimburse municipal funds

from the future SDWLP funding to support construction activities necessary for the Ore Dock Access Road watermain replacement.

RESOLUTION No. 17776

RESOLUTION DECLARING OFFICIAL INTENT TO REIMBURSE EXPENDITURES FROM PROCEEDS OF BORROWING THROUGH THE STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM FOR SFY2025 ORE DOCK ACCESS ROAD PROJECT

WHEREAS, the City of Ashland, Wisconsin intends to file an application for state financial assistance for water main replacements/ system improvements WDNR project number _____ (referred to as the “Project”), under the Wisconsin Safe Drinking Water Loan Program; 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 May 2024, 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.

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 4th day of April, 2024

City of Ashland, Ashland County, Wisconsin

Approved:

Councilperson

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

SUBJECT: Consider Approval to Enter into an Agreement for Professional Construction Engineering Services between the City of Ashland and Cedar Corporation for the 2024 Ore Dock Access Road Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: City Administrator
Public Works Director

EXHIBITS: 1. Professional Construction Engineering Services Agreement

EXPENDITURES REQUIRED: \$ 91,712.04 - Fund 470 Street Improvements (Ore Dock Access Road)
\$ 9,889.60 - Fund 470 Street Improvements (Pedestrian Trail Access)
\$ 47,811.79 - Fund 680 Water Utility
\$ 20,586.58- Fund 690 Wastewater Utility
\$ **170,000.00 Total**

AMOUNT BUDGETED: \$ 91,712.04 - Fund 470 Street Improvements (Ore Dock Access Road)
\$ 9,889.60 - Fund 470 Street Improvements (Pedestrian Trail Access)

APPROPRIATION REQUIRED: \$ 47,811.79 - Fund 680 Water Utility (WI DNR Safe Drinking Water Loan FY 2025)
\$ 20,586.58- Fund 690 Wastewater Utility (WI DNR Clean Water Water Loan FY 2025 or Fund Balance)

TREASURER'S CERTIFICATE: The Treasurer's Office has certified on March 21, 2024 that Cedar Corporation 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 Ore Dock Access Road project consists of various infrastructure improvements, including the connection of Stuntz Avenue to US Highway 2, and construction of an avenue with a median and shared use path (ie trail) to the ore dock. In addition, the project will construct a pedestrian connection from Water Street to the Ore Dock that meets Americans with Disability (ADA) requirements. Replacement of sanitary sewer and an aged water main that crosses Bay City Creek are also included.

At the March 12, 2024 meeting, the Council awarded a bid to Ritola, Inc for the project. The estimated

construction cost of the project is approximately \$1.9 million, including contingency.

Due to their familiarity with the project design, experienced staff who will be assigned to the project, and the need for dedicated oversight of the contractor completing the work, the Public Works Department is seeking Council approval to accept the proposal from Cedar Corporation for construction engineering services for the project.

The City accepted similar proposals from Cedar Corporation for construction engineering services for street reconstruction projects in 2020, 2021, 2022 and 2023 with all projects being successfully constructed. Staff and Cedar Corp are working with the contractor for the 2023 MacArthur Avenue reconstruction project to address "punchlist" items, including areas of defective asphaltic surface.

The Public Works Department recommends entering into an agreement for engineering engineering services at cost of \$170,000. The scope of services is expected to include surveying for construction layout/staking, contract administration, as-built record drawings, and the provision of a full time onsite representative (12 hrs/day, 5 days/week, 12 hrs/day) responsible for construction observation and oversight throughout project construction.

**Confirmation of Client Request for Services
between Cedar Corporation (ENGINEER)
and City of Ashland (CLIENT)**

Authorization to Perform Professional Construction Engineering Services

ENGINEER is hereby authorized to continue with the PROJECT listed below. The services are to be completed in a timely manner mutually agreeable with the CLIENT and ENGINEER.

Project: Ore Dock Access Road Improvements

Scope of Project: The City of Ashland is requesting professional construction engineering services including staff meetings, pre-construction meeting, construction staking and layout, construction observation, construction coordination and administration, and construction record drawings for the Ore Dock Access Road Improvements project including the following limits:

- USH 2 / Stuntz Ave Intersection
- Stuntz Ave from USH 2 to Water St
- Stormwater pond north of the Stuntz Ave / Water St intersection
- St Claire St from Stuntz Ave to 9th Ave E
- 9th Ave E from USH 2 to Water St
- 7th Ave E from Alley to Water St
- Alley midblock between Water St and St Claire St running from Stuntz Ave to 9th Ave E

Scope of Services: Cedar Corporation proposes to render professional construction engineering services for City of Ashland with respect to the above Scope of Project related to the Ore Dock Access Road Improvements project, City of Ashland, Wisconsin. The Engineer will provide required professional services during the PROJECT as follows:

Construction Engineering:

- Conduct a pre-construction meeting with CLIENT, contractor, sub-contractors, utility companies, etc.
- Provide one-time horizontal and vertical control staking and layout for construction, as needed. Engineer is not responsible for preservation of construction staking for the contractor, and any required re-staking due to contractor negligence will be performed at the expense of the contractor. Any required re-staking due to vandalism or severe weather will be discussed and negotiated with the CLIENT.
- Provide full-time (12 Hours per Day) resident Project representative construction observation services during underground utility construction and periodic part-time hours as needed during other construction related work to observe contractor's work in conformance with plans, specifications, and contract documents. The Engineer cannot guarantee the performance of, and shall have no responsibility for, the actions or omissions of any contractor, sub-contractor, supplier, vendor, or any other entity furnishing materials or performing any construction work on the PROJECT. Provide CLIENT copies of construction observation report documents.

- Provide construction coordination and administration services for the PROJECT during construction. Oversee and coordinate construction activities, including private utility relocations, review and document construction quantities, review and process change orders and payment requests, meet with property owners and city staff when required. Attend and lead weekly on-site progress meeting with contractor and CLIENT.
- The CLIENT shall review and approve all contractor requested Work Directives or Change Orders for the PROJECT as presented by the Engineer prior to the work being commenced by the contractor.
- Field data collection and topographic survey of completed street and utility construction, prepare and provide as-built construction record drawings to the CLIENT in AutoCAD electronic and hard copy format upon completion.

Method of Compensation: Work will be completed on a Time and Materials basis for \$170,000 [not-to-exceed without prior approval of CLIENT] for professional construction engineering services for the PROJECT in the amount described below and listed in the above Scope of Services. Any additional work required to complete the project, not included in the Scope of Services will be negotiated with the CLIENT on a time and material basis. The ENGINEER will provide the CLIENT a written quote for any additional work at the CLIENT's request. The CLIENT will be responsible for all applicable governing agency fees including but not limited to permit, review, application, recording, etc., fees.

Construction Bid Amount plus 10% contingencies: \$1,933,429.02

Construction Engineering Fee:

<i>Construction Staking and Layout</i>	<i>\$12,000</i>
<i>Construction Observation (15 weeks, 5 days/week, 12 hours/day)</i>	<i>\$116,800</i>
<i>Construction Coordination and Administration</i>	<i>\$24,300</i>
<i>Construction Record Drawings</i>	<i>\$2,400</i>
<i>City Staff Meetings</i>	<i>\$1,000</i>
<i>Expenses (15 Weeks, 5 days/week)</i>	<i>\$13,500</i>

Total Construction Engineering Hourly Time & Materials "Not to Exceed" Fee \$170,000

Payments are due and payable thirty (30) days from the date of the ENGINEER's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one percent (1%) per month from invoice date.

Timetable: The ENGINEER's services shall be performed as expeditiously as is consistent with the orderly progress of the PROJECT. The ENGINEER shall make every effort to complete the work within the time frame set by the CLIENT. The following is the ENGINEER's proposed timeline for the PROJECT.

<u>TASK</u>	<u>COMPLETION DATE</u>
City Council Bid Award	March 2024
Notice of Award & Contract Documents	March 2024
Notice to Proceed & Pre-Construction Conference	April 2024
Commence Construction	May 2024
Substantial Complete Construction	October 15, 2024
Final Complete Construction (Restoration / Paving)	July 1, 2025

Client Supplied Information: The CLIENT will provide the ENGINEER with copy of executed contract documents, input and comments during construction, resident questions and concerns, review and approve contractor payment application requests and change orders for city council approval, attend pre-construction conference, attend meetings on-site as needed, review and approve construction record drawings for the PROJECT.

Services Not Provided as Part of this Proposal: Archaeological studies and investigations, environmental studies and assessments, environmental investigations, boundary and property surveys, survey, certified survey map, subdivision plat map, easement documents, title search, land acquisition, street and highway right-of-way map, field locating and marking of existing underground utility systems, governing agency permit fees, ecological studies and investigations, flood plain studies and determination, traffic impact analysis and report, WIDOT Trans 233 permits, soils related compaction and construction testing, construction materials install construction testing, restaking, and layout due to weather related damages/contractor negligence/vandalism, and historical site studies and investigations are not included as part of this proposal.

THIS AGREEMENT is hereby approved and executed this ____ day of _____, 2024.

CITY OF ASHLAND

By: _____

Name: Matthew MacKenzie

Title: Mayor

By: _____

Name: John Butler

Title: Director of Public Works

By: _____

Name: Denise Oliphant

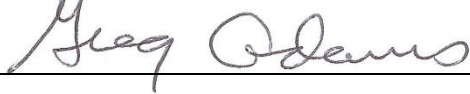
Title: Clerk

By: _____

Name: Jacey Dean

Title: Comptroller

CEDAR CORPORATION

By: 

Name: Greg Adams

Title: Municipal Engineering Team Lead

By: 

Name: Brian Chapman

Title: Project Manager

Attachment C - Standard Conditions

PART I - DESCRIPTION OF SERVICES

- 1.1 CEDAR CORPORATION** agrees to provide professional services for the PROJECT as more completely described in this Agreement.
- 1.2 CEDAR CORPORATION** agrees to provide all professional services within a reasonable period of time following the date of authorization to proceed by OWNER. If a special time schedule must be met for a PROJECT, it shall be specifically set forth in this Agreement.

PART II - CLIENT'S RESPONSIBILITIES

Client, at its expense, shall do the following in a timely manner so as not to delay the services,

2.1 INFORMATION/REPORTS

Furnish Cedar Corporation with all reports, studies, site characterizations, regulatory orders, and similar information in its possession relating to the Project. Unless otherwise specified in Part I, Cedar Corporation may rely upon Client-furnished information without independent verification in performing the Service.

2.2 REPRESENTATIVE

Designate a representative for the project who shall have the authority to transmit instructions, receive information, interpret and define Client's policies, and make decisions with respect to the services.

2.3 GIVE NOTICE

Give prompt written notice to Cedar Corporation whenever Client observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect performance of services under this Agreement.

PART III - BILLING, AND PAYMENT

- 3.1** Cedar Corporation will periodically bill the client with net payment due in 30 days. Unless Client provides Cedar Corporation with a written objection to the bill within 15 days of receipt, Client shall be deemed to accept the bill as submitted.

- 3.2** Where Client disputes some portion of the charges contained in Cedar Corporation's bill for services, he shall make payment of that portion of the bill which is undisputed. In no case may Client elect to withhold payment to Cedar Corporation of the entire amount due.
- 3.3** If Client fails to make any payment due Cedar Corporation for services and expenses after receipt of Cedar Corporation's bill therefore, the amounts due Cedar Corporation shall bear interest from invoice date at the rate set forth in this agreement, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of Cedar Corporation. In addition Cedar Corporation may, after giving ten (10) days written notice to Client, suspend services

under this agreement until paid in full all amounts due under this agreement. In the event Client does not pay, or does not pay timely, Cedar Corporation shall be entitled to collect from Client all amounts due plus expenses, including but not limited to attorney fees, incurred by Cedar Corporation in connection with collection efforts, in addition, the reasonable value of Cedar Corporation's time spent in connection with collection efforts, computed at Cedar Corporation's prevailing fee schedule.

PART IV - STANDARD TERMS AND CONDITIONS

4.1 STANDARD OF CARE.

Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the services are performed. Professional services are not subject to, and Cedar Corporation cannot provide any warranty or guarantee, either express or implied. Any such warranties or guarantees contained in any purchase orders, Client action, requisitions or notices to proceed issued by Client are specifically objected to by Cedar Corporation.

4.2 CHANGE OF SCOPE. The Scope of Services set forth in this Agreement and in any addenda to the Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Client. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the project progresses, facts discovered may indicate that scope must be redefined.

4.3 SAFETY. Cedar Corporation has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, Cedar Corporation specifically disclaims any authority or responsibility for general job site safety and safety of persons other than Cedar Corporation employees.

4.4 DELAYS. If events beyond the

control of Client or Cedar Corporation, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of god or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement or in any Addenda to this Agreement, then such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, Cedar Corporation shall be entitled to an equitable adjustment in compensation.

4.5 TERMINATION. Either party may terminate this Agreement at the end of the term hereof, or any extension thereof, upon 30 days written notice to the other party as provided at PART I above.

Also, this Agreement may be terminated by either party if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. No such termination may be effected unless the other party is given not less than ten calendar day's written notice of intent to terminate and an opportunity for correcting the default and for consultation with the terminating party before termination. If Cedar Corporation terminates as a result of Client default or the Client terminates for cause, Cedar Corporation shall be paid for services performed to the termination date including reimbursable expenses due. Upon receipt of the terminating action, Cedar Corporation shall promptly discontinue all services unless the notice directs otherwise, and upon receipt of final compensation make available to Client all appropriate documents prepared under the Agreement whether completed or in process.

4.6 OPINIONS OF PROBABLE CONSTRUCTION COST. Any opinion of probable construction costs prepared by Cedar Corporation is supplied for the general guidance of the Client only. Since Cedar Corporation has no control over competitive bidding or market conditions, Cedar Corporation cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Client.

4.7 RELATIONSHIP WITH CONTRACTORS. Cedar Corporation shall serve as Client's professional representative for the services, and may make recommendations to Client concerning action relating to Client's contractors. However, Cedar Corporation specifically disclaims any authority to direct or supervise

the means, methods, techniques, sequences or procedures of construction selected by Client's contractors.

4.8 CONSTRUCTION REVIEW.

For projects involving construction, Client acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the municipal project permits errors or omissions to be identified and corrected at comparatively low cost. Client agrees to hold Cedar Corporation harmless from any claims resulting from performance of municipal services by persons other than Cedar Corporation.

4.9 INSURANCE. Cedar Corporation will maintain insurance coverage for Professional Liability, Comprehensive General, Automobile, Workers Compensation, and Employer's Liability in amounts in accordance with applicable legal requirements as well as Cedar Corporation's business requirements. Certificates evidencing such coverage will be provided to Client upon request.

4.10 ALLOCATION OF RISKS. To the fullest extent permitted by law, Cedar Corporation shall indemnify and hold harmless, Client, Client's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Cedar Corporation or Cedar Corporation's officers, directors, partners, employees,

and Cedar Corporation's consultants in the performance and furnishing of Cedar Corporation's services under this Agreement.

To the fullest extent permitted by law, Client shall indemnify and hold harmless Cedar Corporation, Cedar Corporation's officers, directors, partners, employees, and Cedar Corporation's consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Client or Client's officers, directors, partners, employees, and Client's consultants with respect to this Agreement or the Project.

To the fullest extent permitted by law, Cedar Corporation's total liability to Client and anyone claiming by, through, or under Client for any cost, loss, or damages caused in part by the negligence of Cedar Corporation and in part by the negligence of Client or any other negligent entity or individual, shall not exceed the percentage share that Cedar Corporation's negligence bears to the total negligence of Client, Cedar Corporation, and all other negligent entities and individuals.

4.11 HAZARDOUS MATERIAL.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Cedar Corporation and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the Project scope of work. Cedar Corporation agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client acknowledges and agrees that it retains title to all hazardous material existing on the site and shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site may present a potential danger to the public health, safety or the environment. Client shall execute any manifests or forms in connection

with transporting or storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize Cedar Corporation to execute such documents as Client's agent. Client waives any claim against Cedar Corporation and agrees to defend, indemnify, and save Cedar Corporation harmless from any claim or liability for injury or loss arising from Cedar Corporation's discovery of unanticipated hazardous materials or suspected hazardous materials.

4.12 ACCESS. Client shall provide Cedar Corporation safe access to any premises necessary for Cedar Corporation to provide the services.

4.13 REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic media, pertaining to the project by Client for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Cedar Corporation for the specific purpose intended, shall be at the Client's risk. Further, all title blocks and the engineer's seal, if applicable, shall be removed if and when Client provides deliverables in electronic media to another entity. Client agrees that relevant analyses, findings and reports provided in electronic media shall also be provided in "hard copy" and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. Client shall be afforded a period of thirty (30) days in which to check the hard copy against the electronic media. In the event that any error or inconsistency is discovered within such thirty (30) day period it shall be corrected at no additional cost to Client. Following the expiration of this thirty (30) day period, Client shall bear all responsibility for the care, custody and control of the electronic media. In addition, Client represents that it shall retain the necessary mechanisms to read the electronic media, which Client acknowledges to be of only limited duration. Client agrees to defend, indemnify, and

hold harmless Cedar Corporation from all claims, damages, and expenses (including reasonable litigation costs), arising out of such reuse or alteration by Client or others acting through Client. Cedar Corporation agrees that all plans, engineering designs, electronic and computer data and imagery relating to Client's projects are the property of the Client and shall be presented to Client at no additional cost upon written request.

4.14 AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

4.15 ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

4.16 DISPUTE RESOLUTION. Parties shall attempt to settle disputes arising under this agreement by discussion between the parties senior representatives of management. If any dispute cannot be resolved in this manner within a reasonable length of time, parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs, including attorneys' fees from the other party.

4.17 NO WAIVER. No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

4.18 NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including

Client's municipal project contractors.

4.19 SEVERABILITY. The various terms, provisions and covenants contained in this Agreement or any addenda shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

4.20 AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

4.21 OTHER. Cedar Corporation reserves the right to enter into agreements with other design professionals for portions of the work included under this Agreement. Where this subagreement would represent a major portion of the design work, Cedar Corporation shall receive approval of Client for this subagreement.