



Take notice that the City of Ashland Common Council will meet at 6:00 PM in the City Hall Council Chambers, 601 Main Street W. Ashland, WI to consider and act upon the following agenda.

To attend virtually, 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.

Tuesday, September 24, 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. September 10, 2024 City Council and Committee of the Whole Meeting Minutes

4. PRESENTATION BY ROB PRATER, SCHOOL DISTRICT OF ASHLAND SUPERINTENDANT

5. CITIZEN PARTICIPATION PERIOD

6. MAYOR'S REPORT

- A. Announcements
- B. Appointments

7. CONSENT AGENDA

- A. Miscellaneous Minutes

8. OLD BUSINESS

- A. Approve a Resolution to Allow the City of Ashland to Participate in the State of Wisconsin Local Government Investment Pool (Finance) Roll
- B. Approve an Option and Lease Agreement between the City of Ashland and the Towers of Wisconsin BTS, LLC to Lease City-Owned Parcel No. 201-

05120-0210 for the Placement of Communications Facilities and Associated Access (*Planning*) Roll

- C. **Approve the Agreement for Professional Services between the City of Ashland and Short Elliot Hendrickson, Inc. for the 2025/2026 Sanitary Sewer Lift Station Improvements Project (*Public Works*) Roll**
- D. **Approve a Professional Services Agreement between the City of Ashland and Short, Elliott, Hendrickson, Inc. for Grant Administration and Engineering Design Services for the 2026 CDBG Street & Utility Improvements Project (*Public Works*) Roll**
- E. **Approve to Accept Wisconsin Department of Transportation (WI DOT) State Municipal Agreement for the 11th Avenue East Resurfacing Project (*Public Works*) Roll**
- F. **Approve to Accept Wisconsin Department of Transportation (WI DOT) State Municipal Agreement for the 11th Street West Resurfacing Project (*Public Works*) Roll**
- G. **Approve to Submit an Application to the United States Department of Agriculture (USDA) to Assist Funding for Public Works Equipment Purchases as Part of the 2025 Public Works Budget (*Public Works*) Roll**
- H. **Approve a Resolution to Accept an Ashland Urban Area Map to Establish the Wisconsin Department of Transportation Urban Area Boundary (*Public Works*) Roll**

9. NEW BUSINESS

- A. **Approve a Resolution Authorizing the Issuance and Sale of Up to \$9,166,606 Water System Revenue Bonds, Series 2024B, and Providing for Other Details and Covenants With Respect Thereto, and Approval of Related \$9,166,606 State of Wisconsin Safe Drinking Water Loan Program Financial Assistance Agreement (*Public Works, Finance*) Roll**
- B. **Consider a Resolution to Combine Wards and Establish the Polling Place for the November 5, 2024 General Election (*Clerk*) Roll**
- C. **Creation of Finance Task Force and Communication Task Force (*Mayor*)**

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.

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, September 10, 2024 – 6:00 PM
Ashland City Hall Council Chambers

1. CALL TO ORDER

The Tuesday, September 10, 2024 Ashland City Council meeting was called to order by Mayor Matt Mac Kenzie at 6:00 p.m.

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

PRESENT: Kevin Seefeldt, Sarah Jackson, Ana Tochterman, Andrew Goyke, James Gregoire, Charlie Ortman, Nancy Sztynдор

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, Fire Chief Stuart Matthias, Finance Director Julie Vaillancourt, Treasurer/Comptroller Jacey Dean, and other interested citizens.

2. APPROVAL OF AGENDA

A motion by Sztynдор and seconded by Seefeldt to approve the agenda was passed unanimously by roll call vote.

3. APPROVAL OF MINUTES

A. August 20, 2024 City Council and Committee of the Whole Meeting Minutes

A motion by Goyke and seconded by Seefeldt to approve the minutes, 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:

Laura Kruse, citizen of Ashland, advocated for Council to consider allowing more material options for buildings and structures on private property. She also shared a photograph of her garage with steel siding.

5. MAYOR'S REPORT

A. **Announcements**

Mac Kenzie thanked Councilors for attending the recent retreat, held on September 5, 2025. He also noted as Labor Day is behind us, school is in session and cooler months are coming.

6. CONSENT AGENDA

A. **Miscellaneous Minutes**

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

7. OLD BUSINESS

A. **Approve a Resolution to Amend the 2023 General Fund, Special Revenue Funds, Debt Service Funds, Capital Project Funds, and Internal Service Funds Budgets Per Wis. State Statute 65.90(5)(a) (Finance) Roll**

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

B. **Approve to Accept the Assistance to Firefighters Grant for the Purchase of a New Ambulance (Fire Department) Roll**

A motion by Seefeldt and seconded by Gregoire to approve to accept the grant award and move forward with the purchase of a new ambulance was passed unanimously by roll call vote.

C. **Approve an Agreement between the Wisconsin Department of Natural Resources and the City of Ashland for the Purpose of Invasive Species Removal and Restoration of Native Herbaceous Species on Publicly Owned Land in the City of Ashland, Wisconsin (Parks) Roll**

A motion by Seefeldt and seconded by Tochtermann to approve the agreement was passed unanimously by roll call vote.

D. **Approve a Resolution to Vacate Order Transportation Project Plat 1610-00-27- 4.21 for State Highway 13 Pavement Replacement Project (Public Works) Roll**

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

8. NEW BUSINESS

A. **Consider a Memorandum of Understanding between the City of Ashland and the School District of Ashland (Parks) Roll**

A motion by Ortman and seconded by Goyke to approve the Memorandum of Understanding was passed unanimously by roll call vote.

9. ADJOURNMENT

A motion by Goyke and seconded by Sztynдор to adjourn was passed unanimously by voice vote.

Respectfully Submitted,

Denise Oliphant,
City Clerk

MEETING MINUTES
COMMITTEE OF THE WHOLE MEETING
Tuesday, September 10, 2024 – 6:00 PM
Ashland City Hall Council Chambers

1. Roll Call

The Tuesday, September 10, 2024 City of Ashland Committee of the Whole Meeting was called to order by Council President Charlie Ortman at 6:15 p.m.

RESENT: Kevin Seefeldt, Sarah Jackson, Ana Tochterman, Andrew Goyke, James Gregoire, Charlie Ortman, Nancy Sztynдор

ALSO PRESENT: Mayor Matthew MacKenzie, City Administrator Brant Kucera, City Clerk Denise Oliphant, Public Works Director John Butler, Planning Director Steven Wiley, Police Chief Willis Hagstrom, Treasurer/Comptroller Jacey Dean, and other interested citizens.

2. Approval of Agenda

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

3. Council President's Report

Ortman did not offer a report.

4. Administrator's Report

Kucera shared progress is being made on the 2025 budget and reviewing department requests. He plans to include budgeting for increased beautification and has found a grant that may assist with those expenditures.

A. Progress Update of 501 3rd Street West (Former Baron Radiator Site)

Kucera explained the decision to demolish the current building and has architectural plans to share at a future meeting. He also found someone who would "run" the new facility as a multi-use center. He noted the renovations of the former Baron Radiator site are included in the approved Strategic Plan.

5. DISCUSSION & POSSIBLE ACTION ITEMS

A. Discussion and Possible Action Regarding Allowing the City of Ashland to Participate in the State of Wisconsin Local Government Investment Pool (*Finance*)

Treasurer Jacey Dean presented the item with handouts, and answered questions from Council. A motion by Seefeldt and seconded by Goyke to forward the item to Council for formal approval, passed unanimously by voice vote.

B. Discussion and Possible Action Regarding a Potential Agreement between the City of Ashland and the Towers of Wisconsin BTS, LLC to Lease City-Owned Parcel No. 201-05120-0210 for the Placement of Communications Facilities and Associated Access *(Planning)*

Planning Director Steven Wiley presented the item with a draft of the agreement, and answered questions from Council. A motion by Gregoire and seconded by Goyke to forward the item to Council for formal approval, passed unanimously by voice vote.

C. Discussion and Possible Action Regarding Wisconsin Department of Transportation (WI DOT) State Municipal Agreements for 11th Avenue East and 11th Street West Resurfacing Projects *(Public Works)*

Public Works Director John Butler presented the item and answered questions from Council. A motion by Seefeldt and seconded by Gregoire to forward the item to Council for formal approval, passed unanimously by voice vote.

D. Discussion and Possible Action on Capital Projects 460 - Public Works Equipment and USDA Grant Application *(Public Works)*

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

E. Discussion and Possible Action on Private Lead Service Lateral (LSL) Program *(Public Works)*

Butler presented the item and answered questions from Council. No action was taken on this item.

F. Discussion and Possible Action Regarding Wisconsin Department of Transportation Urban Area Boundary *(Public Works)*

Butler began discussion on the item and answered questions from Council. A motion by Goyke and seconded by Sztynodor to forward the item to Council for formal approval, passed unanimously by voice vote.

G. Discussion and Possible Action on 2025/2026 Project for Upgrades to Sanitary Sewer Lift Stations *(Public Works)*

Butler presented the item and answered questions from Council. A motion by Seefeldt and seconded by Sztynodor to forward the item to Council for formal approval, including a consultation with a representative from SEH, Inc. at that time, passed unanimously by voice vote.

H. Discussion and Possible Action Regarding the Process of Scoring Local Roads for Potential Repair *(Mayor)*

Butler offered a presentation of the systematic approach to scoring roads for repairs. No action was taken on this item.

6. Items for Future Discussion

Goyke requested an update of the Ore Dock Waterfront Access Road Project, and an update regarding the potential Spash Pad Project. Seefeldt requested a discussion with the planning department regarding conditional use permits, and the process of determining what is allowed per the City's Ordinances.

7. Adjournment

A motion to adjourn by Goyke and seconded by Jackson, was approved unanimously by voice vote.



Respectfully Submitted,

Denise Oliphant,
City Clerk

Ref: 2024-210

COUNCIL AGENDA: 6.B.
(9/24/2024)

SUBJECT: Appointments

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Mayor

CLEARANCES: Mayor

EXHIBITS: 1. N Sitzmann - Volunteer form (redacted)

EXPENDITURES REQUIRED: NA

AMOUNT BUDGETED:

APPROPRIATION REQUIRED: NA

TREASURER'S CERTIFICATE: NA

COMPLIANCE WITH CHAPTER 51: NA

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

The Mayor requests Council approval for the following appointment:

Beautification Council
Nikki Sitzmann, term to expire February 15, 2025

Public Works Committee
Anne Chartier, reappointment, term to expire September 30, 2029

Find yourself next to the water.

ASHLAND

City of Ashland, Wisconsin

601 Main Street West — Ashland, WI 54806 — www.coashwi.org

OFFER TO VOLUNTEER FORM

I would like to be considered a nominee for the following committee or committees:

Ashland Beautification Council

Write a brief statement of education and training:

I have a B.A. in German from UC Santa Cruz
and became a Wisconsin Master Gardener in 2023.

Biography: (Need a sense of who you are as an individual. For example, general background, work history, life experiences, volunteer activities, special interests, special skills, hobbies, personality, people skills, etc.)

I currently work at the Ashland County Housing Authority
in Mellen. I became interested in Gardening after
travelling a lot, looking for what makes me tick.
I'm looking to connect with my surrounding community
as I just moved to the area about 2 years ago.

Individual references/referred by (please include phone #):

Kay Saari

Contact information:

Nikki Sitzmann

Name (Please print)

Phone #

38522 State Hwy 169 Mellen, WI 54546

Address

8/26/24

Email

Date

Approved 09/11/24

Vaughn Public Library Board of Trustees extra meeting on July 24, 2024

Board members present: Jim Crandall, Megan Robertson, Mary Asbach, Clarence Campbell, Michelle Jardine, Sarah Jackson; Sarah Adams, Director; Alex Ramsey, Engberg Anderson Architects. The meeting was conducted over the internet.

Michelle called the meeting to order at 2:10 p.m.

Alex spoke about the library renovation plan, and presented updated budget figures for the project. She presented more detailed and more current estimates of the costs for each part of the remodeling. The board considered the information which showed that the project will be able to be done in the budgeted amount. The board also discussed additions that can be made if the bidding comes in under the estimates.

The board discussed the merits of moving all materials off site during construction. Motion/second by Michelle/Jim to move all materials to the old Beaser school during the remodeling using the 214 Fund balance in the donation account. CARRIED. Moving to a remote location during the renovation will be safer and cleaner than trying to operate while construction is going on.

The board also learned that a board member is stepping back and a new representative from rural Ashland County is being sought.

The meeting adjourned at 2:56 pm.

Approved 09/11/24

Vaughn Public Library Board of Trustees meeting on August 14, 2024

Board members present in the room: Jim Crandall, Megan Robertson, Mary Asbach, Dinny Bolka, Clarence Campbell, Mel Harvey, prospective board member, Sarah Adams, Director; Alex Ramsey, Engberg Anderson Architects (on line).

The meeting was called to order at 5:33 p.m.

Alex showed the board renderings on how the finished project might look so we have an idea of the total concept. Colors and furniture will be selected at a later stage. She noted that all of the windows on the second floor will be replaced with higher performance units. All estimates to date show that the project will come in on budget. Additions may be made should bids come in under the amount allocated.

Michelle Jardine joined the meeting on line at 5:53 p.m.

Motion/Second by Megan/Clarence to approve the agenda. CARRIED.

Motion/Second by Mary/Dinny to accept the architect's design development document. CARRIED

Motion/Second by Michelle/Clarence to approve a site survey for the building to verify topographic and existing conditions. CARRIED.

Sarah reviewed the moving costs and relocation to the temporary site during construction. She also reviewed the current budget status, which is on track for this time of year.

The meeting adjourned at 6:17 pm.

Ref: 2024-203

COUNCIL AGENDA: 8.A.
(9/24/2024)

SUBJECT: Approve a Resolution to Allow the City of Ashland to Participate in the State of Wisconsin Local Government Investment Pool (*Finance*) Roll

RECOMMENDATION: Approve

DEPARTMENT OF ORIGIN: Finance

CLEARANCES: Approved by Committee of the Whole, September 10, 2024

EXHIBITS:

1. Proposed Resolution No. 17791
2. LGIP Summary

EXPENDITURES REQUIRED: NA

AMOUNT BUDGETED:

APPROPRIATION REQUIRED: NA

TREASURER'S CERTIFICATE: NA

COMPLIANCE WITH CHAPTER 51: NA

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

The Local Government Investment Pool routinely offers both a higher interest rate and greater liquidity than the City's other available investment options. A resolution is required to participate.

RESOLUTION NO. 17791

RESOLUTION TO ALLOW THE CITY OF ASHLAND TO PARTICIPATE IN THE STATE OF WISCONSIN LOCAL GOVERNMENT INVESTMENT POOL

As attached.

PASSED: September 24, 2024

Councilperson

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie, Mayor

APPROVED AS TO FORM

Tyler W. Wickman, City Attorney



LGIP SUMMARY FOR COMMITTEE OF THE WHOLE

Presented by Jacey Dean, Treasurer/Comptroller

Recommendation: to add the Wisconsin Local Government Investment Pool to the City's list of depositories.

- Current rates of return on the City's fully liquid money market accounts range from 0.15% to 3.15%.
- Available municipal CD rates have not exceeded 4.99% over the past year.
- LGIP has consistently accomplished higher rates than municipal (collateralized) CDs while maintaining full liquidity.

Statement from the Wisconsin Department of Administration:

The Local Government Investment Pool (LGIP) provides a secure investment option for all Wisconsin local governments, including counties, cities, villages, towns, school districts and other entities. By pooling local government funds with State funds, local governments may be able to realize generally higher yields over time. The LGIP provides local governments with the best of both worlds - overnight availability and improved earnings.

The LGIP funds are invested by the State of Wisconsin Investment Board. The daily LGIP operations are managed by the Wisconsin Department of Administration - State Controller's Office.

LGIP Online Account Access Website: <http://lgip.wisconsin.gov>

LGIP CONTACT INFORMATION:

LGIP@wisconsin.gov

Toll Free: (877) 947-7665

Phone: (608) 266-3711

Fax: (608) 223-6578

LGIP

101 E. Wilson St. 5th FL.

Madison, WI 53703

LGIP

PO BOX 7871

Madison, WI 53707-7871

Ref: 2024-204

COUNCIL AGENDA: 8.B.
(9/24/2024)

SUBJECT: Approve an Option and Lease Agreement between the City of Ashland and the Towers of Wisconsin BTS, LLC to Lease City-Owned Parcel No. 201-05120-0210 for the Placement of Communications Facilities and Associated Access (*Planning*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Planning & Development

CLEARANCES: Approved by Committee of the Whole, September 10, 2024
City Attorney

EXHIBITS:

1. Option and Lease Agreement
2. Site Maps

EXPENDITURES REQUIRED: NA

AMOUNT BUDGETED:

APPROPRIATION REQUIRED: NA

TREASURER'S CERTIFICATE: The Treasurer's Office has certified that The Towers, LLC is in compliance with the provisions of Ordinance 923.10 Ashland City Ordinances.

COMPLIANCE WITH CHAPTER 51:

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

Ramaker is an architecture and engineering firm and Vertical Bridge is an owner and operator of communications infrastructure. Ramaker and Vertical Bridge approached City staff regarding

the desire to expand cell service within Ashland and the surrounding area. They would like to lease a portion of City-owned parcel no. 201-05120-0210 for the placement of a communications facility. The facility would include a 165-foot tall antenna surrounded by a chain-link fence and associated drive access off of Rail Drive. The fenced in area would be 100 feet by 100 feet for a total of 10,000 square feet devoted to the facility. Vertical Bridge and Ramaker worked with City staff and drafted an agreement which was reviewed by the City Attorney's office and the City Administrator. City staff are satisfied with the terms of the agreement and the initial lease term of five (5) years with nine (9) renewal options of five (5) years each. The lease agreement provides for the tenant to provide the City with a 120-day written notice if the tenant wishes to terminate the lease during the term of the lease. The initial rent would be \$800 per month with a revenue share fee of \$150 for each additional broadband carrier, if in the case of two (2) or more broadband carriers. If approved, Vertical Bridge and Ramaker will work with the City on any required zoning and building permits including the required Conditional Use Permit for a major telecommunications facility.

Staff have reviewed the draft agreement and Vertical Bridge has incorporated the City Attorney's recommendations into the agreement. City staff are in support of the cell equipment proposal and are of the opinion that the lease will allow for the use of a currently unused vacant City property. The 2022-2026 Strategic Plan includes a goal of consistent, reliable, and affordable high-speed internet. The Strategic Plan recommendations focus mostly on information-gathering and creation of recommendations to improve internet coverage, but the proposed lease and communications facility would help expand and improve cell coverage within the area, consistent with the Strategic Plan goal. Staff are of the opinion that a communications facility for the subject site is reasonable given the location in the industrial park and the unused, vacant nature of the property.

Landlord:

City of Ashland
601 Main Street West
Ashland, Wisconsin 54806

Tenant:

The Towers, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

Site #: US-WI-5735

Site Name: Ashland Industrial

OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT (this “**Agreement**”) is made this _____ day of _____, 20_____ (the “**Effective Date**”) by and between **City of Ashland**, a Wisconsin municipality (“**Landlord**”), whose address is 601 Main Street West, Ashland, Wisconsin 54806, and **The Towers, LLC**, a Delaware limited liability company, known in Wisconsin as The Towers of Wisconsin BTS, LLC (“**Tenant**”), whose address is 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487.

WHEREAS, Landlord owns certain real property located in the County of Ashland, in the State or Commonwealth of Wisconsin, that is more particularly described and/or depicted in **Exhibit 1** attached hereto (the “**Property**”); and,

WHEREAS, Tenant desires to lease from Landlord a certain portion of the Property measuring approximately 10,000 square feet and to obtain easements for landscape buffer, utilities and access (collectively, the “**Premises**”), which Premises is more particularly described and/or depicted in **Exhibit 2** attached hereto, for the placement of Communications Facilities (defined below).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree:

1. OPTION TO LEASE.

(a) As of the Effective Date, Landlord grants to Tenant the exclusive option to lease the Premises (the “**Option**”) during the Option Period (defined below). At any time during the Option Period and Term (defined below), Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Property (collectively, the “**Tests**”), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant’s sole discretion for its use of the Premises including, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, construction permits and any other permits and approvals deemed necessary by Tenant (collectively, the “**Government Approvals**”), initiate the ordering and/or scheduling of necessary utilities, obtain a title report with respect to the Property, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant’s sole discretion to determine the physical condition of the Property, the environmental history of the Property, and the feasibility or suitability of the Property for Tenant’s permitted use under this Agreement, all at Tenant’s expense. Tenant shall be authorized to apply for the Government Approvals on

behalf of Landlord and Landlord agrees to reasonably cooperate with such applications. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's Tests. Tenant will restore the Property to its condition as it existed prior to conducting any Tests, reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

(b) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of Two Thousand Dollars (\$2,000.00) within thirty (30) days of the full execution of this Agreement. The Option Period will be for a term of four (4) years from the Effective Date (the "**Option Period**").

(c) Tenant may exercise the Option at any time during the Option Period by delivery of written notice to Landlord (the "**Notice of Exercise of Option**"). The Notice of Exercise of Option shall set forth the commencement date (the "**Commencement Date**") of the Initial Term (defined below). If Tenant does not provide a Notice of Exercise of Option during the Option Period, this Agreement will terminate and the parties will have no further liability to each other.

(d) During the Option Period or the Term, Landlord shall not take any action to change the zoning status or land use of the Property which would diminish, impair, or adversely affect the use of the Premises by Tenant for its permitted uses hereunder.

2. TERM.

(a) Effective as of the Commencement Date, Landlord leases the Premises to Tenant subject to the terms and conditions of this Agreement for an initial term of five (5) years (the "**Initial Term**").

(b) Tenant shall have the option to extend the Initial Term for nine (9) successive terms of five (5) years each (each a "**Renewal Term**"). Provided Tenant is not in default hereunder beyond any applicable cure period, each Renewal Term shall commence automatically, unless Tenant delivers notice to Landlord, not less than sixty (60) days prior to the end of the then-current Term, of Tenant's intent not to renew. For purposes of this Agreement, "**Term**" shall mean the Initial Term and any applicable Renewal Term(s).

3. RENT

(a) Beginning on the first (1st) day of the third (3rd) month after the Commencement Date ("**Rent Commencement Date**"), Tenant shall pay to Landlord a monthly rent payment of Eight Hundred Dollars (\$800.00) ("**Rent**") at the address set forth in Section 29 above on or before the fifth (5th) day of each calendar month in advance. The initial payment of Rent will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date.

(b) Starting with the second (2nd) Broadband Carrier, and each additional Broadband Carrier thereafter, Tenant's monthly Rent due hereunder shall increase by One-Hundred and Fifty Dollars (\$150.00) per month for each such additional Broadband Carrier (each a "**Revenue Share Fee**"), subject to the following terms and conditions. The applicable Revenue Share Fee shall commence on the first day of the month following the date that the second (2nd) Broadband Carrier (and each additional Broadband Carrier thereafter) commences rental payments to Tenant under its respective sublease. The Revenue Share Fee shall only be due and payable in the event there are two (2) or more Broadband Carriers. If at any time subsequent to the addition of a second (2nd) Broadband Carrier the number of Broadband Carriers is reduced

to one (1) Broadband Carrier, then no Revenue Share Fee shall be due and payable. Notwithstanding anything to the contrary contained herein, the Revenue Share Fee shall only be due and payable by Tenant to Landlord hereunder during the term of such Broadband Carrier's sublease agreement and for so long as such Broadband Carrier is actually paying to Tenant the requisite rental set forth therein. For purposes herein, the term "**Broadband Carrier**" shall mean Verizon, AT&T, Dish, and T-Mobile and such similar national broadband carriers

(c) The Rent shall increase by 1.50% annually on each anniversary of the Rent Commencement Date.

(d) All sums becoming due or payable under this Agreement, including all money expended pursuant to the provisions hereof or on account of any default in the performance and observance of this Agreement or covenants herein, shall bear interest at a rate of twelve percent (12%) per annum (or at such lesser rate which is the maximum permitted by applicable law) from thirty (30) days after the date such sums become due or payable, or, in the event one of the parties expends money because of a default by the other, from thirty (30) days after the date the defaulting party received written notice that such money was expended.

4. TAXES. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Communications Facilities located on the Premises. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property and the Premises. Tenant shall pay as additional rent any increase in real property taxes levied against the Premises, which are directly attributable to Tenant's use of the Premises (but not, however, taxes attributable to periods prior to the Commencement Date such as roll-back or greenbelt assessments) if Landlord furnishes proof of such increase to Tenant (such increase, the "**Landlord Tax Reimbursement**"). In the event that Landlord fails to pay when due any taxes affecting the Premises or any easement relating to the Premises, Tenant shall have the right, but not the obligation, to pay such taxes and any applicable interest, penalties or similar charges, and deduct the full amount of the taxes and such charges paid by Tenant on Landlord's behalf from future installments of Rent. Notwithstanding the foregoing, Tenant shall not have the obligation to pay any tax, assessment, or charge that Tenant is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed, provided that no lien attaches to the Property. In addition, Tenant shall not have the obligation to pay or reimburse Landlord for the Landlord Tax Reimbursement if Landlord has not provided proof of such amount and demand therefor within one (1) year of the date such amount is due and payable by Landlord.

5. USE. The Premises are being leased for the purpose of erecting, installing, operating, maintaining, repairing and replacing radio or communications towers, transmitting and receiving equipment, antennas, dishes, satellite dishes, mounting structures, equipment shelters and buildings, solar energy conversion and electrical power generation system, fencing and other supporting structures and related equipment (collectively, the "**Communications Facilities**"), and to alter, supplement and/or modify same. Tenant may, subject to the foregoing, make any improvements, alterations or modifications to the Premises as are deemed appropriate by Tenant for the permitted use herein. Tenant shall have the right to clear the Premises of any trees, vegetation, or undergrowth which interferes with the use of the Premises for the intended purposes by Tenant and/or its subtenants and licensees, as applicable. Tenant shall have the exclusive right to install and operate the Communications Facilities upon the Premises.

6. ACCESS AND UTILITIES. During the Term, Tenant and its guests, agents, employees, customers, invitees, subtenants, licensees and assigns shall have the unrestricted, exclusive right to use, and shall have free and unfettered access to, the Premises seven (7) days a week, twenty-four (24) hours a day. Landlord for itself, its successors and assigns, hereby grants and conveys unto Tenant, its customers,

employees, agents, invitees, subtenants, licensees, successors and assigns a non-exclusive easement throughout the Term to a public right of way (a) for ingress and egress, and (b) for the construction, installation, operation, maintenance, repair and replacement of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of and access to the Premises, subject to the terms and conditions herein set forth. Landlord agrees to coordinate, cooperate and assist Tenant with obtaining the required access and utility easements to the Premises from a public right of way up to and including negotiating and obtaining such access and utility rights from any applicable neighbor parcel. If there are utilities already existing on the Premises which serve the Premises, Tenant may utilize such utilities and services. The rights granted to Tenant herein shall also include the right to partially assign its rights hereunder to any public or private utility company or authority to facilitate the uses contemplated herein, and all other rights and privileges reasonably necessary for Tenant's safe and efficient use and enjoyment of the easements for the purposes described above. Upon Tenant's request, Landlord shall execute and deliver to Tenant requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of Tenant's request, and Landlord shall obtain the consent and joinder of Landlord's mortgagee to any such grant, if applicable.

7. EQUIPMENT, FIXTURES AND REMOVAL. The Communications Facilities shall at all times be the personal property of Tenant and/or its subtenants and licensees, as applicable. Tenant or its customers, subtenants or licensees shall have the right to erect, install, maintain, repair, replace and operate on the Premises such equipment, structures, fixtures, signs, and personal property as Tenant, its customers, subtenants or licensees may deem necessary or appropriate, and such property, including the equipment, structures, fixtures, signs, and personal property currently on the Premises, shall not be deemed to be part of the Premises, but shall remain the property of Tenant or its customers, subtenants or licensees. Within ninety (90) days after the expiration or earlier termination of this Agreement (the "**Removal Period**"), Tenant, customers, subtenants or licensees shall remove its improvements and personal property and restore the Premises to grade and perform all obligations under this Agreement during the Removal Period, including, without limitation, the payment of Rent at the rate in effect upon the expiration or termination of this Agreement.

8. ASSIGNMENT AND SUBLEASE. Tenant may transfer or assign this Agreement to Tenant's Lender (defined below), principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity which acquires all of or substantially all of Tenant's assets or ownership interests by reasons of merger, acquisition or other business reorganization without Landlord's consent (a "**Permitted Assignment**"). As to transfers or assignments which do not constitute a Permitted Assignment, Tenant is required to obtain Landlord's written consent prior to effecting such transfer or assignment, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such assignment, including a Permitted Assignment, Tenant will be relieved and released of all obligations and liabilities hereunder. Tenant shall have the exclusive right to sublease or grant licenses without Landlord's consent to use all or part of the Premises and/or the Communications Facilities, but no such sublease or license shall relieve or release Tenant from its obligations under this Agreement. Landlord may assign this Agreement only in its entirety and only to any person or entity who or which acquires fee title to the Property, subject to Section 15. Landlord may subdivide the Property without Tenant's prior written consent provided the resulting parcels from such subdivision are required to afford Tenant the protections set forth in Section 14 hereof.

9. COVENANTS, WARRANTIES AND REPRESENTATIONS.

(a) Landlord warrants and represents that it is the owner in fee simple of the Property, free and clear of all liens and encumbrances except as to those which may have been disclosed to Tenant in writing prior to the execution hereof, and that it alone has full right to lease the Premises for the Term.

(b) Landlord shall pay promptly, when due, any other amounts or sums due and owing with respect to its ownership and operation of the Property, including, without limitation, judgments, taxes, liens, mortgage payments and other similar encumbrances. If Landlord fails to make any payments required under this Agreement, or breaches any other obligation or covenant under this Agreement, Tenant may (without obligation), after providing ten (10) days written notice to Landlord, make such payment or perform such obligation on behalf of Landlord and offset such payment (including any reasonable attorneys' fees incurred in connection with Tenant performing such obligation) against payments of Rent.

(c) Landlord shall not do or knowingly permit anything that will interfere with or negate any special use permit or approval pertaining to the Premises or cause Tenant's use of the Premises to be in nonconformance with applicable local, state, or federal laws. Landlord shall cooperate with Tenant in any effort by Tenant to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. Landlord agrees to execute any necessary applications, consents or other documents as may be reasonably necessary for Tenant to apply for and obtain the Government Approvals required to use and maintain the Premises and the Communications Facilities.

(d) To the best of Landlord's knowledge, Landlord has complied and shall comply with all laws with respect to the Property. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Property by Landlord or, to the knowledge of Landlord, by any prior owner or user of the Property. There has been no release of or contamination by hazardous materials on the Property by Landlord, or to the knowledge of Landlord, any prior owner or user of the Property.

(e) Tenant shall have access to all utilities required for the operation of Tenant's improvements on the Premises that are existing on the Property.

(f) Landlord warrants and represents that there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Property; there are no outstanding options or rights of first refusal to purchase the Property or any portion thereof or interest therein, or any equity or interest in Landlord if Landlord is an entity; and there are no parties (other than Landlord) in possession of the Property except as to those that may have been disclosed to Tenant in writing prior to the execution hereof.

(g) Tenant warrants and represents that, to the extent applicable, Tenant is duly organized, validly existing and in good standing in the jurisdiction in which Tenant was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required.

(h) Tenant warrants and represents that it has full power and authority to enter into and perform its obligations under this Agreement, and to the extent applicable, the person(s) executing this Agreement on behalf of Tenant, have the authority to enter into and deliver this Agreement on behalf of Tenant.

(i) Tenant warrants and represents that no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Tenant of this Agreement.

10. HOLD OVER TENANCY. Should Tenant or any assignee, sublessee or licensee of Tenant hold over the Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and

conditions, until either party serves written notice of intent to terminate the tenancy with thirty (30) days prior written notice.

11. INDEMNITIES. Each party agrees to indemnify, defend and hold harmless the other party, its parent company or other affiliates, successors, assigns, officers, directors, shareholders, managers, members, agents and employees (collectively, “**Indemnified Persons**”) from and against all claims, actions, judgments, damages, liabilities, losses, expenses and costs (including, without limitation, reasonable attorneys’ fees and court costs) (collectively, “**Losses**”) caused by or arising out of (a) such party’s breach of any of its obligations, covenants, representations or warranties contained herein, or (b) such party’s acts or omissions with regard to this Agreement; provided, however, in no event shall a party indemnify the other party for any such Losses to the extent arising from the gross negligence or willful misconduct of the party seeking indemnification. However, in the event of an Indemnified Person’s contributory negligence or other fault, the Indemnified Person shall not be indemnified hereunder to the extent that the Indemnified Person’s negligence or other fault caused such Losses. Tenant will indemnify Landlord from and against any mechanic’s liens or liens of contractors and subcontractors engaged by or through Tenant.

12. WAIVERS.

(a) Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communications Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws.

(b) EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

13. INSURANCE. Tenant shall insure against property damage and bodily injury arising by reason of occurrences on or about the Premises in the amount of not less than \$1,000,000. The insurance coverage provided for herein shall name Landlord as an additional insured, and may be maintained pursuant to master policies of insurance covering other communication facilities of Tenant and its corporate affiliates. All insurance policies required to be maintained by Tenant hereunder shall be with responsible insurance companies, authorized to do business in the State or Commonwealth where the Premises are located if required by law, and shall provide for cancellation only upon ten (10) days’ prior written notice to Landlord. Tenant shall evidence such insurance coverage by delivering to Landlord, if requested, a copy of a certificate of insurance of such policies issued by the insurance companies underwriting such risks.

14. INTERFERENCE. During the Option Period and the Term, Landlord, its successors and assigns, will not grant any ground lease, license, or easement with respect to the Property (outside of the Premises) and any property adjacent or contiguous to the Property or in the immediate vicinity of the Property that is fee owned by Landlord: (a) for any of the uses contemplated in Section 5 herein; or (b) if such lease, license, or easement would detrimentally impact the Communications Facilities or Tenant’s economic opportunities at the Premises, or the use thereof. Landlord shall not cause or permit the construction of communications or broadcast towers or structures, fiber optic backhaul facilities, or satellite facilities on the Property or on any other property of Landlord adjacent or contiguous to or in the immediate vicinity of the Property, except for the Communications Facilities constructed by Tenant. Landlord and Tenant intend by this Agreement for Tenant (and persons deriving rights by, through, or under Tenant) to be the sole

parties to market, use, or sublease any portion of the Property for Communications Facilities during the Option Period and the Term. Landlord agrees that this restriction on the use of the Property is commercially reasonable, not an undue burden on Landlord, not injurious to the public interest, and shall be specifically enforceable by Tenant (and persons deriving rights by, through or under Tenant) in a court of competent jurisdiction. The foregoing restriction shall run with the land and be binding on the successors and assigns of Landlord.

15. RIGHT OF FIRST REFUSAL. In the event Landlord determines to sell, transfer, license or otherwise convey any interest, whether fee simple interest, easement interest, leasehold, or otherwise, and whether direct or indirect by way of transfer of ownership interests in Landlord if Landlord is an entity, which interest underlies or affects any or all of the Premises (the “**ROFR Property**”) to any third party that is a Third Party Competitor (as defined below), Landlord shall offer Tenant a right of first refusal to purchase the Premises (or such larger portion of the Property that encompasses the Premises, if applicable). For purposes herein, a “**Third Party Competitor**” is any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing communications infrastructure or any person or entity directly or indirectly engaged in the business of owning, acquiring, or investing in real property leases or easements underlying communications infrastructure. In such event, Landlord shall send a written notice to Tenant in accordance with Section 29 below that shall contain an offer to Tenant of a right of first refusal to purchase the ROFR Property, together with a copy of any offer to purchase, or any executed purchase agreement or letter of intent (each, an “**Offer**”), which copy shall include, at a minimum, the purchase price or acquisition price, proposed closing date, and financing terms (collectively, the “**Minimum Terms**”). Within thirty (30) days of receipt of such Offer, Tenant shall provide written notice to Landlord of Tenant’s election to purchase the ROFR Property on the same Minimum Terms, provided: (a) the closing date shall be no sooner than sixty (60) days after Tenant’s purchase election notice; (b) given Landlord’s direct relationship and access to Tenant, Tenant shall not be responsible for payment of any broker fees associated with an exercise of Tenant’s rights to acquire the ROFR Property; and, (c) Tenant shall not be required to match any components of the purchase price which are speculative or incalculable at the time of the Offer. In such event, Landlord agrees to sell the ROFR Property to Tenant subject to Tenant’s payment of the purchase price and compliance with a purchase and sale agreement to be negotiated in good faith between Landlord and Tenant. If Tenant provides written notice that it does not elect to exercise its right of first refusal to purchase the ROFR Property, or if Tenant does not provide notice of its election within the thirty (30) day period, Tenant shall be deemed to have waived such right of first refusal only with respect to the specific Offer presented (and any subsequent Offers shall again be subject to Tenant’s continuing right of first refusal hereunder), and Landlord shall be permitted to consummate the sale of the ROFR Property in accordance with the strict terms of the Offer (“**Permitted Sale**”). If Landlord does not consummate the Permitted Sale within ninety (90) days of the date of Tenant’s waiver of its right of first refusal, including if the Minimum Terms are modified between Landlord and the Third Party Competitor, Landlord shall be required to reissue a New Offer to Tenant.

16. SECURITY. The parties recognize and agree that Tenant shall have the right to safeguard and protect its improvements located upon or within the Premises. Consequently, Tenant may elect, at its expense, to construct such enclosures and/or fences as Tenant reasonably determines to be necessary to secure the Communications Facilities. Tenant may also undertake any other appropriate means to restrict access to the Communications Facilities including, without limitation, if applicable, installing security systems, locks and posting signs for security purposes and as may otherwise be required by law.

17. FORCE MAJEURE. The time for performance by Landlord or Tenant of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, pandemics, material or labor restrictions by governmental authority, government

shutdowns, quarantines, and/or other disease control measures and any other cause not within the control of Landlord or Tenant, as the case may be.

18. CONDEMNATION; CASUALTY.

(a) In the event Landlord receives any notice of any condemnation proceedings, or other proceedings in the nature of eminent domain related to the Property or the Premises, it will forthwith send a copy of such notice to Tenant. If all or any part of the Premises is taken by eminent domain, Tenant may, upon written notice to Landlord, elect to terminate this Agreement, whereupon neither party shall have any further liability or obligation hereunder. Notwithstanding any provision of this Agreement to the contrary, in the event of condemnation of all or any part of the Premises, Landlord and Tenant shall be entitled to separate awards with respect to the Premises, in the amount determined by the court conducting such condemnation proceedings based upon Landlord's and Tenant's respective interests in the Premises. If a separate condemnation award is not determined by such court, Landlord shall permit Tenant to participate in the allocation and distribution of the award. In no event shall the condemnation award to Landlord exceed the unimproved value of the Premises, without taking into account the improvements located thereon.

(b) In case of damage to the Premises or the Communications Facilities by fire or other casualty, Landlord shall, at its expense, cause any damage to the Property (excluding the Communications Facilities) to be repaired to a condition as nearly as practicable to that existing prior to the damage, with reasonable speed and diligence, subject to delays which may arise by reason of adjustment of loss under insurance policies, governmental regulations, and for delays beyond the control of Landlord, including a force majeure. Landlord shall coordinate with Tenant as to the completion of Landlord's work to restore the Property so as not to adversely impact Tenant's use of the Premises and the Communications Facilities. Landlord shall not be liable for any inconvenience or annoyance to Tenant, or injury to Tenant's business or for any consequential damages resulting in any way from such damage or the repair thereof, except to the extent and for the time that the Communications Facilities or the Premises are thereby rendered unusable for Tenant's intended purpose the Rent shall proportionately abate. In the event the damage shall be so extensive that Tenant shall decide, in its sole discretion, not to repair or rebuild the Communications Facilities, or if the casualty shall not be of a type insured against under standard fire policies with extended type coverage, or if the holder of any mortgage, deed of trust or similar security interest covering the Communications Facilities shall not permit the application of adequate insurance proceeds for repair or restoration, this Agreement shall, at the sole option of Tenant, exercisable by written notice to Landlord, be terminated as of the date of such casualty, and the obligation to pay Rent (taking into account any abatement as aforesaid) shall cease as of the termination date and Tenant shall thereupon promptly vacate the Premises.

19. DEFAULT. The failure of Tenant or Landlord to perform any of the covenants of this Agreement shall constitute a default. The non-defaulting party shall give the other written notice of such default, and the defaulting party shall cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, if the defaulting party shall proceed promptly after the receipt of such notice to cure such default, and shall pursue curing such default with due diligence, the time for curing shall be extended for such period of time as may be necessary to complete such curing, however, in no event shall this extension of time be in excess of sixty (60) days, unless agreed upon by the non-defaulting party.

20. REMEDIES. Should the defaulting party fail to cure a default under this Agreement, the other party shall have all remedies available either at law or in equity, and the right to terminate this Agreement. In the event Landlord elects to terminate this Agreement due to a default by Tenant (which remains uncured by Lender), Landlord shall continue to honor all sublease and license commitments made by Tenant through

the expiration of the term of any such commitment and shall be entitled to collect and retain the rents or license fees associated with such subleases or license commitments, it being intended hereby that each such commitment shall survive the early termination of this Agreement.

21. ATTORNEYS' FEES. If there is any legal proceeding between Landlord and Tenant arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment.

22. ADDITIONAL TERMINATION RIGHT. If at any time during the Term, Tenant determines, in Tenant's sole and absolute discretion, with or without cause, that the Premises is no longer suitable or desirable for Tenant's intended use and/or purposes, Tenant shall have the right to terminate this Agreement upon one hundred twenty (120) days prior written notice to Landlord during which time Tenant shall continue to pay the Rent.

23. PRIOR AGREEMENTS. The parties hereby covenant, recognize and agree that the terms and provisions of this Agreement shall constitute the sole embodiment of the arrangement between the parties with regard to the Premises, and that all other written or unwritten agreements, contracts, or leases by and between the parties with regard to the Premises are hereby terminated, superseded and replaced by the terms hereof.

24. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT. In the event the Property is encumbered by a mortgage or deed of trust or other security instrument of any kind (a "**Landlord Mortgage**"), Landlord, within fifteen (15) days following Tenant's request or immediately prior to the creation of any encumbrance created after the date this Agreement is fully executed, will obtain from the holder of each such Landlord Mortgage a fully-executed subordination, non-disturbance and attornment agreement (an "**SNDA**") in recordable form, which shall be prepared or approved by Tenant. The holder of every such Landlord Mortgage shall, in the SNDA, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure of Landlord's interest in the Premises, such Landlord Mortgage holder shall recognize and confirm the validity and existence of this Agreement, not disturb the tenancy of Tenant (and its customers, subtenants, and licensees) and Tenant (and its customers, subtenants, and licensees) shall have the right to continue its use and occupancy of the Premises in accordance with the provisions of this Agreement, provided Tenant is not in default of this Agreement beyond applicable notice and cure periods.

25. LENDER'S RIGHTS.

(a) Landlord agrees to recognize the subleases and licenses of all subtenants and licensees and will permit each of them to remain in occupancy of its premises notwithstanding any default hereunder by Tenant so long as each such respective subtenant or licensee is not in default under the lease/license covering its premises. Landlord agrees to execute such documents as any such subtenant and/or licensee might reasonably require, including customary subordination, non-disturbance and attornment agreements and/or Landlord recognition agreements, to further memorialize the foregoing, and further agrees to use Landlord's best efforts to also cause its lenders to similarly acknowledge, in writing, subtenant's and licensee's right to continue to occupy its premises as provided above.

(b) Tenant shall have the right from time to time to mortgage or otherwise encumber Tenant's interest in this Agreement, the Communications Facilities and/or leasehold estate in the Premises (a "**Tenant Mortgage**") and Landlord consents to the granting by Tenant of a lien and security interest in

Tenant's interest in this Agreement and/or leasehold estate of the Premises and all of Tenant's personal property and fixtures attached to the real property described herein, and furthermore consents to the exercise by any such lender of Tenant ("Lender") of its rights of foreclosure with respect to its lien and security interest. Landlord agrees to recognize Lender as Tenant hereunder upon any such exercise by Lender of its rights of foreclosure. The term "Lender" as used in this Agreement shall mean the lender identified in Section 29 hereof and its successors, assigns, designees or nominees.

(c) Landlord hereby agrees to give Lender written notice of any breach or default of Tenant of the terms of this Agreement within fifteen (15) days after the occurrence thereof at the address set forth in Section 29. Landlord further agrees that no default under this Agreement by Tenant shall be deemed to have occurred unless such notice to Lender is also given and that, in the event of any such breach or default under the terms of this Agreement, Lender shall have the right, to the same extent, for the same period and with the same effect, as Tenant, plus an additional ninety (90) days after any applicable grace period to cure or correct any such default.

(d) Landlord acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of Tenant under this Agreement. Lender shall not become liable under the provisions of this Agreement or any lease executed pursuant to Section 26 hereof unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate created hereby or thereby.

(e) This Agreement shall not be amended or modified without the consent of Lender. In the event that Lender shall become the owner of such leasehold estate, Lender shall not be bound by any modification or amendment of this Agreement made subsequent to the date of a Tenant Mortgage unless Lender shall have consented to such modification or amendment at the time it was made.

26. RIGHT TO NEW LEASE.

(a) In the case of termination of this Agreement for any reason, or in the event this Agreement is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, Landlord shall give prompt notice thereof to Lender at the address set forth in Section 29 or as may be provided to Landlord by Tenant following the Commencement Date. Thereafter, Landlord, upon written request of Lender, and within thirty (30) days after the receipt of such request, shall promptly execute and deliver a new lease of the Premises and assignment of all subleases and licenses to Lender or its designee or nominee, for the remainder of the Term upon all the covenants, conditions, limitations and agreements contained herein (including, without limitation, options to extend the Term) except for such provisions which must be modified to reflect such termination, rejection or disaffirmance and the passage of time, provided that Lender (i) shall pay to Landlord, simultaneously with the delivery of such new lease, all unpaid rent due under this Agreement up to and including the date of the commencement of the term of such new lease and all reasonable expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Landlord in connection with the default by Tenant, the termination of this Agreement and the preparation of the new lease, and (ii) shall cure all defaults existing under this Agreement which are susceptible to being cured by Lender promptly and with due diligence after the delivery of such new lease. Notwithstanding anything to the contrary contained herein, provided Lender shall have otherwise complied with the provisions of this Section, Lender shall have no obligation to cure any defaults which are not susceptible to being cured by Lender (for example, the bankruptcy of Tenant).

(b) For so long as Lender shall have the right to enter into a new lease with Landlord pursuant to this Section, Landlord shall not enter into a new lease of the Premises with any person or entity other than Lender, without the prior written consent of Lender.

27. ADDITIONAL PROVISIONS.

(a) The parties hereto agree that (i) Tenant is in possession of the Premises notwithstanding the fact that Tenant has subleased or licensed, or may in the future sublease or license, certain of the improvements thereon or portions of the Premises to third parties, and (ii) the requirements of Section 365(h) of Title 11 of the United States Code (the Bankruptcy Code) with respect to Tenant's possession of the leasehold under this Agreement are satisfied. Accordingly, the right of Tenant to remain in possession of the leasehold under this Agreement shall continue notwithstanding any rejection of this Agreement in any bankruptcy proceeding involving Landlord, or any other actions by any party in such a proceeding. This provision, while included in this Agreement, has been separately negotiated and shall constitute a separate contract between the parties as well as a part of this Agreement. The provisions of this Section are for the benefit of Tenant and its assigns, including, without limitation, Lender. The parties hereto also agree that Lender is a party in interest and shall have the right to appear as a party in any proceeding brought under any bankruptcy law or under any other law which may affect this Agreement.

(b) The provisions of Section 25 and Section 26 hereof shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if such Sections were a separate and independent contract made by Landlord, Tenant and Lender and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new lease, Lender may use and enjoy the leasehold estate created by this Agreement without hindrance by Landlord. The aforesaid agreement of Landlord to enter into a new lease with Lender shall be deemed a separate agreement between Landlord and Lender, separate and apart from this Agreement as well as a part of this Agreement, and shall be unaffected by the rejection of this Agreement in any bankruptcy proceeding by any party.

(c) Landlord shall have no right, and expressly waives any right arising under applicable law, in and to the rentals or other fees payable to Tenant, if any, under any sublease or license of the Premises by Tenant, which rentals or fees may be assigned by Tenant to Lender.

(d) If a Tenant Mortgage is in effect, this Agreement shall not be modified or amended by the parties hereto, or terminated or surrendered by Tenant, nor shall Landlord accept any such termination or surrender of this Agreement by Tenant, without the prior written consent of Lender.

(e) The provisions of Section 25 and Section 26 hereof are for the benefit of Lender and may be relied upon and shall be enforceable by Lender as if Lender were a party to this Agreement.

(f) Landlord shall, within ten (10) days of the request of Tenant or any Lender or prospective Lender, provide an estoppel certificate as to any matters reasonably requested by Tenant or Lender.

(g) The right to extend or renew this Agreement and any right of first refusal to purchase the Premises may be exercisable by the holder of a Tenant Mortgage and, before the expiration of any periods to exercise such a right, Landlord must provide to Lender at least thirty (30) days prior written notice before the expiration of the right to so extend or renew in order to extinguish Lender's right to so extend, renew or purchase.

(h) Under no circumstances shall the fee estate of Landlord and the leasehold estate created hereby merge, even though owned by the same party, without the written consent of the holder of a Tenant Mortgage.

28. QUIET ENJOYMENT. So long as Tenant is not in default under this Agreement beyond the applicable notice and cure period, Landlord covenants and agrees that Tenant shall peaceably and quietly hold and enjoy the Premises throughout the Term, without any hindrance, molestation or ejection by Landlord, its successors or assigns or by those claiming by, through or under them.

29. NOTICES. All notices, requests, claims, demands, and other communications hereunder shall be in writing and may be hand delivered (provided the deliverer provides proof of delivery) or sent by nationally established overnight courier that provides proof of delivery, or certified or registered mail (postage prepaid, return receipt requested). Notice shall be deemed received on the date of delivery as demonstrated by the receipt of delivery. Notices shall be delivered to a party at the party's respective address below, or to such other address that a party below may provide from time to time:

If to Landlord:

City of Ashland
601 Main Street West
Ashland, Wisconsin 54806

If to Tenant:

The Towers, LLC
750 Park of Commerce Drive,
Suite 200
Boca Raton, Florida 33487
Ref: US-WI-5735
Attn: VP Asset Management

If to Lender:

Toronto Dominion (Texas) LLC
31 West 52nd Street
New York, NY 10019
Attn: Admin Agent
Fax No. 416-982-5535

With a copy to: General Counsel

30. ENVIRONMENTAL. Tenant shall not use or store any Hazardous Materials (defined below) of any kind on the Premises except in accordance with applicable law. Tenant shall, at its sole cost, remove, dispose and remediate all Hazardous Materials transported, manufactured, use, stored, or released on the Premises by Tenant or any of its agents, employees or independent contractors. Tenant shall defend, indemnify, and hold Landlord, its agents and employees, harmless from and against any and all claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the introduction, use, manufacture, storage or release of Hazardous Materials on the Premises by Tenant. For purposes of this Agreement, "**Hazardous Materials**" shall include hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.), petroleum and petroleum products, and any other hazardous or toxic materials, substances or wastes under any federal, state or local laws or regulations relating to protections of health, safety, or the environment. The obligations of this Section shall survive the expiration or terminations of this Agreement.

31. MISCELLANEOUS.

(a) Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

(b) If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

(c) All attached exhibits are hereby incorporated by this reference as if fully set forth herein.

(d) Failure of a party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a party's rights hereunder, shall not waive such rights.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State or Commonwealth in which the Premises are located.

(f) This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, other leases and/or agreements with regard to the Premises. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both parties.

(g) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(h) A short-form Memorandum of Option to Lease (and a short-form Memorandum of Lease in the event Tenant exercises its option to lease the Premises) may be recorded at Landlord's or Tenant's option in the form as depicted in **Exhibit 3** and **Exhibit 4**, respectively, attached hereto. In addition, Tenant's subtenants and licensees shall have the right to record a memorandum of its sublease or license with Tenant.

(i) Subject to the requirements of the Wisconsin Open Records law, Wis. Stats. § 19.31, et seq, Landlord shall keep the terms of this Agreement confidential and shall not disclose any terms contained within this Agreement to any third party other than such terms as are set forth in the Memorandum of Option to Lease or Memorandum of Lease.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:	
Name: _____	
Name: _____	
Name: _____	

LANDLORD:
City of Ashland a Wisconsin municipality
By: _____
Name: _____
Title: _____
Date: _____

COUNTY OF _____

Notary Public

Print Name: _____

My Commission Expires:_____

(Tenant signature page to Option and Lease Agreement)

WITNESSES: _____ Name: _____ _____ Name: _____	TENANT: The Towers, LLC a Delaware limited liability company By: _____ Name: _____ Title: _____ Date: _____
---	---

STATE OF FLORIDA

COUNTY OF PALM BEACH

This instrument was acknowledged before me on _____, 20_____, by _____
_____ (name of signatory), as _____
(title of signatory) of The Towers, LLC.

Notary Public

Print Name: _____

My Commission Expires: _____

EXHIBIT 1

Legal Description of the Property (Parent Parcel)

(may be updated by Tenant upon receipt of final legal description from title)

The following described real estate in Ashland County, Wisconsin:

Lot 1 of Certified Survey Map No. 561

Parcel ID: 201-05120-0210

This being a portion of the same property conveyed to City of Ashland, a Wisconsin municipal corporation by a Deed from Barbara A. Sears and Randy F. Foris, as joint tenants, and not as tenants in common dated 9/14/1998 and recorded 9/14/1998 in Book 495 Page 832 and Instrument 261278 in the County of Ashland, State of Wisconsin. Also, being the same property conveyed to City of Ashland, a Wisconsin municipal corporation by a Deed from James C. Hegbloom and Barbara B. Hegbloom dated 12/23/1975 and recorded 1/27/1976 in Book 315 Page 540 and Instrument 187893 in the County of Ashland, State of Wisconsin.

EXHIBIT 2

Premises

(below may be replaced with a final survey and legal description of the Premises)

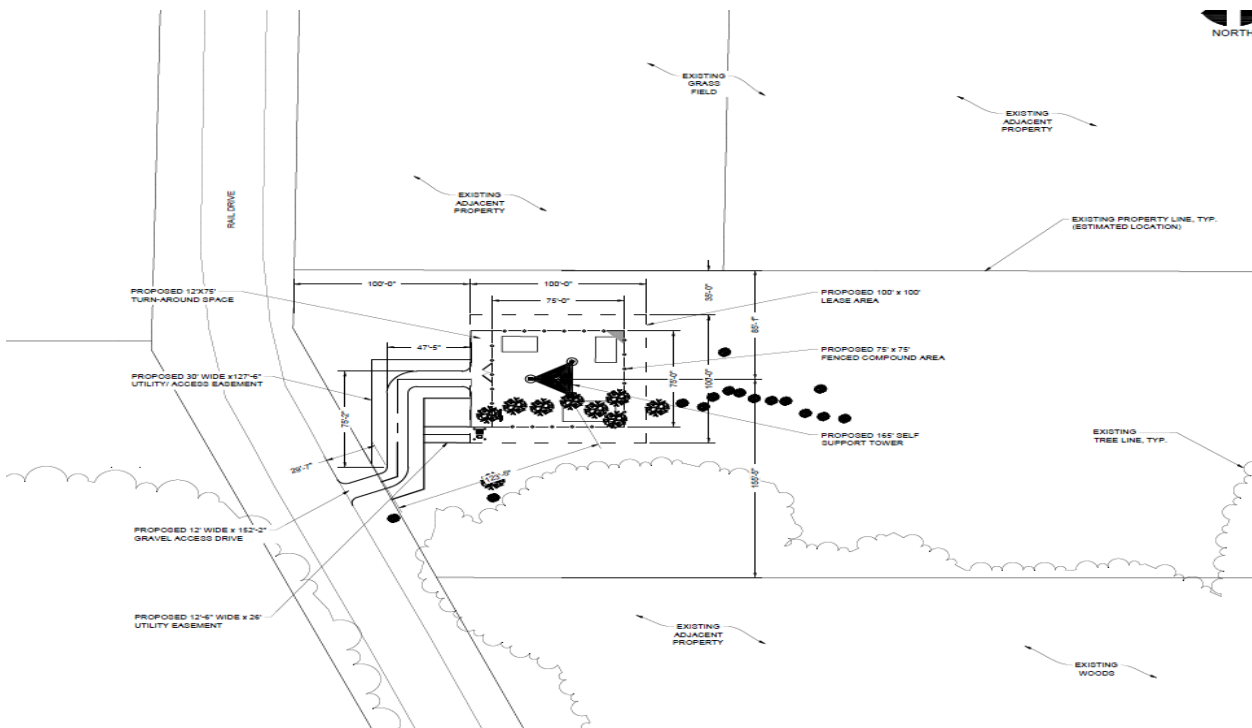


EXHIBIT 3

Memorandum of Option to Lease

(Attached)

(Above 3" Space for Recorder's Use Only)

Upon Recording Return to:

The Towers, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487
Attn: General Counsel

Site Name: Ashland Industrial
Site Number: US-WI-5735
Commitment #: VTB-180480-C

MEMORANDUM OF OPTION TO LEASE

This Memorandum of Option to Lease (this "**Memorandum**") evidences an Option and Lease Agreement (the "**Agreement**") between **City of Ashland**, a Wisconsin municipality ("**Landlord**"), whose address is 601 Main Street West, Ashland, Wisconsin 54806, and **The Towers, LLC**, a Delaware limited liability company, known in Wisconsin as The Towers of Wisconsin BTS, LLC ("**Tenant**"), whose address is 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487, dated _____, 20____ (the "**Effective Date**"), for a portion (the "**Premises**") of the real property (the "**Property**") described in **Exhibit A** attached hereto.

Pursuant to the Agreement, Landlord has granted Tenant an exclusive option to lease the Premises (the "**Option**"). The Option commenced as of the Effective Date and shall continue in effect for a period of four (4) years from the Effective Date.

Landlord ratifies, restates and confirms the Agreement and, upon exercise of the Option, shall lease to Tenant the Premises, subject to the terms and conditions of the Agreement. The Agreement provides for the lease by Landlord to Tenant of the Premises for an initial term of (5) years with nine (9) renewal option(s) of an additional five (5) years each, and further provides:

1. Landlord may assign the Agreement only in its entirety and only to a purchaser of the fee interest of the Property;
2. Under certain circumstances, Tenant has a right of first refusal to acquire the Premises or the Property from Landlord;
3. Under certain circumstances, Landlord may subdivide the Property without Tenant's prior written consent; and

4. The Agreement restricts Landlord's ability to utilize, or allow the utilization of the Property or real property owned by Landlord which is adjacent or contiguous to the Property for the construction, operation and/or maintenance of the Communications Facilities (as defined in the Agreement).

This Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement. In the event of a conflict between the provisions of this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of Landlord and Tenant and shall inure to the benefit of their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK, SIGNATURES
BEGIN ON NEXT PAGE

WITNESSES:	LANDLORD:
_____ Name: _____ _____ Name: _____	City of Ashland a Wisconsin municipality By: _____ Name: _____ Title: _____ Date: _____

COUNTY OF _____

Notary Public

Print Name: _____

My Commission Expires:_____

(Tenant's Signature Page to Memorandum of Option to Lease)

WITNESSES: _____ Name: _____ _____ Name: _____	TENANT: The Towers, LLC a Delaware limited liability company By: _____ Name: _____ Title: _____ Date: _____
---	---

STATE OF FLORIDA

COUNTY OF PALM BEACH

This instrument was acknowledged before me on _____, 20_____, by _____
(name of signatory), as _____
(title of signatory) of The Towers, LLC.

Notary Public

Print Name: _____

My Commission Expires:_____

EXHIBIT A
(TO MEMORANDUM OF OPTION TO LEASE)

The Property

(may be updated by Tenant upon receipt of final legal description from title)

The following described real estate in Ashland County, Wisconsin:

Lot 1 of Certified Survey Map No. 561

Parcel ID: 201-05120-0210

This being a portion of the same property conveyed to City of Ashland, a Wisconsin municipal corporation by a Deed from Barbara A. Sears and Randy F. Foris, as joint tenants, and not as tenants in common dated 9/14/1998 and recorded 9/14/1998 in Book 495 Page 832 and Instrument 261278 in the County of Ashland, State of Wisconsin. Also, being the same property conveyed to City of Ashland, a Wisconsin municipal corporation by a Deed from James C. Hegbloom and Barbara B. Hegbloom dated 12/23/1975 and recorded 1/27/1976 in Book 315 Page 540 and Instrument 187893 in the County of Ashland, State of Wisconsin.

Access and utilities serving the Premises (as defined in the Agreement) includes all easements of record as well as that portion of the Property designated by Landlord and Tenant for Tenant (and Tenant's guests, agents, customers, subtenants, licensees and assigns) ingress, egress, and utility purposes to and from a public right-of-way.

EXHIBIT 4

Memorandum of Lease

(Attached)

(Above 3" Space for Recorder's Use Only)

Upon Recording Return to:

The Towers, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487
Attn: General Counsel

Site Name: Ashland Industrial
Site Number: US-WI-5735
Commitment #: VTB-180480-C

MEMORANDUM OF LEASE

This Memorandum of Lease (this "**Memorandum**") evidences a Lease Agreement (the "**Lease**") between **City of Ashland**, a Wisconsin municipality ("**Landlord**"), whose address is 601 Main Street West, Ashland, Wisconsin 54806, and **The Towers, LLC**, a Delaware limited liability company, known in Wisconsin as The Towers of Wisconsin BTS, LLC ("**Tenant**"), whose address is 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487, dated the _____ day of _____, 20____ (the "**Effective Date**"), for a portion (the "**Premises**") of the real property (the "**Property**") described in Exhibit A attached hereto.

Landlord hereby ratifies, restates and confirms the Lease and leases to Tenant the Premises, subject to the terms and conditions of the Lease. The Commencement Date of the Lease is _____. The Lease provides for the lease by Landlord to Tenant of the Premises for an initial term of five (5) years with nine (9) renewal option(s) of an additional five (5) years each, and further provides:

1. Landlord will attorn to any mortgagee of Tenant, subordinate any Landlord's lien to the Lease and to liens of Tenant's mortgagees, and not disturb the tenancy of Tenant;
2. The Lease restricts Landlord's ability to utilize, or allow the utilization of the Property or real property owned by Landlord which is adjacent or contiguous to the Property for the construction, operation and/or maintenance of Communications Facilities (as defined in the Lease);
3. Tenant (and persons deriving rights by, through, or under Tenant) are the sole parties to market, use, or sublease any portion of the Property for Communications Facilities during the term of the Lease (such restriction shall run with the land and be binding on the successors and assigns of Landlord);

4. The Premises may be used exclusively by Tenant for all legal purposes, including, without limitation, erecting, installing, operating and maintaining Communications Facilities;

5. Tenant is entitled to sublease and/or license the Premises, including any Communications Facilities located thereon;

6. Under certain circumstances, Tenant has a right of first refusal to acquire the Premises from Landlord;

7. Landlord may assign the Lease only in its entirety and only to a purchaser of the fee interest of the Property; and

8. Under certain circumstances, Landlord may subdivide the Property without Tenant's prior written consent.

This Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease. In the event of a conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of Landlord and Tenant and shall inure to the benefit of their respective heirs, successors, and assigns, subject to the provisions of the Lease.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK, SIGNATURES
BEGIN ON NEXT PAGE

WITNESSES:	LANDLORD:
	City of Ashland a Wisconsin municipality
	By: _____
Name: _____	Name: _____
	Title: _____
Name: _____	Date: _____

COUNTY OF _____

Notary Public

Print Name: _____

My Commission Expires:_____

(Tenant's Signature Page to Memorandum of Lease)

WITNESSES:	TENANT:
	The Towers, LLC a Delaware limited liability company
_____	By: _____
Name: _____	Name: _____
_____	Title: _____
Name: _____	Date: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

This instrument was acknowledged before me on _____, 20_____, by _____
 _____ (name of signatory), as _____
 _____ (title of signatory) of The Towers, LLC.

Notary Public

Print Name: _____

My Commission Expires:_____

EXHIBIT A
(TO MEMORANDUM OF LEASE)

The Property

(may be updated by Tenant upon receipt of final legal description from title)

The following described real estate in Ashland County, Wisconsin:

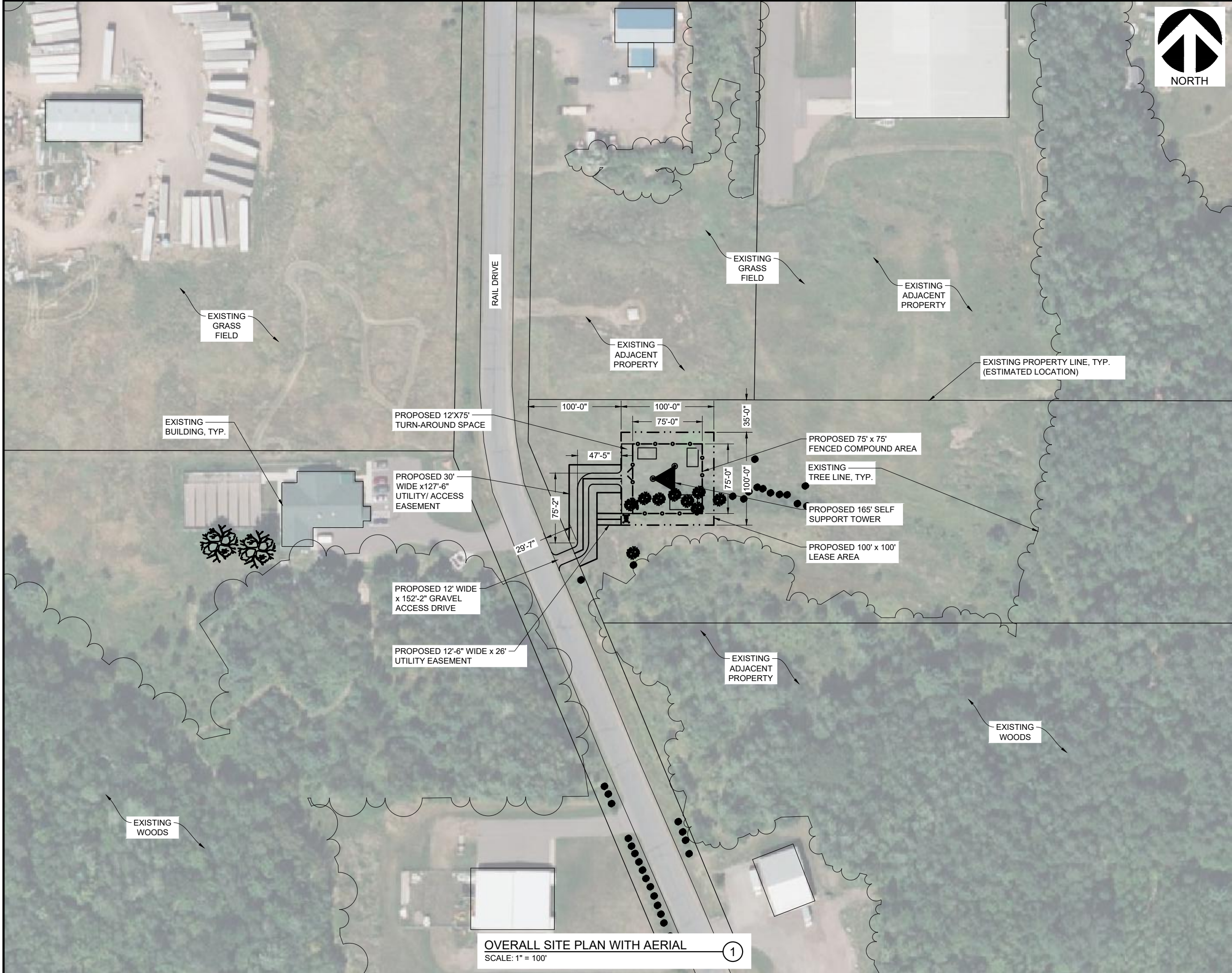
Lot 1 of Certified Survey Map No. 561

Parcel ID: 201-05120-0210

This being a portion of the same property conveyed to City of Ashland, a Wisconsin municipal corporation by a Deed from Barbara A. Sears and Randy F. Foris, as joint tenants, and not as tenants in common dated 9/14/1998 and recorded 9/14/1998 in Book 495 Page 832 and Instrument 261278 in the County of Ashland, State of Wisconsin. Also, being the same property conveyed to City of Ashland, a Wisconsin municipal corporation by a Deed from James C. Hegbloom and Barbara B. Hegbloom dated 12/23/1975 and recorded 1/27/1976 in Book 315 Page 540 and Instrument 187893 in the County of Ashland, State of Wisconsin.

Said interest being over land more particularly described by the following description:

Insert metes and bounds description of area



OVERALL SITE PLAN WITH AERIAL ①
SCALE: 1" = 100'





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employee-owned
(608) 643-4100 www.ramaker.com



10801 BUSH LAKE ROAD
BLOOMINGTON, MN 55438

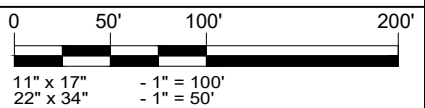
Certification & Seal:

MARK	DATE	DESCRIPTION
ISSUE	DATE	DATE
PHASE	LEASE EXHIBIT	ISSUED 05/15/2024

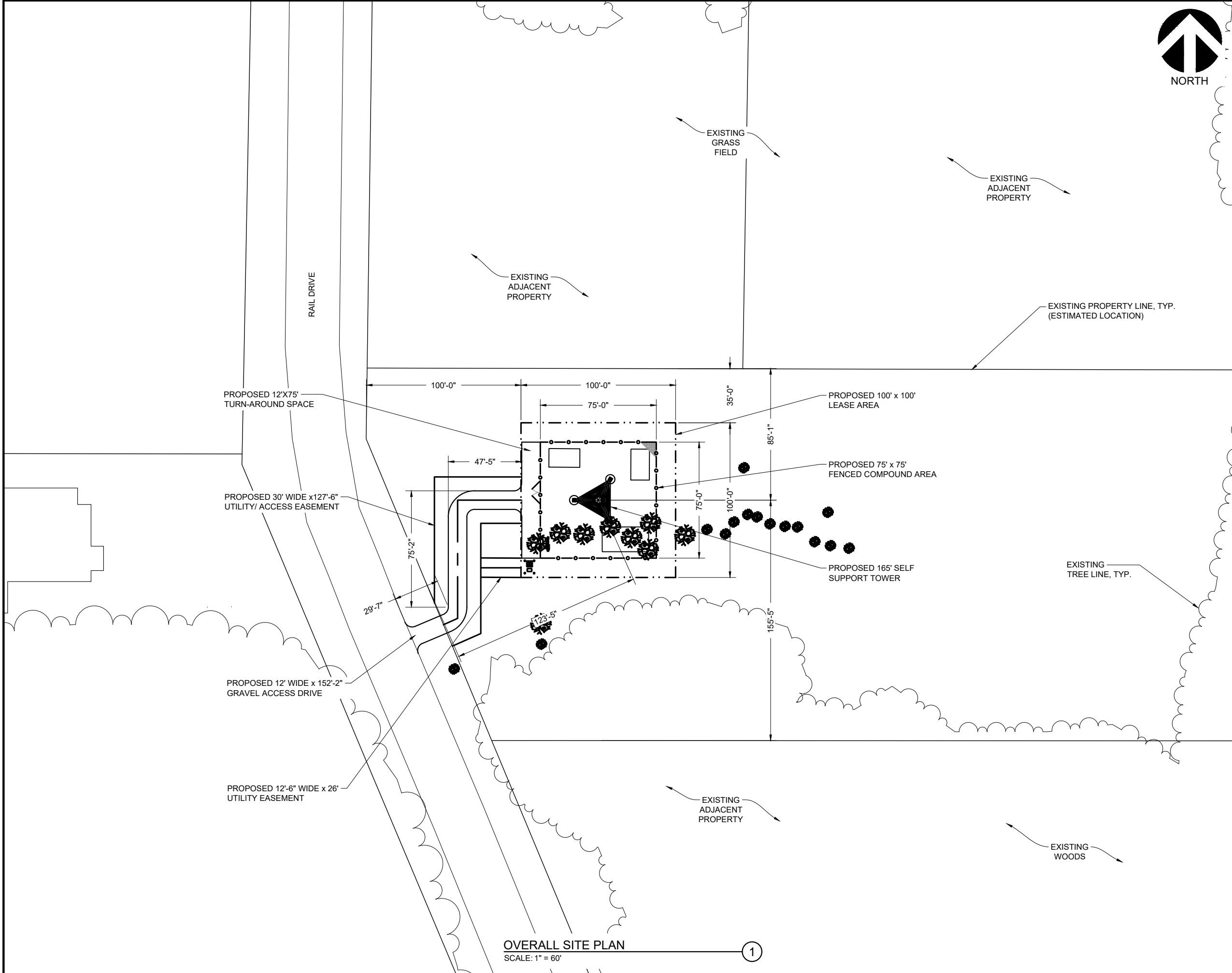
PROJECT TITLE:
**ASHLAND INDUSTRIAL-B
5000345027**

PROJECT INFORMATION:
EAST SIDE OF RAIL DR.
ASHLAND, WI 54806
ASHLAND COUNTY

SHEET TITLE:
**OVERALL SITE PLAN WITH
AERIAL**



PROJECT NUMBER	60500
SHEET NUMBER	A-1





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(608) 643-4100 www.ramaker.com



10801 BUSH LAKE ROAD
BLOOMINGTON, MN 55438

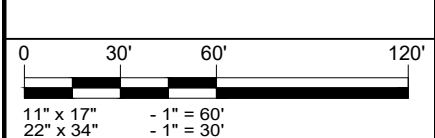
Certification & Seal:

MARK	DATE	DESCRIPTION
ISSUE	LEASE EXHIBIT	DATE ISSUED 05/15/2024
PHASE		

PROJECT TITLE:
**ASHLAND INDUSTRIAL-B
5000345027**

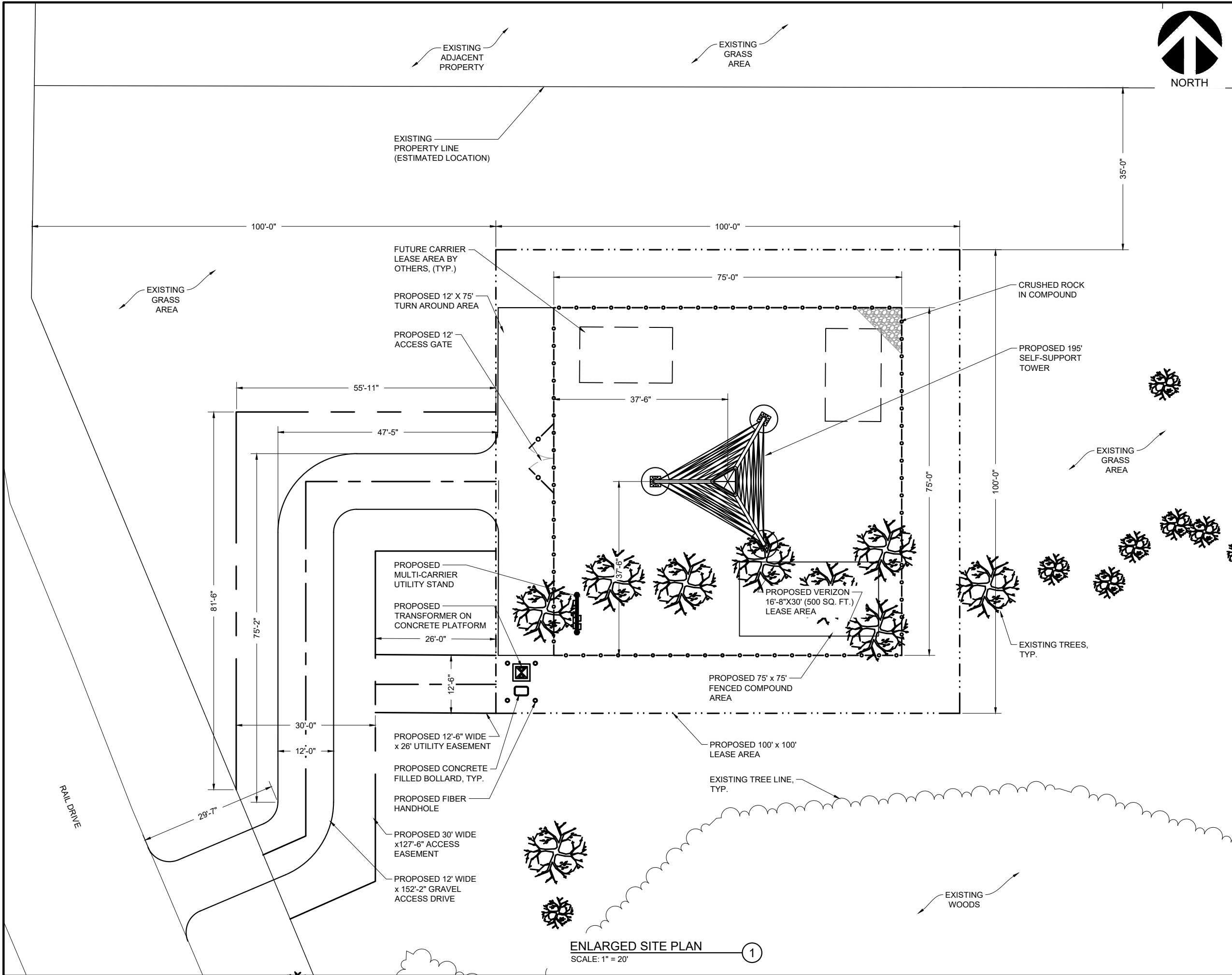
PROJECT INFORMATION:
EAST SIDE OF RAIL DR.
ASHLAND, WI 54806
ASHLAND COUNTY

SHEET TITLE:
OVERALL SITE PLAN



PROJECT NUMBER	60500
SHEET NUMBER	A-2

OVERALL SITE PLAN
SCALE: 1" = 60' ①



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verizon
10801 BUSH LAKE ROAD
BLOOMINGTON, MN 55438

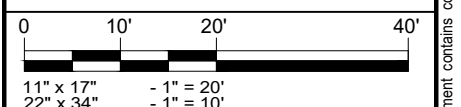
Certification & Seal:

MARK	DATE	DESCRIPTION
ISSUE	LEASE EXHIBIT	DATE ISSUED 05/15/2024

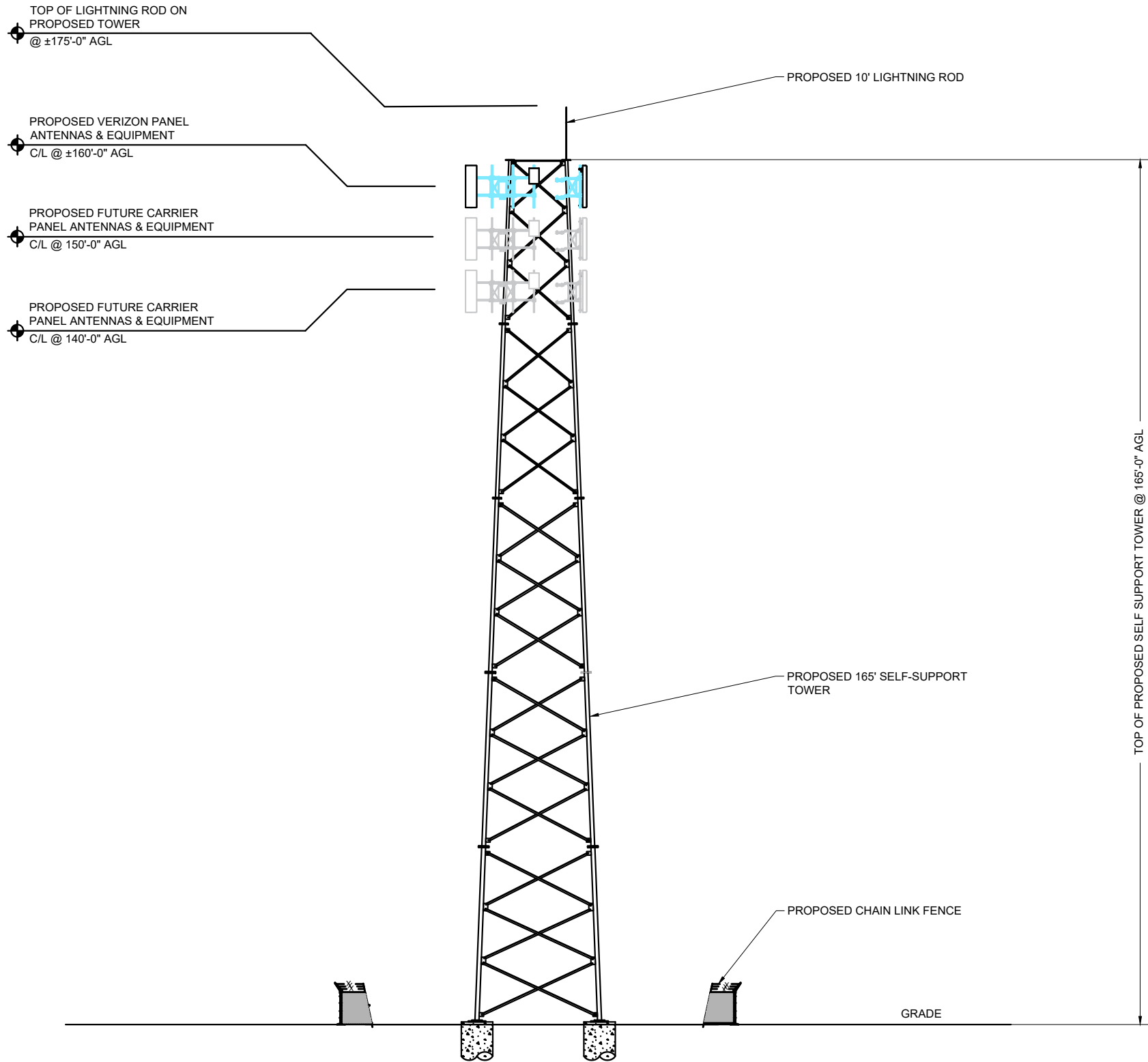
PROJECT TITLE:
**ASHLAND INDUSTRIAL-B
5000345027**

PROJECT INFORMATION:
EAST SIDE OF RAIL DR.
ASHLAND, WI 54806
ASHLAND COUNTY

SHEET TITLE:
ENLARGED SITE PLAN



PROJECT NUMBER	60500
SHEET NUMBER	A-3



TOWER ELEVATION ①
SCALE: 1" = 25'



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(608) 643-4100 www.ramaker.com



10801 BUSH LAKE ROAD
BLOOMINGTON, MN 55438

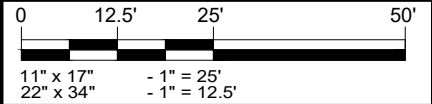
Certification & Seal:

MARK	DATE	DESCRIPTION
ISSUE	LEASE EXHIBIT	DATE ISSUED 05/15/2024

PROJECT TITLE:
**ASHLAND INDUSTRIAL-B
5000345027**

PROJECT INFORMATION:
EAST SIDE OF RAIL DR.
ASHLAND, WI 54806
ASHLAND COUNTY

SHEET TITLE:
TOWER ELEVATION



PROJECT NUMBER	60500
SHEET NUMBER	A-4

Ref: 2024-208

COUNCIL AGENDA: 8.C.
(9/24/2024)

SUBJECT: Approve the Agreement for Professional Services between the City of Ashland and Short Elliot Hendrickson, Inc. for the 2025/2026 Sanitary Sewer Lift Station Improvements Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Approved by Committee of the Whole, September 10, 2024

EXHIBITS:

1. Agreement for Professional Services between City of Ashland and Short Elliott Hendrickson, Inc.
2. Main Lift Station Pump Condition Report

EXPENDITURES REQUIRED: \$94,000 - Fund 690 Wastewater Utility (WI DNR Clean Water Loan FY 2026)

AMOUNT BUDGETED: N/A

APPROPRIATION REQUIRED: \$94,000 - Fund 690 Wastewater Utility (WI DNR Clean Water Loan FY 2026)

TREASURER'S CERTIFICATE: The Treasurer's Office has certified that Short, Elliott, Hendrickson, Inc. is in compliance with Ashland City ordinance 923.10.

COMPLIANCE WITH CHAPTER 51: N/A

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:

As previously presented to Council, the City has been working with Short Elliott Hendrickson, Inc. (SEH) to evaluate the wastewater treatment plant (WWTP) and associated pumping facilities to prioritize other long term needs. Staff and SEH have developed a long-term WWTP upgrade project that will be evaluated for potential grant opportunities.

However, these efforts have indicated that upgrades to sewer pumping facilities (ie lift stations) are a priority in the near term.

The Main Lift Station is located along the waterfront trail near 11th Avenue East. This facility is responsible for conveyance of approximately 80% of sewage to the WWTP on an annual basis. This is by design, as the City's WWTP was relocated from the waterfront in 1991. The Main Lift Station has six pumps which are used during high flow events to prevent sewer overflows. Four of these pumps are original from the 1991 construction and lack modern pump starting equipment which can reduce electrical demand and extend the useful lifetimes of the pumps. Due to the criticality of these pumps, proactive replacement is recommended to avoid pump failure. These pumps are quite large and require electrical and mechanical modifications to install, and the project is expected to cost over \$1 million. The attached condition report from 2022 shows that all 6 of the pumps have a condition rating of "Bad" as determined by an independant contractor specializing in pump equipment.

The Turner Road Lift Station is located near the junction of US2 and Turner Road and is a much smaller facility responsible for conveyance of sewage at the west end of the city. The Turner Road lift station was constructed in 1982 and aside from pump replacement in 2017, most components are original. The lift station is typical in that pumps are housed in a "dry well" while sewage is stored in a "wet well". With submersible pump technology, most lift stations simply use a wet well to provide more storage and prevent overflows. In addition, the wet well is severely cracked and allows a significant amount of I&I to enter the system due to a high groundwater table in the area. The 2017 Master Plan for the Wastewater Utility recommends the Turner Road Lift Station for complete replacement. Due to the smaller size, replacement of this lift station is expected to cost around \$550,000.

Staff is proposing to move forward with a Lift Station Upgrades project for 2025 construction and has negotiated an agreement with SEH to provide technical design and other services. Staff do not feel that the Lift Station Upgrades project can be deferred as with the WWTP Upgrades. The project is proposed to be funded by a combination of equipment replacement funds, Wisconsin Department of Natural Resources (WI DNR) grant/loan funds, and/or revenue bonds. The cost of SEH's services are anticipated to be included in the WI DNR grant/loan funds.

The Public Works Committee (PWC) recently recommended increases to fees charged for bulk treatment related to septic/holding tanks. These increases will be presented to the Council via the 2025 budget and are expected to provide sufficient additional revenue for debt service on the Lift Station Upgrades project. Details on the proposed fee increases recommended by the PWC are attached.

The proposed fee increases are recommended for the long term sustainability of the Wastewater Utility. If the fee increases are not adopted by the Council, the Public Works Director is

verifying that the Wastewater Utility has sufficient cash reserves to fund the agreement at the present.

The Wastewater Utility recommends accepting the proposal from SEH to allow for project design for 2025 construction.

Agreement for Professional Services

This Agreement is effective as of September 30, 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: **Lift Station Improvements**

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

Project Manager: Samuel Bender
Address: 156 High Street, Suite 300, New Richmond, Wisconsin 54017
Telephone: 231.769.2028 **email:** sbender@sehinc.com

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

The proposed engineering services in general consist of preparation of drawings and specifications, and bidding the project as described in this Agreement. The design for this project will address the items identified in the forthcoming Abbreviated Facility Plan as needs at Main Lift Station and Turner Rd Lift Station. It is understood the Client intends to utilize Clean Water Fund Program (CWFP) funding for the project in whole or in part.

Consultant proposes the following work scope for design and bidding of the Lift Station Improvements project:

Task 1 – Final Design

1. Main Lift Station
 - Replace two existing pumps with dry-pit submersible style pumps.
 - Replace VFDs associated with the two pumps replaced.
2. Turner Road Lift Station
 - Replace existing dry pit pumps with submersible pumps, located within existing 6-foot diameter wet well.
 - Demolish existing dry well structure.
 - Construct new valve vault to house plug and check valve for each new submersible pump.
 - Rehabilitate existing wet well to minimize infiltration.

The following items are included in the Design Scope:

- A virtual design kickoff meeting will be held with Client staff and design leads from each discipline.
- Consultant will prepare preliminary design drawings, outline specifications, and opinion of probable construction cost.
- A virtual design review meeting will be held with the Client staff and Project Manager to review the preliminary design. Consultant will respond to comments and gain approval on preliminary design from Client before proceeding with the remainder of final design.
- Consultant will prepare final drawings, specifications, design report, contract documents, and opinions of probable construction cost for the Lift Station Improvements project.

- Design documents will include provisions for project compliance with current CWFP requirements including “American Iron and Steel”. According to the CWFP State Fiscal Year 2025 Draft Intended Use Plan, “Build America, Buy America” compliance applies to projects that are designated as Federal Equivalency projects. Federal Equivalency applies if the municipality’s population exceeds 20,000 persons. The final determination on designation will be by DNR when they issue the Project Priority List after the applications have been submitted. As of the criteria in place in August 2024, Ashland does not appear to fall under the BABA requirements.
- Design Documents will be submitted to the Wisconsin Department of Natural Resources (WDNR) for review and approval. If necessary, Consultant will respond to comments from WDNR to gain approval prior to project bidding.

Task 2 – Bidding

100% Bidding Documents will be prepared after addressing comments or requests for revisions from review agencies and Client staff. The following items are included in the bidding scope:

1. Preparation of 100% Bidding Documents. Two (2) hard copies and one electronic copy of the Bidding Documents will be delivered to the Client.
2. Provide necessary documentation to City staff to request Authorization to Advertise for Bidding.
3. Prepare the advertisement for bidding and assist the Client in advertising.
4. Respond to bidders’ questions during advertisement.
5. Prepare up to one addendum to clarify or expand upon the bidding documents.
6. Virtually attend one (1) Pre-bid meeting.
7. Virtual bidding and electronic submittal of bids will be used for this project through Quest CDN. The bids will be collected electronically and reviewed by Consultant. A tabulation of bids will be prepared and delivered to the Client.
8. Prepare recommendation for award of contract.

ASSUMPTIONS/CONDITIONS

This Agreement is subject to the following assumptions/conditions:

1. No site visits will be performed by SEH. City staff will provide support for gathering site information.
2. Existing Record Drawings of the Main Lift station will be used as base sheets instead of drafting new plan sheets for Work at that location.
3. No changes to buried sewer or force main pipes more than 20 feet from the station are required.
4. No soil borings or geotechnical analysis are required.
5. No site survey is required besides verifying the existing Turner Road Lift Station wet well lid is two feet above 100-year flood elevation.
6. No changes are required that affect the rated capacity of the treatment facility.
7. No floodplain review is required.
8. Wetland delineation will be completed under a separate PSA.
9. Consultant’s standard bidding documents, specifications, general conditions, and O&M Manual format will be utilized on the project.
10. Contract documents will be EJCDC format.
11. Contract documents will be prepared for a single prime contract.
12. Presence of significant historic and cultural resources, or threatened and endangered species is not anticipated and, therefore, further studies or permitting relating to these are not included.
13. Clean Water Fund Program application and administration is not included. Consultant is pleased to provide scope and fee to complete these services prior to September 30, 2025.
14. No construction related services are included Consultant is pleased to provide scope and fee for these services following completion of Task 1.

CLIENT’S RESPONSIBILITIES

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

1. Furnish Consultant information, reports, tests, operation and maintenance manuals, and record drawings of existing facilities, all of which Consultant may rely upon without independent verification in performing the Services.
2. 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.

3. Provide all criteria and full information as to Client requirements for the Project. Obtain (with Consultant's assistance, if applicable) necessary approvals and permits, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and generally participate in the Project to the extent necessary to allow Consultant to perform the Services.
4. Assist Consultant in preparation of Division 00 and 01 specifications in making fiscal, insurance, and legal decisions as necessary. These are the specifications that form the terms of the contract for construction.
5. Pay all charges or fees required by any agency or authority having jurisdiction over the Project for review of plans, specifications, and contract documents, or for obtaining permits.
6. Pay all charges or fees associated with advertising the project.
7. Publication of any notices required by the grant application or administration process. All costs associated with any required public notices shall be a direct expense of the Client.
8. Legal, financial advisor, and accounting fees that may be required as part of the grant application or administration process.

Schedule: Consultant is prepared to complete this scope of work and begin these efforts upon receipt of Client's written authorization. Barring any unforeseen delays, the following milestones are proposed:

1. Authorization to proceed by September 30, 2024.
2. Submit design and bidding documents to review agencies by January 31, 2025.
3. Depending on agency review time, complete final bidding documents by April 30, 2025.
4. Bid Project in May-June 2025

Hourly - JB

Payment: The ~~lump~~ sum fee is \$94,000 including expenses and equipment. The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-2.

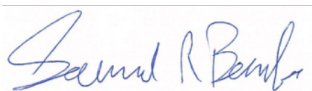
This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services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

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
None.

Short Elliott Hendrickson Inc.

City of Ashland

By:



Full Name: Samuel Bender
Title: Engineer V

By:

Full Name:
Title:

Exhibit A-2
to Agreement for Professional Services
Between City of Ashland (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated September 30, 2024

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

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

A. Lump Sum Basis Option

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

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

B. Expenses Not Included in the Lump Sum

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

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

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

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.



Quality Flow Systems, Inc.

800 6th ST N.W.

New Prague, MN 56071

(952) 758-9445

Customer/City: Ashland, WI

Lift Station Name: Main LS (Pumps 1-4)

Lift Station Address: 314 N. 11th Ave. E

Date of Inspection: 12/7/2022

Service Inspection Report

	Pump #1	Pump #2	Pump #3	Pump #4
Make/Year	Chicago	Chicago	Chicago	Chicago
Model	86154BHT	86154BHT	86154BHT	86154BHT
Serial No.	x	x	x	x
HP/R.P.M	150hp / 1785rpm	150hp / 1785rpm	150hp / 1785rpm	150hp / 1785rpm
Voltage/Phase	460/3	460/3	460/3	460/3
Impeller Type	Dual Vane	Dual Vane	Dual Vane	Dual Vane
Impeller Size	x	x	x	x
Full Load Amps	164	164	164	164
Guide System	Dry-Pit	Dry-Pit	Dry-Pit	Dry-Pit
Rail Dia.	x	x	x	x
Pump Size/Claw Size	6"	6"	6"	6"
Pull Pump From Volute	x	x	x	x
Volute Condition	x	x	x	x
Drop Impeller	x	x	x	x
Impeller Condition	Bad	Bad	Bad	Bad
Rotating Wear Ring	x	x	x	x
Material/Size	x	x	x	x
Stationary Wear Ring	x	x	x	x
Material/Size	x	x	x	x
Coolant Condition	x	x	x	x
Greased	Yes	Yes	Yes	Yes
Leakage Chamber	x	x	x	x
Inspect Pump Cable	x	x	x	x
Oil Condition	x	x	x	x
Running Condition	Ok	Ok	Ok	Ok
Discharge Leakage	None	None	None	None

Service Inspection Report

	Pump #1	Pump #2	Pump #3	Pump #4
Megger Test	x	x	x	x
Seal Leak/FLS Ohm Test	x	x	x	x
Thermistor Ohm Test	x	x	x	x
Ω Ohm Test	x	x	x	x
Line Volts	480	480	480	480
Load Volts	VFD	VFD	VFD	VFD
Amps	156 / 154 / 157	156 / 155 / 157	164 / 166 / 167	171 / 172 / 170
Tighten/Inspect Wires	Ok	Ok	Ok	Ok
RTM Hours	8,658	8,988	9,402	4,114

	Manufacure	Model or Size	Notes:
Control Panel	Energenics		
PLC	AB	Micrologix 1400	
Starter / VFD	Yaskawa	CIR-PU4A0208AAA	
Heater No./OL Size	x		
Pump Breaker	Westinghouse	400A	
Phase Monitor	x		
Float controller	PR	5202B	
No. of Float Switches	0 1 <u>2</u> 3 4 5 6		
Clean and Inspect Floats	Y / N		
Pump Alternation	Y / N		
Alarms Working	Y / N		
Junction Box	Y / N		
Tranducer	Y / N		
Pit Dia. / Depth			

Inspected by: Alex Witte

Comments: _____



Quality Flow Systems, Inc.

800 6th ST N.W.

New Prague, MN 56071

(952) 758-9445

Customer/City: Ashland, WI

Lift Station Name: Main LS (Pumps 5-6)

Lift Station Address: 314 N. 11th Ave. E

Date of Inspection: 12/7/2022

Service Inspection Report

	Pump #5	Pump #6	Pump #3	Pump #4
Make/Year	Chigago	Chigago		
Model	x	x		
Serial No.	x	x		
HP/R.P.M	86154BHT	86154BHT		
Voltage/Phase	460/3	460/3		
Impeller Type	Dual Vane	Dual Vane		
Impeller Size	x	x		
Full Load Amps	164	164		
Guide System	Dry-Pit	Dry-Pit		
Rail Dia.	x	x		
Pump Size/Claw Size	x	x		
Pull Pump From Volute	x	x		
Volute Condition	x	x		
Drop Impeller	x	x		
Impeller Condition	Bad / Thin	Bad / Thin		
Rotating Wear Ring	x	x		
Material/Size	x	x		
Stationary Wear Ring	x	x		
Material/Size	x	x		
Coolant Condition	x	x		
Greased	Yes	Yes		
Leakage Chamber	x	x		
Inspect Pump Cable	x	x		
Oil Condition	x	x		
Running Condition	x	x		
Discharge Leakage	None	None		

Service Inspection Report

	Pump #5	Pump #6	Pump #3	Pump #4
Megger Test	x	x		
Seal Leak/FLS Ohm Test	x	x		
Thermistor Ohm Test	x	x		
Ω Ohm Test	x	x		
Line Volts	480	480		
Load Volts	VFD	VFD		
Amps	Good	Good		
Tighten/Inspect Wires	Ok	Ok		
RTM Hours	9,992	543		

	Manufacure	Model or Size	Notes:
Control Panel	Energenics		
PLC	x		
Starter / VFD	x		
Heater No./OL Size	x		
Pump Breaker	x		
Phase Monitor	x		
Float controller	x		
No. of Float Switches	0 1 <u>2</u> 3 4 5 6		
Clean and Inspect Floats	<u>Y</u> / N		
Pump Alternation	<u>Y</u> / N		
Alarms Working	<u>Y</u> / N		
Junction Box	<u>Y</u> / N		
Tranducer	<u>Y</u> / N		4-20mA
Pit Dia. / Depth			

Inspected by: Alex Witte

Comments: _____

Ref: 2024-209

COUNCIL AGENDA: 8.D.
(9/24/2024)

SUBJECT: Approve a Professional Services Agreement between the City of Ashland and Short, Elliott, Hendrickson, Inc. for Grant Administration and Engineering Design Services for the 2026 CDBG Street & Utility Improvements Project (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Approved Unanimously by Committee of the Whole, July 9, 2024

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

EXPENDITURES REQUIRED: \$ 81,081.00 Fund 470 Street Improvements
\$ 97,119.00 Fund 680 Water Utility
\$178,200.00 Total Grant Administration and Engineering Services

AMOUNT BUDGETED: \$ 75,000.00 Fund 470 Street Improvements

APPROPRIATION REQUIRED: \$ 6,081.00 Fund 470 Street Improvements
\$97,119.00 Fund 680 Water Utility (WI DNR Safe Drinking Water Utility Loan FY 2024)

TREASURER'S CERTIFICATE: The Treasurer's Office has certified that Short, Elliot, Hendrickson is in compliance with Ashland City ordinance 923.10.

COMPLIANCE WITH CHAPTER 51: N/A

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:

Staff is pursuing \$1M from a Housing and Urban Development Community Development Block Grant (CDBG), for a street reconstruction project, which will be applied towards streets, storm sewer and sidewalk costs.

In February 2024, the Public Works Department solicited statements of qualifications (SOQ) from four (4) qualified engineering firms having experience in street reconstruction. Only two firms, Cedar Corporation and Short, Elliott, Hendrickson Inc. (SEH) responded. The selection committee, which consists of the Civil Engineer-Streets, the Planning Director and a Public Works Committee member, selected Cedar Corporation. However, contract negotiations with Cedar Corporation were unsuccessful and staff approached SEH about moving forward with the project.

Selection of a project area is complicated due to CDBG funding requirements. The priorities that the City has for street reconstruction, incorporating watermain, and private lead service lateral (LSL) replacements, are not considered to be a "community wide benefit" per the CDBG definition. As a result, an income survey of residents in the selected project area is required. The City last used CDBG funding for street reconstruction in 2022 on 6th Street East and income surveys were completed at that time.

Staff would like to focus on the reconstruction of 13th Avenue East from US Highway 2 to 6th Street East due to the presence of a 16-inch water main installed in 1888 which provides water supply to the majority of the City. This main has broken six times in the past 20 years, including on Thanksgiving Day in 2022. Also included is the replacement of approximately thirteen private LSLs. The block of 13th Avenue East from US Highway 2 to Main Street East, which is currently graveled, would be paved. The income survey is included in SEH's scope of work, along with grant administration services. If the income survey for 13th Avenue East is not successful, City staff will work with SEH to identify an alternative project.

CDBG requirements have changed since 2022 and a completed design is needed as part of the application for funding. City staff anticipate applying for funding in May 2025 and, if successful, construction would be scheduled for 2026.

Funds were budgeted in 2024 for this project labeled as "Main Street East Reconstruction". Discussion with Cedar Corp and SEH has determined that this project is not a good fit for CDBG funding requirements, so the Public Works Director is requesting reallocation of those funds to the 13th Avenue East Project.

The Public Works Department recommends entering into an agreement with SEH for grant administration and engineering design services at a cost of \$178,200 to allow City staff to pursue CDBG funding.

Agreement for Professional Services

This Agreement is effective as of September 16, 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: **2026 CDBG Street & Utility Improvements**.

Client's Authorized Representative: John Butler, PE

Address: 2020 6th Street East
Ashland, WI 54806

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

Project Manager: Bryan Cunningham, PE (WI)

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

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

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

Approximately 2,200 feet of street and utility reconstruction on 13th Avenue E., between 6th Street E. and USH 2. The existing 16-inch water main was installed in the 1880's and needs replacement. This main serves the entire community and is the main line to the water treatment plant. The existing storm sewer and street also need replacement and curb and gutter will be added with sidewalk on one side.

Task I - CDBG Neighborhood Income Survey

Consultant understands that the Client desires an income survey to determine if the following district is eligible for CDBG-PF funding:

1. 13th Avenue E., from USH 2 to 6th Street E.

Phase I: Census Survey Preparation

- a) Identify area benefited by proposed improvements
- b) Identify survey area boundaries
- c) Develop map of survey area, and generate random survey targets with individual households/units mapped and numbered
- d) Develop survey instrument and publicity materials
- e) Coordinate and Receive Wisconsin Department of Administration (WDOA) approval of survey and method
- f) Implement coding system connecting map of area with surveys

Phase II: Conduct Survey

- a) Survey to be conducted by the City. SEH will assist and be available for questions.

Phase III: Analyze Survey

- a) Tabulate surveys
- b) Prepare summary of data for submittal with grant application.

Task II – Grant Application

Complete the CDBG application for submittal to the Wisconsin Department of Administration (WDOA). Specific actions shall include:

2. Working with the City to determine the scope of the project for submittal to WDOA.

3. Complete grant application forms as required by WDOA.
4. Draft necessary maps and diagrams for grant application.
5. Negotiate funding levels and contract language with WDOA.
6. Draft (or amend) the Citizen Participation Plan.
7. Provide staff for required public hearing(s).
8. Complete the Environmental Review Process
 - a. Complete the Environmental Review Record.
 - b. Draft all public notices and plan for publication.
 - c. Should an Archeological study be required, this will be billed as an additional expense.
 - d. If Floodplain or Wetland reviews are required, this will be billed as an additional expense.
 - e. Draft required Request for Release of Funds and Certification form (HUD form 7015.15)
 - f. Document compliance with Federal Environmental Requirements.

Task III – Grant Administration

Grant administration will be completed in accordance with WDOA regulations if the Client receives and accepts funding, including:

1. General Administration
 - a. Set up a complete set of file folders in the manner prescribed by the WDOA. They will enable the community to file and maintain the files in a manner that meets WDOA's requirements.
 - b. Review proposed contract between the community and WDOA. Propose revisions to contract.
 - c. Complete citizen participation efforts. This includes:
 - i. Draft Citizen Participation Plans and amendments, as needed.
 - ii. Prepare notices and arrange for publication.
 - iii. Present at public meetings (one during the application process, one near the completion of the project).
 - iv. LMI survey documentation, as appropriate, will be placed in the grant files.
2. Procurement of Professional Services
 - a. Document compliance with federal procurement policy.
3. Financial Management
 - a. Draft financial management forms.
 - b. Complete all drawdown requests to the WDOA.
 - c. Maintain Cash Control Register.
 - d. Maintain Disbursements Journal.
 - e. Maintain Matching Funds Journal.
4. Equal Opportunity and Procurement Requirements
 - a. Maintain Section 3 Compliance.
 - b. Maintain compliance with Executive Order 11246.
 - c. Work with engineer to insert required federal and state forms in bidding documents, as appropriate.
 - d. Complete Fair Housing requirements.
 - e. Document compliance with Handicap Accessibility Requirements.
5. Labor Standards
 - a. Work with engineer to insert Davis Bacon Wage Rates in bid documents.
 - b. Complete Semi-Annual Labor Standard Enforcement Reports.
 - c. Complete Final Labor Standards Compliance Report.
 - d. Review all payrolls on a weekly basis.
 - e. Complete HUD 11s (employee interviews) as required.
 - f. Document all payroll violations.
 - g. Work with contractors to correct wage underpayments (if any).
6. Complete Semi-Annual Reports and submit to WDOA
7. Acquisition/Relocation. If applicable, assist in acquisition and relocation efforts.
 - a. Coordinate with municipal attorney, as appropriate.
 - b. Maintain Acquisition Summary Checklist.
 - c. Maintain required files documenting compliance.
8. Audit Requirements. Assist the Client in determining what level of Audit (if any) is required. Coordinate and submit audit when audit is completed by the community. Audit services are not included.

9. Close Out in 2026-2027. Complete Close out documentation, including self-monitoring checklist. Schedule and participate in WDOA monitoring visit (if required by WDOA).

Task IV – Design Services

1. Topographic survey
 - (a) Complete a topographic survey to include existing street, roadway, culverts, storm sewer, watermain and appurtenances, and any property irons, if located.
 - (b) Collect located private utility locations.
2. Street, storm sewer and water main preliminary plan for City review.
 - (a) Kick-off meeting coordination with City staff
 - (b) Design of water main to replace existing water main, hydrants, and lateral service connections. Check water system model with 16-inch water main under construction.
 - (c) Design of storm sewer to replace all inlets, manholes and pipe connections.
 - (d) Design of street geometrics, grades, cross sections, sidewalks, curb and gutter, driveways and ADA pedestrian curb ramps.
 - (e) Preparation of preliminary plan drawing documents to include plan and profile sheets and details.
 - (f) Attend two (2) virtual City coordination meetings
3. Complete biddable plans and specifications for submittal of CDBG application in May 2025.
 - (a) Prepare a preliminary construction cost estimate based on submitted plans.
 - (b) Attend one (1) virtual City coordination meeting.
 - (c) Complete the Wisconsin Department of Natural Resources (WDNR) Water Main permit.
 - (d) Complete the WDNR Storm Water Erosion Control permit.

Task V- Final Design and Bidding Services

1. Prepare final bidding documents based on final CDBG and City review of plan submittal
 - (a) Complete final plan drawings, specifications and construction cost estimate.
2. Bidding
 - (a) Facilitate the Ad for Bid, online plan distribution, bidders list and answer contractor bidding questions for both projects.
 - (b) Facilitate bid opening virtually on Quest.
 - (c) Prepare bid tabulations and a Recommendation to Award for each project.
3. Facilitate contracting between the City and selected contractor.

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

1. Field site visits for income survey.
2. Wetland delineation or flood plain determination
3. Archaeological or historical analysis
4. Soil borings or geotechnical investigation
5. Water main design crossing of USH 2/Lakeshore Drive
6. Sanitary sewer replacement or rehabilitation
7. Creation of easement or plat documents related to water main or service lateral installations. (It is assumed that all water service connections will be made in the boulevard and not require excavation extending onto private property.)
8. LSL (lead service line) replacement plans, specifications, funding applications or administration for private side lateral replacements.
9. WDNR Safe Drinking Water (SDW) ITA, PERF, Applications, or Administration. (SDW Application Due June 30, 2025)
10. Special assessment related items, such as reports, hearings, notices, or waiver documents.

11. Additional meetings, notifications, press releases, or extra distribution of information for public or property owners. Preparation of displays, exhibits, renderings, or other text, graphics, or drawings beyond what is described above.
12. Construction engineering, Resident Project Representation (RPR), staking, or other construction related tasks such as pre-con meeting attendance, shop drawing review, pay application or quantity review, or as-built record plans.

Schedule: Consultant is prepared to complete this scope of work and begin these efforts upon receipt of Client's written authorization. The Consultant will complete the design tasks to follow the CDBG application schedule, which is as follows:

Topographic survey	October 2024
Income survey	Oct.-Dec. 2024
Biddable plans, specifications and estimate	mid-May 2025
Final plans, specifications and estimate	November 2025
Open Bids	January 2026
Construction	May-October 2026

Payment: The fee for design is hourly estimated to be **\$178,200**, including expenses and equipment. The estimated fee for each project task is as follows:

Task I-	CDBG Neighborhood Income Survey	\$4,000
Task II-	Grant Application	\$15,000
Task III-	Grant Administration	\$30,000
Task IV-	Design Services	\$114,150
Task V-	Final Design and Bidding Services	\$15,050

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.

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Short Elliott Hendrickson Inc.

City of Ashland

By:



By:

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

Title: Client Service Manager | Principal

Title:

Exhibit A-1
to Agreement for Professional Services
Between City of Ashland (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated September 16, 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 80% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 20% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

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

B. Expenses

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

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

The Client shall pay Consultant monthly for expenses.

C. Equipment Utilization

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

The Client shall pay Consultant monthly for equipment utilization.

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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, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service"). Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
- 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.

Ref: 2024-205

COUNCIL AGENDA: 8.E.
(9/24/2024)

SUBJECT: Approve to Accept Wisconsin Department of Transportation (WI DOT)
State Municipal Agreement for the 11th Avenue East Resurfacing Project
(Public Works) Roll

RECOMMENDATION: Approval

**DEPARTMENT OF
ORIGIN:** Public Works

CLEARANCES: Approved by Committee of the Whole, September 10, 2024

EXHIBITS: 1. WI DOT State/Municipal Agreement - 11th Avenue East

EXPENDITURES	\$ 353,910.11	WI DOT Surface Transportation Program
REQUIRED:	\$ 88,977.53	Fund 470 Streets, Sidewalk, Stormwater
	\$ 442,887.64	Project Total

AMOUNT BUDGETED: N/A

APPROPRIATION \$22,431.54 - City Share Design (2025 Budget)
REQUIRED: \$66,545.99 - City Share Construction (2027 or 2028 Budget)

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH CHAPTER 51: NA

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

The Wisconsin Department of Transportation (WI DOT) receives federal funds that are allocated throughout the state to construct improvements to certain roads eligible for federal aid. These funds are allocated through the WI DOT Surface Transportation Program (STP) and roads must meet certain criteria for functional classification in order to be eligible for STP funds.

Following congressional approval of the Bipartisan Infrastructure Law (BIL), the WI DOT STP received a significant increase in funds available. The City of Ashland submitted approximately \$1.05 million in STP funding requests in Fall 2023. In Spring 2024, the City received notification of the award of approximately \$354,000 in STP funds for the resurfacing (ie Mill & Overlay) of 11th Ave E from US2 to Pufall Drive. This represents a funding split of 80% WI DOT funds to 20% City funds.

Council approved functional classification designations at their October 22, 2019 meeting. The approved resolution and the map of functionally classified roadways are attached. 11th Avenue East and was prioritized for resurfacing based on its status as emergency snow plowing routes and staff assessment of ability to meet grant criteria.

Resurfacing offers a relatively low-cost option to preserve the condition of these roads before more expensive reconstruction is necessary, commonly referred to as "pavement preservation". These projects will not include replacement of any water, sewer or stormwater utilities or sidewalk.

The Public Works Department recommends approval of the July 9, 2024 State Municipal Agreement in order to utilize the grant funding and allow the project to be scheduled. The 11th Avenue East project would be designed in 2025 and constructed in 2027 or 2028.



**STATE/MUNICIPAL AGREEMENT
FOR A STATE- LET STP-URBAN
PROJECT**

Program Name: STP- Urban

Population Group: 5,000 to 20,000

Sub-program #: 206

Cycle: 2024-2029

Date: July 9, 2024

I.D.: 8995-00-27/28

Road Name: 11th Ave East

Limits: Pufall Drive to USH 2

County: Ashland

Roadway Length: 0.49 miles

Functional Classification: Major Collector

Project Sponsor: City of Ashland

State Fiscal Year of Design: 2025

State Fiscal Year of Construction: 2027

The signatory, **City of Ashland**, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Municipality agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility - Describe and give reason for request: **The existing facility is a 2-lane urban cross section with asphalt pavement. The facility was last improved in 2012 and is in Fair-Good pavement condition with a pavement rating of 4-6 with surface raveling, severe cracking and settling. The shoulders are cub and gutter and there is sidewalk on both sides of the street and no bicycle accommodations. 11th Ave E serves commercial, industrial, residential, and recreational properties. The route is designated as a heavy traffic/truck route by the City of Ashland, is a Priority 2 emergency snowplow route, and is included on the City of Ashland Bike Plan Map.**

Proposed Improvement - Nature of work: **The proposed improvement is a 2,587-ft urban pavement resurfacing. The new pavement type will be hot mix asphalt. Bike lanes are proposed to be added.**

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal requirements: **Non-participating costs include maintenance and repair of haul roads.**

The Municipality agrees to the following 2024- 2029 STP-Urban project funding conditions:

Project ID **8995-00-27** design costs are funded with up to 80% federal funding up to a funding limit of **\$89,726.15**. The Municipality agrees to provide the remaining 20% and any funds in excess of the **\$89,726.15** federal funding limit. Project ID **8995-00-28** construction costs are funded with up to 80% federal funding up to a funding limit of **\$264,183.96**. The Municipality agrees to provide the remaining 20% and any funds in excess of the **\$264,183.96** federal funding limit. Non-participating costs are 100% the responsibility of the Municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

This project is currently scheduled in State Fiscal Year **2027**. Sunset date: **June 30, 2032**

Sunset Date is determined based on the date a project is scheduled to be authorized. Sunset date is calculated as six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled.

Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary of Costs Table below are estimates. The final Municipal share is dependent on the final federal participation, and actual costs will be used in the final division of cost for billing and reimbursement. In no event shall federal funding exceed the estimate of **\$353,910.11** in the Summary of Costs Table, unless such increase is approved in writing by the State through the State's Change Management Policy prior to the Municipality incurring the increased costs.

SUMMARY OF COSTS

PHASE	Total Est. Project Cost	Federal / State Funds	%	Municipal Funds	%
ID 8995-00-27*					
Design	\$ 97,157.69	\$ 77,726.15	80%	\$ 19,431.54	20% + BAL
State Review	\$ 15,000.00	\$ 12,000.00	80%	\$ 3,000.00	20% + BAL
<i>Project total</i>	\$ 112,157.69	\$ 89,726.15	MAX	\$ 22,431.54	
ID 8995-00-28**					
Participating Construction	\$ 274,113.00	\$ 219,290.40	80%	\$ 54,822.60	20% + BAL
Construction Engineering	\$ 41,116.95	\$ 32,893.56	80%	\$ 8,223.39	20% + BAL
Non-Participating Construction	\$ 500.00	\$ -	0%	\$ 500.00	100%
State Review	\$ 15,000.00	\$ 12,000.00	80%	\$ 3,000.00	20% + BAL
<i>Project total</i>	\$ 330,729.95	\$ 264,183.96	MAX	\$ 66,545.99	
Total Est. Cost Distribution	\$ 442,887.64	\$ 353,910.11	MAX	\$ 88,977.53	
*Design ID 8995-00-27 federal/state funding is limited to \$89,726.15 .					
**Construction ID 8995-00-28 federal/state funding is limited to \$264,183.96 .					

This request is subject to the terms and conditions that follow and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signatures certify the content has not been altered by the municipality.

Signed for and on behalf of: **City of Ashland**

Name

Title

Date

Signed for and on behalf of the State:

Name

Title

Date

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding.
3. The Municipality, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
 - a. Environmental requirements, including but not limited to those set forth in the 23 U.S.C. 139 and National Environmental Policy Act (42 U.S.C. 4321 et seq.)
 - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The municipality agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Municipality agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Municipality agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
 - c. Prevailing wage requirements, including but not limited to 23 U.S.C 113.
 - d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
 - e. Competitive bidding and confidentiality requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06. This includes the sharing of financial data prior to the conclusion of the competitive bid period.
 - f. All applicable Disadvantaged Business Enterprise (DBE) requirements that the State specifies.
 - g. Federal statutes that govern the Surface Transportation Program (STP), including but not limited to 23 U.S.C. 133.

- h. General requirements for administering federal and state aids set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

- 4. Funding of each project phase is subject to inclusion in Wisconsin's approved 2024-2029 STP-Urban program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
 - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
 - b. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.
 - c. Storm sewer mains necessary for the surface water drainage.
 - d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
 - f. Signing and pavement marking.
 - g. New installations or alteration of street lighting and traffic signals or devices.
 - h. Landscaping.
 - i. Preliminary engineering and design.
 - j. Management consultant and state review services.
- 5. The work will be administered by the State and may include items not eligible for federal participation.
- 6. As the work progresses, the State will bill the Municipality for work completed that is not chargeable to federal/state funds. Upon completion of the project, a final audit will be made to determine the final division of costs subject to funding limits in the Summary of Costs Table. If reviews or audits show any of the work to be ineligible for federal/state funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

- 7. Work necessary to complete the 2024-2029 STP-Urban improvement project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below.
 - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
 - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
 - c. Detour routes and haul roads. The municipality is responsible for determining the detour route.
 - d. Conditioning, if required and maintenance of detour routes.
 - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.

- f. All work related to underground storage tanks and contaminated soils.
 - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
 - h. Real estate for the improvement.
8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.
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 10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
 11. The Municipality will include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. 51.01 (5), sexual orientation as defined in Wis. Stat. 111.32 (13m), or national origin.
 12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed federal/state financing commitments or are ineligible for federal/state financing. To guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
 13. In accordance with the State's sunset policy for Local Bridge Program projects, the subject 2024-2029 STP improvement must be constructed and in final acceptance within six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled. Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.
 14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred on behalf of the project.
 15. The Municipality will at its own cost and expense:
 - a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, sidewalks and parking lanes [including snow and ice removal]) for such maintenance in a manner consistent with reasonable industry standards, and will make ample provision for such maintenance each year.
 - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
 - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
 - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the project.

- e. Provide complete plans, specifications, and estimates to State upon request.
- f. Provide relocation orders and real estate plats to State upon request.
- g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
- h. Provide maintenance and energy for lighting.
- i. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

16. It is further agreed by the Municipality that:

- a. The Municipality assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the state and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this agreement.
- b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse State if State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Municipality will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Municipality or by others, will be in conformity with such *Manual of Uniform Traffic Control Devices* as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
- e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by federal or state highway regulations will not be permitted within the right-of-way limits of the project. The Municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.
- f. The Municipality is responsible for any damage caused by legally hauled loads, including permitted oversize and overweight loads. The contractor is responsible for any damage caused to haul roads if the contractor does not obey size and weight laws, use properly equipped and maintained vehicles, and does not prevent spilling of materials onto the haul road (*WisDOT Standard Specifications* 618.1, 108.7, 107.8). The local maintaining authority can impose special or seasonal weight limitations as defined in Wis. Stat. 349.16, but this should not be used for the sole purpose of preventing hauling on the road.

The bid item 618.0100 Maintenance and Repair of Haul Roads (project) is ineligible for federal funding on local program projects as per the State/Municipal Agreement. The repair of damages as a result of hauling materials for the project is the responsibility of the Municipality as specified in the State/Municipal Agreement Terms and Conditions under "Municipal Responsibilities and Requirements."

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Municipality and its sureties; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
19. Contract modification: This State/Municipal Agreement can only modified by written instruments duly executed by both parties. No term or provision of either this State/Municipal Agreement or any of its attachments may be changed, waived or terminated orally.
20. Binding effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third-party enforcement rights.
21. Choice of law and forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

PROJECT FUNDING CONDITIONS

22. Non-appropriation of funds: With respect to any payment required to be made by the State under this State/Municipal Agreement, the parties acknowledge the State's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Municipality or the State may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.
23. Maintenance of records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Municipality, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the State. The State reserves the right to audit and inspect such records and accounts at any time. The Municipality shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

24. The Municipality agrees to the following 2024-2029 STP-Urban project funding conditions:
 - a. ID **8995-00-27**: Design is funded with 80% federal funding up to a funding limit of **\$89,726.15** when the Municipality agrees to provide the remaining 20% and any funds in excess of the **\$89,726.15** federal funding limit. This phase includes plan development, management consultant review, and state review. The work includes project review, approval of required reports and documents and processing the final Plan, Specification & Estimate (PS&E) document for award of the contract. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.

b. ID **8995-00-28**: Construction:

- i. Costs for Participating Construction are funded with 80% federal funding up to a funding limit of **\$264,183.96** when the Municipality agrees to provide the remaining 20%, and any funds in excess of the **\$264,183.96** federal funding limit.
- ii. Non-participating costs are funded 100% by the Municipality. Costs include construction delivery.
- iii. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.

[End of Document]

Ref: 2024-206

COUNCIL AGENDA: 8.F.
(9/24/2024)

SUBJECT: Approve to Accept Wisconsin Department of Transportation (WI DOT)
State Municipal Agreement for the 11th Street West Resurfacing Project
(Public Works) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Approved by Committee of the Whole, September 10, 2024

EXHIBITS: 1. WI DOT State/Municipal Agreement - 11th Street West

EXPENDITURES	\$ 487,797.33	WI DOT Surface Transportation Program
REQUIRED:	\$ 122,449.3	Fund 470 Streets, Sidewalk, Stormwater
	\$ 610,246.66	Project Total

AMOUNT BUDGETED: N/A

APPROPRIATION \$23,363.86 - City Share Design (2025 Budget)
REQUIRED: \$99,085.47 - City Share Construction (2029 Budget)

TREASURER'S CERTIFICATE: NA

COMPLIANCE WITH CHAPTER 51: NA

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

The Wisconsin Department of Transportation (WI DOT) receives federal funds that are allocated throughout the state to construct improvements to certain roads eligible for federal aid. These funds are allocated through the WI DOT Surface Transportation Program (STP) and roads must meet certain criteria for functional classification in order to be eligible for STP funds.

Following congressional approval of the Bipartisan Infrastructure Law (BIL), the WI DOT STP received a significant increase in funds available. The City of Ashland submitted approximately \$1.05 million in STP funding requests in Fall 2023. In Spring 2024, the City received notification of the award of approximately \$488,000 in STP funds for the resurfacing (ie Mill & Overlay) of 11th St W from Ellis Ave to Sanborn Ave. This represents a funding split of 80% WI DOT funds to 20% City funds, with the City responsible for approximately \$122,500 in costs.

Council approved functional classification designations at their October 22, 2019 meeting. The approved resolution and the map of functionally classified roadways are attached. 11th Street West was prioritized for resurfacing based on its status as emergency snow plowing routes and staff assessment of ability to meet grant criteria.

Resurfacing offers a relatively low-cost option to preserve the condition of these roads before more expensive reconstruction is necessary, commonly referred to as "pavement preservation". These projects will not include replacement of any water, sewer or stormwater utilities or sidewalk. The resurfacing of 11th Street West will include the incorporation of bicycle lanes, which will require the elimination of parking on one side of the street, per the City of Ashland Bike Plan approved by the Council in May 2024.

The Public Works Department recommends approval of the July 9, 2024 State Municipal Agreement in order to utilize the grant funding and allow the project to be scheduled. The 11th St W project would be designed in 2025 and constructed in 2029.



**STATE/MUNICIPAL AGREEMENT
FOR A STATE- LET STP-URBAN
PROJECT**

Program Name: STP- Urban

Population Group: 5,000 to 20,000

Sub-program #: 206

Cycle: 2024-2029

Date: July 30, 2024

I.D.: 8995-00-29/30

Road Name: 11th Street West

Limits: Beaser Ave to Ellis Ave

County: Ashland

Roadway Length: 0.84 miles

Functional Classification: Minor Arterial

Project Sponsor: City of Ashland

State Fiscal Year of Design: 2025

State Fiscal Year of Construction: 2029

The signatory, **City of Ashland**, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Municipality agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility - Describe and give reason for request: **The existing facility is a 2-lane urban cross section with asphalt pavement. The facility was last improved in 2010 and is in good pavement condition with a pavement rating of 6-7 with significant cracking, edge settling, and depressions. The shoulders are curb and gutter and there is sidewalk on one side of the street and no bicycle accommodations. 11th Street W is a heavily used direct connection between STH 13 and Beaser Ave. The route is a main ambulance and school bus route. It is a Priority 1 snowplow Route and included in the Ashland Bike Plan Map.**

Proposed Improvement - Nature of work: **The proposed improvement is a 4,435-ft urban pavement resurfacing. The new pavement type will be hot mix asphalt. Bike lanes are proposed to be added. Curb ramps will be updated to be ADA compliant.**

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal requirements: **Non-participating costs include maintenance and repair of haul roads.**

The Municipality agrees to the following 2024- 2029 STP-Urban project funding conditions:

Project ID **8995-00-29** design costs are funded with up to 80% federal funding up to a funding limit of **\$93,455.45**. The Municipality agrees to provide the remaining 20% and any funds in excess of the **\$93,455.45** federal funding limit. Project ID **8995-00-30** construction costs are funded with up to 80% federal funding up to a funding limit of **\$394,341.88**. The Municipality agrees to provide the remaining 20% and any funds in excess of the **\$394,341.88** federal funding limit. Non-participating costs are 100% the responsibility of the Municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

This project is currently scheduled in State Fiscal Year **2029**. Sunset date: **June 30, 2034**

Sunset Date is determined based on the date a project is scheduled to be authorized. Sunset date is calculated as six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled.

Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary of Costs Table below are estimates. The final Municipal share is dependent on the final federal participation, and actual costs will be used in the final division of cost for billing and reimbursement. In no event shall federal funding exceed the estimate of **\$487,797.33** in the Summary of Costs Table, unless such increase is approved in writing by the State through the State's Change Management Policy prior to the Municipality incurring the increased costs.

SUMMARY OF COSTS

PHASE	Total Est. Project Cost	Federal / State Funds	%	Municipal Funds	%
ID 8995-00-29*					
Design	\$ 101,819.31	\$ 81,455.45	80%	\$ 20,363.86	20% + BAL
State Review	\$ 15,000.00	\$ 12,000.00	80%	\$ 3,000.00	20% + BAL
<i>Project total</i>	\$ 116,819.31	\$ 93,455.45	MAX	\$ 23,363.86	
ID 8995-00-30**					
Participating Construction	\$ 415,589.00	\$ 332,471.20	80%	\$ 83,117.80	20% + BAL
Construction Engineering	\$ 62,338.35	\$ 49,870.68	80%	\$ 12,467.67	20% + BAL
Non-Participating Construction	\$ 500.00	\$ -	0%	\$ 500.00	100%
State Review	\$ 15,000.00	\$ 12,000.00	80%	\$ 3,000.00	20% + BAL
<i>Project total</i>	\$ 493,427.35	\$ 394,341.88	MAX	\$ 99,085.47	
Total Est. Cost Distribution	\$ 610,246.66	\$ 487,797.33	MAX	\$ 122,449.33	

*Design ID **8995-00-29** federal/state funding is limited to **\$93,455.45**.

Construction ID **8995-00-30 federal/state funding is limited to **\$394,341.88**.

This request is subject to the terms and conditions that follow and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signatures certify the content has not been altered by the municipality.

Signed for and on behalf of: **City of Ashland**

Name

Title

Date

Signed for and on behalf of the State:

Name

Title

Date

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding.
3. The Municipality, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
 - a. Environmental requirements, including but not limited to those set forth in the 23 U.S.C. 139 and National Environmental Policy Act (42 U.S.C. 4321 et seq.)
 - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The municipality agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Municipality agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Municipality agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
 - c. Prevailing wage requirements, including but not limited to 23 U.S.C 113.
 - d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
 - e. Competitive bidding and confidentiality requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06. This includes the sharing of financial data prior to the conclusion of the competitive bid period.
 - f. All applicable Disadvantaged Business Enterprise (DBE) requirements that the State specifies.
 - g. Federal statutes that govern the Surface Transportation Program (STP), including but not limited to 23 U.S.C. 133.
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 - b. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.
 - c. Storm sewer mains necessary for the surface water drainage.
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 - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
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 - f. All work related to underground storage tanks and contaminated soils.

g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).

h. Real estate for the improvement.

8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.
9. Work to be performed by the Municipality without federal funding participation necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Municipality but must be coordinated with all other work undertaken during construction.
10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
11. The Municipality will include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. 51.01 (5), sexual orientation as defined in Wis. Stat. 111.32 (13m), or national origin.
12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed federal/state financing commitments or are ineligible for federal/state financing. To guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
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 - a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, sidewalks and parking lanes [including snow and ice removal]) for such maintenance in a manner consistent with reasonable industry standards, and will make ample provision for such maintenance each year.
 - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
 - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
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 - e. Provide complete plans, specifications, and estimates to State upon request.

- f. Provide relocation orders and real estate plats to State upon request.
- g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
- h. Provide maintenance and energy for lighting.
- i. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

16. It is further agreed by the Municipality that:

- a. The Municipality assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the state and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this agreement.
- b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse State if State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Municipality will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Municipality or by others, will be in conformity with such *Manual of Uniform Traffic Control Devices* as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
- e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by federal or state highway regulations will not be permitted within the right-of-way limits of the project. The Municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.
- f. The Municipality is responsible for any damage caused by legally hauled loads, including permitted oversize and overweight loads. The contractor is responsible for any damage caused to haul roads if the contractor does not obey size and weight laws, use properly equipped and maintained vehicles, and does not prevent spilling of materials onto the haul road (*WisDOT Standard Specifications* 618.1, 108.7, 107.8). The local maintaining authority can impose special or seasonal weight limitations as defined in Wis. Stat. 349.16, but this should not be used for the sole purpose of preventing hauling on the road.

The bid item 618.0100 Maintenance and Repair of Haul Roads (project) is ineligible for federal funding on local program projects as per the State/Municipal Agreement. The repair of damages as a result of hauling materials for the project is the responsibility of the Municipality as specified in the State/Municipal Agreement Terms and Conditions under "Municipal Responsibilities and Requirements."

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Municipality and its sureties; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
19. Contract modification: This State/Municipal Agreement can only modified by written instruments duly executed by both parties. No term or provision of either this State/Municipal Agreement or any of its attachments may be changed, waived or terminated orally.
20. Binding effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third-party enforcement rights.
21. Choice of law and forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

PROJECT FUNDING CONDITIONS

22. Non-appropriation of funds: With respect to any payment required to be made by the State under this State/Municipal Agreement, the parties acknowledge the State's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Municipality or the State may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.
23. Maintenance of records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Municipality, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the State. The State reserves the right to audit and inspect such records and accounts at any time. The Municipality shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

24. The Municipality agrees to the following 2024-2029 STP-Urban project funding conditions:
 - a. ID **8995-00-29**: Design is funded with 80% federal funding up to a funding limit of **\$93,455.45** when the Municipality agrees to provide the remaining 20% and any funds in excess of the **\$93,455.45** federal funding limit. This phase includes plan development, management consultant review, and state review. The work includes project review, approval of required reports and documents and processing the final Plan, Specification & Estimate (PS&E) document for award of the contract. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.

b. ID **8995-00-30**: Construction:

- i. Costs for Participating Construction are funded with 80% federal funding up to a funding limit of **\$394,341.88** when the Municipality agrees to provide the remaining 20%, and any funds in excess of the **\$394,341.88** federal funding limit.
- ii. Non-participating costs are funded 100% by the Municipality. Costs include construction delivery.
- iii. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.

[End of Document]

Ref: 2024-212

COUNCIL AGENDA:
8.G. (9/24/2024)

SUBJECT: Approve to Submit an Application to the United States Department of Agriculture (USDA) to Assist Funding for Public Works Equipment Purchases as Part of the 2025 Public Works Budget (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Approved by Committee of the Whole, September 10, 2024

EXHIBITS:

1. Patrol Truck
2. Wheel Loader

EXPENDITURES REQUIRED: \$50,000 Fund 460 Public Works Equipment (annually for loan term)

AMOUNT BUDGETED: N/A- to be incorporated into future budgets (including 2025)

APPROPRIATION REQUIRED: \$50,000 Fund 460 Public Works Equipment

TREASURER'S CERTIFICATE: NA

COMPLIANCE WITH CHAPTER 51: N/A

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

SUMMARY STATEMENT:

The Public Works Department has been engaged in planning, prioritization, and financing heavy equipment for several years. In recent years, the City has made significant investment in fleet modernization, including replacement of the street sweeper, motor grader, and two front end

wheel loaders.

Staff uses evaluation criteria including age, running hours and recommended useful lifetimes to prioritize heavy equipment assets for replacement.

Current efforts have identified a highway plow and salt/sand truck and a front end wheel loader as the Department's priorities. The highway plow truck is used to maintain highways and priority City streets during the winter, including both snow removal and ice control measures. The truck was constructed in 2006 and has 7,500 running hours. The recommended useful lifetime for this type of asset is fifteen years and/or 9,000 running hours and the department extended its lifetime via renovation in 2017. While the running hours are under the recommended useful lifetime, a combination of age and materials used in its construction have made the highway plow truck very susceptible to rust, elevating the priority for replacement.

The front end wheel loader is used for snow removal on city streets and alleyways during the winter and a variety of maintenance and construction activities in the summer. The loader was constructed in 1996 and has 6,755 running hours. The recommended useful lifetime for this type of asset is fifteen years and/or 6,000 running hours. The wheel loader is a priority for replacement due to both age and running hours.

The Public Works Director has identified a United States Department of Agriculture (USDA) program that funds municipal equipment and building facility needs. The USDA terms include the possibility of a grant allocation up to \$50,000, a ten-year loan term, and subsidized interest rates. Staff would like to submit an application to this program for approximately \$500,000 to replace both the highway plow truck and front end wheel loader. Depending on financial terms and conditions offered by the USDA, fund balance from Capital Fund 460 Public Works Equipment would be used to ensure that annual payments are around \$50,000. The City Administrator has indicated that this amount is sustainable from a financial perspective for the ten-year loan duration.

Staff is requesting City Council approval of the USDA grant application to allow the Department to complete the submission as part of the 2025 City budget.

2006 Patrol Truck



2006 Patrol Truck-
rust on plow hitch



1996 Wheel Loader





Ref: 2024-207

**COUNCIL AGENDA:
8.H. (9/24/2024)**

SUBJECT: Approve a Resolution to Accept an Ashland Urban Area Map to Establish the Wisconsin Department of Transportation Urban Area Boundary (*Public Works*) Roll

RECOMMENDATION: Approval

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Approved by Committee of the Whole, September 10, 2024

EXHIBITS:

1. Proposed Resolution No. 17796
2. Ashland Urban Area Map

**EXPENDITURES
REQUIRED:**

AMOUNT BUDGETED: Public Works

**APPROPRIATION
REQUIRED:**

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH CHAPTER 51: N/A

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

SUMMARY STATEMENT:

At the July 9, 2024 meeting, the Public Works Director introduced proposed changes to the City's Urban Area Boundary (UAB). At the request of the Council, the Public Works Director and Planning Director had a conference call with Wisconsin Department of Transportation (WI

DOT) staff to clarify the intent, scope and implications of the proposed changes.

WI DOT staff clarified that the UAB is solely used by the WI DOT and Federal Highway Administration (FHWA) to determine eligibility for grants related to street improvements. The City actively participates in these WI DOT grant programs, specifically the Surface Transportation Program (STP). Many of the City streets that are eligible for STP funding are part of the roadway transportation network beyond the City limits and are managed by multiple jurisdictions, such as Beaser Avenue or 11th Avenue East.

The UAB is simply used to establish the boundaries of the City for the purpose of delineating what portions of these types of streets that the City would be eligible to receive funding for versus the other jurisdictions.

The previous UAB included some irregularities: specific portions of Chequamegon Bay being included and the exclusion of the John F. Kennedy Memorial Airport, as shown in the attached map. The WI DOT is requesting City approval of a revised UAB by Council resolution, which is needed to allow the City to remain eligible for the grant program.

The Public Works Director is requesting Council recommendation of the revised UAB for approval by resolution to allow the City to continue to pursue STP funds.

RESOLUTION No. 17796

RESOLUTION APPROVING CITY OF ASHLAND URBAN AREA BOUNDARY CHANGES

WHEREAS, a comprehensive boundary review is conducted across the state of Wisconsin after the decennial census update; and

WHEREAS, designation of the City of Ashland urban area boundaries is necessary to ensure the City's eligibility for certain types of funding for roadway improvements and/or maintenance; and

WHEREAS, the Wisconsin Department of Transportation (WisDOT), Bureau of Planning and Economic Development (BPED) and Division of Transportation Systems Development (DTSD) conduct the and boundary review with the cooperation of municipal stakeholders; and

WHEREAS, the WisDOT has proposed changes to the City of Ashland urban area boundaries as described in the map entitled "Ashland Urban Area (Adjusted Urban Area Boundary" and dated 10/17/2023; and

WHEREAS, in accordance with federal regulation set forth by the Federal Highway Administration (FHWA) under 23 CFR §470.103 and §470.105, proposed changes to the urban area boundaries need to be approved by Common Council of the City of Ashland.

THEREFORE, BE IT RESOLVED that the Common Council of the City of Ashland does approve the resolution confirming the proposed changes to the urban area boundaries as described.

PASSED: September 24, 2024

Charlie Ortman, Council President

ATTEST:

Denise Oliphant, City Clerk

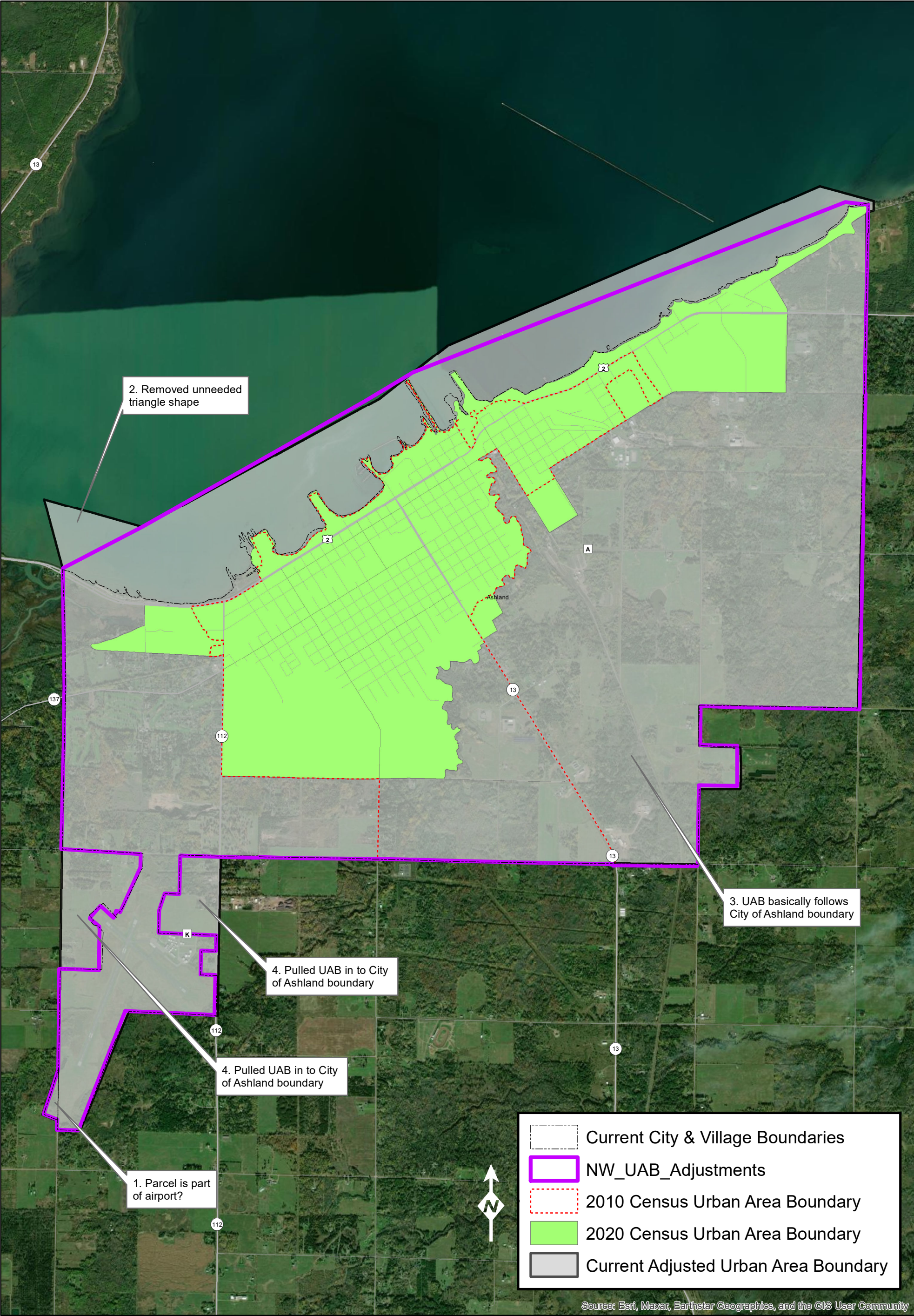
Mathew MacKenzie, Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

Ashland Urban Area

(Adjusted Urban Area Boundary)



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

0 0.25 0.5 1 1.5 2 Miles

Population (2020): 7,225
Housing Units: 3,543
Map Date: 10/17/2023

Ref: 2024-211

COUNCIL AGENDA: 9.A.
(9/24/2024)

SUBJECT: Approve a Resolution Authorizing the Issuance and Sale of Up to \$9,166,606 Water System Revenue Bonds, Series 2024B, and Providing for Other Details and Covenants With Respect Thereto, and Approval of Related \$9,166,606 State of Wisconsin Safe Drinking Water Loan Program Financial Assistance Agreement (*Public Works, Finance*) Roll

RECOMMENDATION: Approve

DEPARTMENT OF ORIGIN: Public Works

CLEARANCES: Finance Director
Public Works Director

EXHIBITS:

1. Proposed Resolution No. 17795
2. State of Wisconsin Safe Drinking Water Loan Program Financial Assistance Agreement with Principal Forgiveness

EXPENDITURES REQUIRED: -0-

AMOUNT BUDGETED: -0-

APPROPRIATION REQUIRED: N/A

TREASURER'S CERTIFICATE: N/A

COMPLIANCE WITH CHAPTER 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 revenue bonds conform to the goals and community values identified in the City of Ashland's Comprehensive Plan.

SUMMARY STATEMENT:

At the December 12, 2023 meeting, the Council approved an application to the Public Service Commission (PSC) for a rate increase. The application was prepared by the Water Utility's financial advisor, Ehlers, and requested a 38% rate increase. Subsequent negotiations resulted in a 44% rate increase that was effective on September 11, 2024. The cost of the New Lake Superior Intake is a major driver of the proposed rate increase but the rate increase also affords financial capacity for cash flow necessary to finance other Water Utility projects, such as annual distribution system improvements, lead service lateral replacements, and storage facility maintenance. The Council has approved several agreements with Greeley and Hanseon to provide design, permitting, construction management, and grant administration services for the project.

The total cost of the project, including engineering design, construction, and construction management is estimated to be \$12.66 million. The Army Corp of Engineers is provided \$1.9 million in grant funding and the additional funds will be provided by the Wisconsin Department of Natural Resources (WI DNR). Funding from the WI DNR includes \$1.6 million in principal forgiveness.

The remaining \$9.16 million will be provided by the WI DNR in the form of a loan, as described by the attached Financial Assistance Agreement with Principal Forgiveness. Loan terms are 30 yr repayment with 1.485% interest. Both the principal forgiveness and subsidized interest rate are made available to Ashland due to the community's qualification as a disadvantaged community per WI DNR criteria. The 30 yr loan term is also advantageous as it also the cost to be spread out over a longer time period, which is a good approach considering the estimated 125 yr plus useful life of the new intake.

Council is asked to approve the required resolution authorizing the issuance of Water System Revenue Bonds and the accompanying Financial Assistance Agreement for the financing of the New Lake Superior Intake Project.

Repayment of this debt has been included in long term financial projections informing the proposed user rate increases for the drinking water system.

RESOLUTION NO. 17795

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$9,166,606 WATER SYSTEM REVENUE BONDS, SERIES 2024B, AND PROVIDING FOR OTHER DETAILS AND COVENANTS WITH RESPECT THERETO

WHEREAS, the City of Ashland, Ashland and Bayfield Counties, Wisconsin (the "Municipality") owns and operates a water system (the "System") which is operated for a public purpose as a public utility by the Municipality; and

WHEREAS, the Municipality has heretofore issued its Water System Revenue Bonds, Series 2008, dated April 23, 2008 (the "2008 Bonds") pursuant to Resolution No. 16526 adopted by the Governing Body on April 15, 2008 (the "2008 Resolution"), which are payable from the income and revenues of the System; and

WHEREAS, the Municipality has heretofore issued its Water System Revenue Bonds, Series 2009, dated April 22, 2009 (the "2009 Bonds") pursuant to Resolution No. 16642 adopted by the Governing Body on March 31, 2009 (the "2009 Resolution"), which are payable from the income and revenues of the System; and

WHEREAS, the Municipality has heretofore issued its Water System Mortgage Revenue Bonds, dated December 23, 2016 (the "2016 Bonds") pursuant to Resolution No. 17318 adopted by the Governing Body on November 15, 2016 (the "2016 Resolution"), which are payable from the income and revenues of the System; and

WHEREAS, the Municipality has heretofore issued its Water System Revenue Refunding Bonds, Series 2017A, dated May 11, 2017 (the "2017 Bonds") pursuant to Resolution No. 17354 adopted by the Governing Body on April 18, 2017 (the "2017 Resolution"), which are payable from the income and revenues of the System; and

WHEREAS, the Municipality has heretofore issued its Water System Revenue Bonds, Series 2023B, dated December 28, 2023 (the "2023B Bonds") pursuant to Resolution No. 17757 adopted by the Governing Body on December 12, 2023 (the "2023B Resolution"), which are payable from the income and revenues of the System; and

WHEREAS, the Municipality has heretofore issued its Water System Revenue Bonds, Series 2024, dated July 10, 2024 (the "2024 Bonds") pursuant to Resolution No. 17786 adopted by the Governing Body on June 25, 2024 (the "2024 Resolution"), which are payable from the income and revenues of the System; and

WHEREAS, the 2008 Bonds, the 2009 Bonds, the 2016 Bonds, the 2017 Bonds, the 2023B Bonds and the 2024 Bonds shall collectively be referred to as the "Prior Bonds"; and

WHEREAS, the 2008 Resolution, the 2009 Resolution, the 2016 Resolution, the 2017 Resolution, the 2023B Resolution and the 2024 Resolution shall collectively be referred to as the "Prior Resolutions"; and

WHEREAS, certain improvements to the System are necessary to meet the needs of the Municipality and the residents thereof, consisting of the construction of a project (the "Project")

assigned Safe Drinking Water Loan Program Project No. 4759-27 by the Department of Natural Resources, and as described in the Department of Natural Resources approval letter for the plans and specifications of the Project, or portions thereof, issued under Section 281.41, Wisconsin Statutes, assigned No. W-2023-0412 and dated May 19, 2023 and No. W-2023-0412A and dated March 29, 2024 by the DNR; and

WHEREAS, under the provisions of Chapter 66, Wisconsin Statutes any municipality may, by action of its governing body, provide for purchasing, acquiring, constructing, extending, adding to, improving, operating and managing a public utility from the proceeds of bonds, which bonds are to be payable only from the revenues received from any source by such utility, including all rentals and fees; and

WHEREAS, the Municipality deems it to be necessary, desirable and in its best interest to authorize and sell water system revenue bonds of the Municipality payable solely from the revenues of the System, pursuant to the provisions of Section 66.0621, Wisconsin Statutes, to pay the cost of the Project; and

WHEREAS, the Prior Resolutions permit the issuance of additional bonds on a parity with the Prior Bonds upon certain conditions, and those conditions have been met; and

WHEREAS, other than the Prior Bonds, no bonds or obligations payable from the revenues of the System are now outstanding.

NOW, THEREFORE, be it resolved by the Governing Body of the Municipality that:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by implication requires otherwise:

- (a) "Act" means Section 66.0621, Wisconsin Statutes;
- (b) "Bond Registrar" means the Municipal Treasurer which shall act as Paying Agent for the Bonds;
- (c) "Bonds" means the \$9,166,606 Water System Revenue Bonds, Series 2024B, of the Municipality dated their date of issuance, authorized to be issued by this Resolution;
- (d) "Bond Year" means the twelve-month period ending on each May 1;
- (e) "Current Expenses" means the reasonable and necessary costs of operating, maintaining, administering and repairing the System, including salaries, wages, costs of materials and supplies, insurance and audits, but shall exclude depreciation, debt service, tax equivalents and capital expenditures;
- (f) "Debt Service Fund" means the Water System Revenue Bond and Interest Special Redemption Fund of the Municipality, which shall be the "special redemption fund" as such term is defined in the Act;

(g) "Financial Assistance Agreement" means the Financial Assistance Agreement by and between the State of Wisconsin by the Department of Natural Resources and the Department of Administration and the Municipality pursuant to which the Bonds are to be issued and sold to the State, substantially in the form attached hereto and incorporated herein by this reference;

(h) "Fiscal Year" means the twelve-month period ending on each December 31;

(i) "Governing Body" means the Common Council, or such other body as may hereafter be the chief legislative body of the Municipality;

(j) "Gross Earnings" means the gross earnings of the System, including earnings of the System derived from water charges imposed by the Municipality, all payments to the Municipality under any service agreements between the Municipality and any contract users of the System, and any other monies received from any source including all rentals and fees, any tax incremental district revenues or other revenues of the Municipality pursuant to Section 9 appropriated by the Governing Body to the System, and any special assessments levied and collected in connection with the Project;

(k) "Municipal Treasurer" means the Treasurer of the Municipality who shall act as Bond Registrar and Paying Agent;

(l) "Municipality" means the City of Ashland, Ashland and Bayfield Counties, Wisconsin;

(m) "Net Revenues" means the Gross Earnings of the System after deduction of Current Expenses;

(n) "Parity Bonds" means bonds payable from the revenues of the System other than the Bonds but issued on a parity and equality with the Bonds pursuant to the restrictive provisions of Section 11 of this Resolution;

(o) "Prior Bonds" means the 2008 Bonds, the 2009 Bonds, the 2016 Bonds, the 2017 Bonds, the 2023B Bonds and the 2024 Bonds, collectively;

(p) "Prior Resolutions" means the 2008 Resolution, the 2009 Resolution, the 2016 Resolution, the 2017 Resolution, the 2023B Resolution and the 2024 Resolution, collectively;

(q) "Project" means the Project described in the preamble to this Resolution. All elements of the Project are to be owned and operated by the Municipality as part of the System as described in the preamble hereto;

(r) "Record Date" means the close of business on the fifteenth day of the calendar month next preceding any principal or interest payment date;

(s) "System" means the entire water system of the Municipality specifically including that portion of the Project owned by the Municipality and including all property of every nature now or hereafter owned by the Municipality for the extraction, collection, storage, treatment, transmission, distribution, metering and discharge of industrial and potable public water,

including all improvements and extensions thereto made by the Municipality while any of the Bonds and Parity Bonds remain outstanding, including all real and personal property of every nature comprising part of or used or useful in connection with such water system and including all appurtenances, contracts, leases, franchises, and other intangibles;

(t) "2008 Bonds" means the Municipality's Water System Revenue Bonds, Series 2008, dated April 23, 2008;

(u) "2008 Resolution" means Resolution No. 16526 adopted by the Governing Body on April 15, 2008 authorizing the issuance of the 2008 Bonds;

(v) "2009 Bonds" means the Municipality's Water System Revenue Bonds, Series 2009, dated April 22, 2009;

(w) "2009 Resolution" means Resolution No. 16642 adopted by the Governing Body on March 31, 2009 authorizing the issuance of the 2009 Bonds;

(x) "2016 Bonds" means the Municipality's Water System Mortgage Revenue Bonds, dated December 23, 2016;

(y) "2016 Resolution" means Resolution No. 17318 adopted by the Governing Body on November 15, 2016 authorizing the issuance of the 2016 Bonds;

(z) "2017 Bonds" means the Municipality's Water System Revenue Refunding Bonds, Series 2017A, dated May 11, 2017;

(aa) "2017 Resolution" means Resolution No. 17354 adopted by the Governing Body on April 18, 2017 authorizing the issuance of the 2017 Bonds;

(bb) "2023B Bonds" means the Municipality's Water System Revenue Bonds, Series 2023B, dated December 28, 2023;

(cc) "2023B Resolution" means Resolution No. 17757 adopted by the Governing Body on December 12, 2023 authorizing the issuance of the 2023B Bonds;

(dd) "2024 Bonds" means the Municipality's Water System Revenue Bonds, Series 2024, dated July 10, 2024; and

(ee) "2024 Resolution" means Resolution No. 17786 adopted by the Governing Body on June 25, 2024 authorizing the issuance of the 2024 Bonds.

Section 2. Authorization of the Bonds and the Financial Assistance Agreement. For the purpose of paying the cost of the Project (including legal, fiscal, engineering and other expenses), there shall be borrowed on the credit of the income and revenue of the System up to the sum of \$9,166,606; and fully registered revenue bonds of the Municipality are authorized to be issued in evidence thereof and sold to the State of Wisconsin Safe Drinking Water Loan Program in accordance with the terms and conditions of the Financial Assistance Agreement, which is incorporated herein by this reference and the Mayor and City Clerk of the Municipality

are hereby authorized, by and on behalf of the Municipality, to execute the Financial Assistance Agreement.

Section 3. Terms of the Bonds. The Bonds shall be designated "Water System Revenue Bonds, Series 2024B" (the "Bonds"); shall be dated their date of issuance; shall be numbered one and upward; shall bear interest at the rate of 1.485% per annum; shall be issued in denominations of \$0.01 or any integral multiple thereof; and shall mature on the dates and in the amounts as set forth in Exhibit B of the Financial Assistance Agreement and in the Bond form attached hereto as Exhibit A as it is from time to time adjusted by the State of Wisconsin based upon the actual draws made by the Municipality. Interest on the Bonds shall be payable commencing on May 1, 2025 and semiannually thereafter on May 1 and November 1 of each year. The Bonds shall not be subject to redemption prior to maturity except as provided in the Financial Assistance Agreement.

The schedule of maturities of the Bonds is found to be such that the amount of annual debt service payments is reasonable in accordance with prudent municipal utility practices.

Section 4. Form, Execution, Registration and Payment of the Bonds. The Bonds shall be issued as registered obligations in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

The Bonds shall be executed in the name of the Municipality by the manual signatures of the Mayor and City Clerk, and shall be sealed with its official or corporate seal, if any.

The principal of, premium, if any, and interest on the Bonds shall be paid by the Municipal Treasurer, who is hereby appointed as the Municipality's Bond Registrar.

Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America by the Bond Registrar. Payment of principal of the final maturity on the Bond will be payable upon presentation and surrender of the Bond to the Bond Registrar. Payment of principal on the Bond and each installment of interest shall be made to the registered owner of each Bond who shall appear on the registration books of the Municipality, maintained by the Bond Registrar, on the Record Date and shall be paid by electronic transfer or by check or draft of the Municipality (as directed by the registered owner) and if by check or draft, mailed to such registered owner at his or its address as it appears on such registration books or at such other address may be furnished in writing by such registered owner to the Bond Registrar.

Section 5. Security for the Bonds. The Bonds, together with interest thereon, shall not constitute an indebtedness of the Municipality nor a charge against its general credit or taxing power. The Bonds, together with interest thereon, shall be payable only out of the Debt Service Fund hereinafter continued, and shall be a valid claim of the registered owner or owners thereof only against such Debt Service Fund and the revenues of the System pledged to such fund, on a parity with the pledge granted to the holders of the Prior Bonds. Sufficient revenues are hereby pledged to said Debt Service Fund, and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Prior Bonds, the Bonds and any Parity Bonds as the same becomes due.

Section 6. Funds and Accounts. In accordance with the Act, for the purpose of the application and proper allocation of the revenues of the System, and to secure the payment of the principal of and interest on the Prior Bonds, the Bonds and Parity Bonds, certain funds of the System which were established by a resolution adopted on June 16, 1998 are hereby continued and shall be used solely for the following respective purposes:

- (a) Water System Revenue Fund, into which shall be deposited as received the Gross Earnings of the System, which money shall then be divided among the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund in the amounts and in the manner set forth in Section 7 hereof and used for the purposes described below.
- (b) Water System Operation and Maintenance Fund, which shall be used for the payment of Current Expenses.
- (c) Water System Revenue Bond and Interest Special Redemption Fund (the "Debt Service Fund"), which shall be used for the payment of the principal of, premium, if any, and interest on the Prior Bonds, the Bonds and Parity Bonds as the same becomes due.
- (d) Water System Depreciation Fund, which shall be used to provide a proper and adequate depreciation account for the System. To the extent that the Depreciation Fund serves as a Bond Reserve Account for the 2016 Bonds, it is not pledged to the payment of principal of or interest on the 2008 Bonds, the 2009 Bonds, the 2017 Bonds, the 2023B Bonds, the 2024 Bonds or the Bonds and moneys in the Depreciation Fund shall under no circumstances be used to pay principal on or interest on the 2008 Bonds, the 2009 Bonds, the 2017 Bonds, the 2023B Bonds, the 2024 Bonds or the Bonds.
- (e) Market Reserve Account, which was created by the 2017 Resolution and shall be used to secure the payment of the principal and interest on the 2017 Bonds and the 2023B Bonds. The Market Reserve Account is not pledged to the payment of principal of or interest on the 2008 Bonds, the 2009 Bonds, the 2016 Bonds, the 2024 Bonds or the Bonds and moneys in the Market Reserve Account shall under no circumstances be used to pay principal of or interest on the 2008 Bonds, the 2009 Bonds, the 2016 Bonds, the 2024 Bonds or the Bonds.
- (f) Water System Surplus Fund, which shall first be used when necessary to meet requirements of the Operation and Maintenance Fund including the one month reserve, the Debt Service Fund, the Depreciation Fund and the Market Reserve Account. Any money then remaining in the Surplus Fund at the end of any Fiscal Year may be used only as permitted and in the order specified in Section 66.0811(2), Wisconsin Statutes. Money thereafter remaining in the Surplus Fund may be transferred to any of the funds or accounts provided by this section.

Section 7. Application of Revenues. After the delivery of the Bonds, the Gross Earnings of the System shall be deposited as collected in the Revenue Fund and shall be transferred

monthly to the funds listed below in the following order of priority and in the manner set forth below:

- (a) to the Operation and Maintenance Fund, in an amount equal to the estimated Current Expenses for such month and, if not needed to remedy a deficiency in the Debt Service Fund, for the following month (after giving effect to available amounts in said Fund from prior deposits);
- (b) to the Debt Service Fund, an amount equal to one-sixth (1/6) of the next installment of interest coming due on the Prior Bonds, the Bonds and any Parity Bonds then outstanding and an amount equal to one-twelfth (1/12) of the installment of principal of the Prior Bonds, the Bonds and any Parity Bonds coming due during such Bond Year (after giving effect to available amounts in said Fund from accrued interest, any premium or any other source);
- (c) to the Depreciation Fund/Bond Reserve Account, the amount determined by the Governing Body to constitute an adequate and reasonable depreciation account for the System and the amount required by the 2016 Resolution;
- (d) to the Market Reserve Account, the amount required by the resolutions authorizing the 2017 Bonds, the 2023B Bonds and any Parity Bonds secured thereby; and
- (e) to the Surplus Fund, any amount remaining in the Revenue Fund after the monthly transfers required above have been completed.

Transfers from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund/Bond Reserve Account, the Market Reserve Account and the Surplus Fund shall be made monthly not later than the tenth day of each month, and such transfer shall be applicable to monies on deposit in the Revenue Fund as of the last day of the month preceding. Any other transfers and deposits to any fund required or permitted by subsection (a) through (e) of this Section, except transfers or deposits which are required to be made immediately or annually, shall be made on or before the tenth day of the month. Any transfer or deposit required to be made at the end of any Fiscal Year shall be made within sixty (60) days after the close of such Fiscal Year. If the tenth day of any month shall fall on a day other than a business day, such transfer or deposit shall be made on the next succeeding business day.

It is the express intent and determination of the Governing Body that the amounts transferred from the Revenue Fund and deposited in the Debt Service Fund shall be sufficient in any event to pay the interest on the Prior Bonds, the Bonds and any Parity Bonds as the same accrues and the principal thereof as the same matures.

Section 8. Deposits and Investments. The Debt Service Fund shall be kept apart from monies in the other funds and accounts of the Municipality and the same shall be used for no purpose other than the prompt payment of principal of and interest on the Prior Bonds, the Bonds and any Parity Bonds as the same becomes due and payable. All monies therein shall be deposited in special and segregated accounts in a public depository selected under Chapter 34,

Wisconsin Statutes and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes. The other funds herein created (except the Water System Series 2024B SDWLP Project Fund) may be combined in a single account in a public depository selected in the manner set forth above and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes.

Section 9. Service to the Municipality. The reasonable cost and value of services rendered to the Municipality by the System by furnishing water services for public purposes shall be charged against the Municipality and shall be paid in monthly installments as the service accrues, out of the current revenues of the Municipality collected or in the process of collection, exclusive of the revenues derived from the System; that is to say, out of the tax levy of the Municipality made by it to raise money to meet its necessary current expenses. The reasonable cost and value of such service to the Municipality in each year shall be equal to an amount which, together with other revenues of the System, will produce in each Fiscal Year Net Revenues equivalent to not less than the annual principal and interest requirements on the Prior Bonds, the Bonds, any Parity Bonds and any other obligations payable from the revenues of the System then outstanding, times the greater of (i) 110% or (ii) the highest debt service coverage ratio required with respect to any obligations payable from revenues of the System then outstanding. However, such payment out of the tax levy shall be subject to (a) approval of the Public Service Commission, or successors to its function, if applicable, (b) yearly appropriations therefor, and (c) applicable levy limitations, if any; and neither this Resolution nor such payment shall be construed as constituting an obligation of the Municipality to make any such appropriation over and above the reasonable cost and value of the services rendered to the Municipality and its inhabitants or to make any subsequent payment over and above such reasonable cost and value.

Section 10. Operation of System; Municipality Covenants. It is covenanted and agreed by the Municipality with the owner or owners of the Bonds, and each of them, that the Municipality will perform all of the obligations of the Municipality as set forth in the Financial Assistance Agreement.

Section 11. Additional Bonds. The Bonds are issued on a parity with the Prior Bonds as to the pledge of revenues of the System. No bonds or obligations payable out of the revenues of the System may be issued in such manner as to enjoy priority over the Bonds. Additional obligations may be issued if the lien and pledge is junior and subordinate to that of the Bonds. Parity Bonds may be issued only under the following circumstances:

(a) Additional Parity Bonds may be issued for the purpose of completing the Project and for the purpose of financing costs of the Project which are ineligible for payment under the State of Wisconsin Safe Drinking Water Loan Program. However, such additional Parity Bonds shall be in an aggregate amount not to exceed 20% of the face amount of the Bonds; or

(b) Additional Parity Bonds may also be issued if all of the following conditions are met:

(1) The Net Revenues of the System for the Fiscal Year immediately preceding the issuance of such additional bonds must have been in an amount at least equal to the maximum annual interest and principal requirements on all bonds outstanding payable from the revenues of the System, and on the bonds then to be issued, times the greater of (i) 1.10 or (ii) the highest debt service coverage ratio to be required with respect to the Additional Parity Bonds to be issued or any other obligations payable from the revenues of the System then outstanding. Should an increase in permanent rates and charges, including those made to the Municipality, be properly ordered and made effective during the Fiscal Year immediately prior to the issuance of such additional bonds or during that part of the Fiscal Year of issuance prior to such issuance, then Net Revenues for purposes of such computation shall include such additional revenues as a registered municipal advisor, an independent certified public accountant, consulting professional engineer or the Wisconsin Public Service Commission may calculate would have accrued during the prior Fiscal Year had the new rates been in effect during that entire immediately prior Fiscal Year.

(2) The payments required to be made into the funds enumerated in Section 6 of this Resolution must have been made in full.

(3) The additional bonds must have principal maturing on May 1 of each year and interest falling due on May 1 and November 1 of each year.

(4) The proceeds of the additional bonds must be used only for the purpose of providing extensions or improvements to the System, or to refund obligations issued for such purpose.

Section 12. Sale of Bonds. The sale of the Bonds to the State of Wisconsin Safe Drinking Water Loan Program for the purchase price of up to \$9,166,606 and at par, is ratified and confirmed; and the officers of the Municipality are authorized and directed to do any and all acts, including executing the Financial Assistance Agreement and the Bonds as hereinabove provided, necessary to conclude delivery of the Bonds to said purchaser, as soon after adoption of this Resolution as is convenient. The purchase price for the Bonds shall be paid upon requisition therefor as provided in the Financial Assistance Agreement, and the officers of the Municipality are authorized to prepare and submit to the State requisitions and disbursement requests in anticipation of the execution of the Financial Assistance Agreement and the issuance of the Bonds.

Section 13. Application of Bond Proceeds. The proceeds of the sale of the Bonds shall be deposited by the Municipality into a special fund designated as "Water System Series 2024B SDWLP Project Fund." The Water System Series 2024B SDWLP Project Fund shall be used solely for the purpose of paying the costs of the Project as more fully described in the preamble hereof and in the Financial Assistance Agreement. Moneys in the Water System Series 2024B SDWLP Project Fund shall be disbursed within three (3) business days of their receipt from the State of Wisconsin and shall not be invested in any interest-bearing account.

Section 14. Amendment to Resolution. After the issuance of any of the Bonds, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Bonds have been paid in full as to both principal and interest, or discharged as herein provided, except: (a) the Municipality may, from time to time, amend this Resolution without the consent of any of the owners of the Bonds, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and (b) this Resolution may be amended, in any respect, with a written consent of the owners of not less than two-thirds (2/3) of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the Municipality; provided, however, that no amendment shall permit any change in the pledge of revenues derived from the System or the maturity of any Bond issued hereunder, or a reduction in the rate of interest on any Bond, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Bonds may be redeemed or make any other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Bond to which the change is applicable.

Section 15. Defeasance. When all Bonds have been discharged, all pledges, covenants and other rights granted to the owners thereof by this Resolution shall cease. The Municipality may discharge all Bonds due on any date by irrevocably depositing in escrow with a suitable bank or trust company a sum of cash and/or bonds or securities issued or guaranteed as to principal and interest of the U.S. Government, or of a commission, board or other instrumentality of the U.S. Government, maturing on the dates and bearing interest at the rates required to provide funds sufficient to pay when due the interest to accrue on each of said Bonds to its maturity or, at the Municipality's option, if said Bond is prepayable to any prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such Bond at maturity, or at the Municipality's option, if said Bond is prepayable, at its earliest redemption date, with the premium required for such redemption, if any, provided that notice of the redemption of all prepayable Bonds on such date has been duly given or provided for.

Section 16. Rebate Fund. Unless the Bonds are exempt from the rebate requirements of the Internal Revenue Code of 1986, as amended (the "Code"), the Municipality shall establish and maintain, so long as the Bonds and any Parity Bonds are outstanding, a separate account to be known as the "Rebate Fund." The sole purpose of the Rebate Fund is to provide for the payment of any rebate liability with respect to the Bonds under the relevant provisions of the Code and the Treasury Regulations promulgated thereunder (the "Regulations"). The Rebate Fund shall be maintained by the Municipality until all required rebate payments with respect to the Bonds have been made in accordance with the relevant provisions of the Code and the Regulations.

The Municipality hereby covenants and agrees that it shall pay to the United States from the Rebate Fund, at the times and in the amounts and manner required by the Code and the Regulations, the portion of the "rebate amount" (as defined in Section 1.148-3(b) of the Regulations) that is due as of each "computation date" (within the meaning of Section 1.148-3(e) of the Regulations). As of the date of this Resolution, the provisions of the Regulations specifying the required amounts of rebate installment payments and the time and manner of such payments are contained in Sections 1.148-3(f) and (g) of the Regulations, respectively. Amounts held in the Rebate Fund and the investment income therefrom are not pledged as security for the

Bonds or any Parity Bonds and may only be used for the payment of any rebate liability with respect to the Bonds.

The Municipality may engage the services of accountants, attorneys or other consultants necessary to assist it in determining the rebate payments, if any, owed to the United States with respect to the Bonds. The Municipality shall maintain or cause to be maintained records of determinations of rebate liability with respect to the Bonds for each computation date until six (6) years after the retirement of the last of the Bonds. The Municipality shall make such records available to the State of Wisconsin upon reasonable request therefor.

Section 17. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Municipality and the owner or owners of the Bonds, and after issuance of any of the Bonds no change or alteration of any kind in the provisions of this Resolution may be made, except as provided in Section 14, until all of the Bonds have been paid in full as to both principal and interest. The owner or owners of any of the Bonds shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against the Municipality, the Governing Body thereof, and any and all officers and agents thereof including, but without limitation, the right to require the Municipality, its Governing Body and any other authorized body, to fix and collect rates and charges fully adequate to carry out all of the provisions and agreements contained in this Resolution.

Section 18. Continuing Disclosure. The officers of the Municipality are hereby authorized and directed, if requested by the State of Wisconsin, to provide to the State of Wisconsin Safe Drinking Water Loan Program and to such other persons or entities as directed by the State of Wisconsin such ongoing disclosure regarding the Municipality's financial condition and other matters, at such times and in such manner as the Safe Drinking Water Loan Program may require, in order that securities issued by the Municipality and the State of Wisconsin satisfy rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended and as it may be amended from time to time, imposed on brokers and dealers of municipal securities before the brokers and dealers may buy, sell, or recommend the purchase of such securities.

Section 19. Conflicting Resolutions. All ordinances, resolutions (other than the Prior Resolutions), or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage. In case of any conflict between this Resolution and the Prior Resolutions, the Prior Resolutions shall control as long as any of the respective Prior Bonds are outstanding.

Passed: September 24, 2024

Approved: September 24, 2024

Matthew MacKenzie
Mayor

Attest:

Denise Oliphant
City Clerk

EXHIBIT A

(Form of Municipal Obligation)

REGISTERED
NO. _____

UNITED STATES OF AMERICA
STATE OF WISCONSIN
ASHLAND AND BAYFIELD
CITY OF ASHLAND

REGISTERED
\$ _____
COUNTIES

WATER SYSTEM REVENUE BOND, SERIES 2024B

Final
Maturity Date

May 1, 2054

Date of
Original Issue

_____, 20__

REGISTERED OWNER: STATE OF WISCONSIN SAFE DRINKING WATER LOAN
PROGRAM

FOR VALUE RECEIVED the City of Ashland, Ashland and Bayfield Counties, Wisconsin (the "Municipality") hereby acknowledges itself to owe and promises to pay to the registered owner shown above, or registered assigns, solely from the fund hereinafter specified, the principal sum of an amount not to exceed _____ DOLLARS (\$ _____) (but only so much as shall have been drawn hereunder, as provided below) on May 1 of each year commencing May 1, 2026 until the final maturity date written above, together with interest thereon (but only on amounts as shall have been drawn hereunder, as provided below) from the dates the amounts are drawn hereunder or the most recent payment date to which interest has been paid, at the rate of 1.485% per annum, calculated on the basis of a 360-day year made up of twelve 30-day months, such interest being payable on the first days of May and November of each year, with the first interest being payable on May 1, 2025.

The principal amount evidenced by this Bond may be drawn upon by the Municipality in accordance with the Financial Assistance Agreement entered by and between the Municipality and the State of Wisconsin by the Department of Natural Resources and the Department of Administration including capitalized interest transferred (if any). The principal amounts so drawn shall be repaid in installments on May 1 of each year commencing on May 1, 2026 in an amount equal to an amount which when amortized over the remaining term of this Bond plus current payments of interest (but only on amounts drawn hereunder) at One and 485/1000ths percent (1.485%) per annum shall result in equal annual payments of the total of principal and the semiannual payments of interest. The State of Wisconsin Department of Administration shall record such draws and corresponding principal repayment schedule on a cumulative basis in the format shown on the attached Schedule A.

Both principal and interest hereon are hereby made payable to the registered owner in lawful money of the United States of America. On the final maturity date, principal of this Bond shall be payable only upon presentation and surrender of this Bond at the office of the Municipal Treasurer. Principal hereof and interest hereon shall be payable by electronic transfer or by check or draft dated on or before the applicable payment date (as directed by the registered owner) and if by check or draft, mailed from the office of the Municipal Treasurer to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month next preceding such interest payment date.

This Bond shall not be redeemable prior to its maturity, except with the consent of the registered owner.

This Bond is transferable only upon the books of the Municipality kept for that purpose at the office of the Municipal Treasurer, by the registered owner in person or its duly authorized attorney, upon surrender of this Bond, together with a written instrument of transfer (which may be endorsed hereon) satisfactory to the Municipal Treasurer, duly executed by the registered owner or its duly authorized attorney. Thereupon a replacement Bond shall be issued to the transferee in exchange therefor. The Municipality may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or interest hereof and for all other purposes. This Bond is issuable solely as a negotiable, fully-registered bond, without coupons, and in denominations of \$0.01 or any integral multiple thereof.

This Bond is issued for the purpose of providing for the payment of the cost of constructing improvements to the Water System of the Municipality, pursuant to Article XI, Section 3, of the Wisconsin Constitution, Section 66.0621, Wisconsin Statutes, and a resolution adopted September 24, 2024, and entitled: "Resolution Authorizing the Issuance and Sale of Up to \$9,166,606 Water System Revenue Bonds, Series 2024B, and Providing for Other Details and Covenants With Respect Thereto" and is payable only from the income and revenues of the Water System of the Municipality (the "Utility"). The Bonds are issued on a parity with the Municipality's Water System Revenue Bonds, Series 2008, dated April 23, 2008, Water System Revenue Bonds, Series 2009, dated April 22, 2009, Water System Mortgage Revenue Bonds, dated December 23, 2016, Water System Revenue Refunding Bonds, Series 2017A, dated May 11, 2017, Water System Revenue Bonds, Series 2023B, dated December 28, 2023 and Water System Revenue Bonds, Series 2024, dated July 10, 2024, as to the pledge of income and revenues of the Utility. This Bond does not constitute an indebtedness of said Municipality within the meaning of any constitutional or statutory debt limitation or provision.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen, and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law; and that sufficient of the income and revenue to be received by said Municipality from the operation of its Utility has been pledged to and will be set aside into a special fund for the payment of the principal of and interest on this Bond.

IN WITNESS WHEREOF, the Municipality has caused this Bond to be signed by the signatures of its Mayor and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

CITY OF ASHLAND,
WISCONSIN

(SEAL)

By: _____
Matthew MacKenzie
Mayor

By: _____
Denise Oliphant
City Clerk

COPY

(Form of Assignment)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite name and address, including zip code, of Assignee)

Please insert Social Security or other identifying number of Assignee

the within Bond and all rights thereunder, hereby irrevocably constituting and appointing

Attorney to transfer said Bond on the books kept for the registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature of this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature(s) guaranteed by

SCHEDULE A

\$9,166,606

CITY OF ASHLAND, WISCONSIN
WATER SYSTEM REVENUE BONDS, SERIES 2024B

<u>Amount of Disburse- ment</u>	<u>Date of Disbursement</u>	<u>Series of Bonds</u>	<u>Principal Repaid</u>	<u>Principal Balance</u>

SCHEDULE A (continued)

PRINCIPAL REPAYMENT SCHEDULE

<u>Date</u>	<u>Principal Amount</u>
May 1, 2026	\$255,203.54
May 1, 2027	258,993.32
May 1, 2028	262,839.37
May 1, 2029	266,742.53
May 1, 2030	270,703.66
May 1, 2031	274,723.61
May 1, 2032	278,803.25
May 1, 2033	282,943.48
May 1, 2034	287,145.19
May 1, 2035	291,409.30
May 1, 2036	295,736.73
May 1, 2037	300,128.42
May 1, 2038	304,585.33
May 1, 2039	309,108.42
May 1, 2040	313,698.68
May 1, 2041	318,357.10
May 1, 2042	323,084.71
May 1, 2043	327,882.51
May 1, 2044	332,751.57
May 1, 2045	337,692.93
May 1, 2046	342,707.67
May 1, 2047	347,796.88
May 1, 2048	352,961.66
May 1, 2049	358,203.14
May 1, 2050	363,522.46
May 1, 2051	368,920.77
May 1, 2052	374,399.24
May 1, 2053	379,959.07
May 1, 2054	385,601.46

State of Wisconsin
Department of Natural Resources
Bureau of Community Financial Assistance
101 South Webster Street
PO Box 7921
Madison, Wisconsin 53707-7921

Financial Assistance Agreement
Safe Drinking Water Loan Program
Form 8700-214 rev 05/24

STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM
FINANCIAL ASSISTANCE AGREEMENT WITH PRINCIPAL FORGIVENESS

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
DEPARTMENT OF ADMINISTRATION

and

CITY OF ASHLAND

\$10,766,606 With up to \$1,600,000 PRINCIPAL FORGIVENESS

FINANCIAL ASSISTANCE AGREEMENT

Dated as of October 9, 2024

This constitutes a **Financial Assistance Agreement** under the State of Wisconsin's Safe Drinking Water Loan Program. This agreement is awarded pursuant to ss. 281.59 and 281.61, Wis. Stats. The purpose of this agreement is to award financial assistance from the Safe Drinking Water Loan Program. This agreement also discloses the terms and conditions of this award.

This agreement is only effective when signed by authorized officers of the municipality, the State of Wisconsin Department of Natural Resources, and the State of Wisconsin Department of Administration.

The Department of Natural Resources and the Department of Administration may rescind or terminate this agreement if the municipality fails to comply with the terms and conditions contained within. Any determination or certification made in this agreement by the Department of Natural Resources or the Department of Administration is made solely for the purpose of providing financial assistance under the Safe Drinking Water Loan Program.

Municipal Identification No. 02201
Safe Drinking Water Loan Program Project No. 4759-27

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EXHIBIT F	PROJECT MANAGER SUMMARY PAGE

WITNESSETH:

WHEREAS, this is a FINANCIAL ASSISTANCE AGREEMENT (the "FAA"), dated October 9, 2024, between the STATE OF WISCONSIN Safe Drinking Water Loan Program (the "SDWLP"), by the Department of Natural Resources (the "DNR") and the Department of Administration (the "DOA"), acting under authority of ss. 281.59 and 281.61, Wis. Stats., as amended (the "Statute"), and the City of Ashland, a municipality within the meaning of the Statute, duly organized and existing under the laws of the State of Wisconsin (the "Municipality"); and

WHEREAS, the United States, pursuant to the Federal Safe Drinking Water Act Amendments of 1996 (the "Act"), requires each state to establish a drinking water revolving loan fund to be administered by an instrumentality of the state before the state may receive capitalization grants for eligible projects from the United States Environmental Protection Agency (the "EPA"), or any successor which may succeed to the administration of the program established by the Act; and

WHEREAS, the State of Wisconsin, pursuant to the Statute, Wis. Stats., established the SDWLP to be used in part for purposes of the Act; and

WHEREAS, the State of Wisconsin, pursuant to s. 25.43, Wis. Stats., established a State of Wisconsin Environmental Improvement Fund which includes the SDWLP; and

WHEREAS, DNR and DOA have the joint responsibility to provide SDWLP financial assistance to municipalities for the construction of eligible drinking water projects, all as set forth in the Statute; and

WHEREAS, the Municipality submitted to DNR an application for financial assistance (the "Application") for a project (the "Project"), and DNR has approved the Application, and determined the Application meets DNR criteria for Project eligibility established in applicable state statutes and regulations; and

WHEREAS, DNR determined that the Municipality and the Project are not ineligible for financial assistance under s. 281.61(2g), Wis. Stats.; and

WHEREAS, DOA determined the SDWLP will provide financial assistance to the Municipality by making a loan (the "Loan") pursuant to s. 281.59(9), Wis. Stats., for the purposes of that subsection and providing principal forgiveness; and

WHEREAS, the Municipality pledged the security, if any, required by DOA, and the Municipality demonstrated to the satisfaction of DOA the financial capacity to ensure sufficient revenues to operate and maintain the Project for its useful life and to pay debt service on the obligations it issues for the Project; and

WHEREAS, the Municipality certifies to the SDWLP that it has created a dedicated source of revenue, for repayment of the Municipal Obligations; and

WHEREAS, the Municipality obtained DNR approval of facility plans or engineering reports and Plans and Specifications for the Project, subject to the provisions of applicable State environmental standards set forth in law, rules, and regulations;

NOW, THEREFORE, in consideration of the promises and of the mutual representations, covenants, and agreements herein set forth, the SDWLP and the Municipality, each binding itself, its successors, and its assigns, do mutually promise, covenant, and agree as follows:

ARTICLE I
DEFINITIONS; RULES OF INTERPRETATION

Section 1.01. Definitions The following capitalized terms as used in this FAA shall have the following meanings:

"Act" means the federal Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26.

"American Iron and Steel" means the requirements for using American iron and steel as mandated under EPA's Drinking Water State Revolving Fund program.

"Application" means the written application of the Municipality dated June 29, 2023, for financial assistance under the Statute.

"Bonds" means bonds or notes issued by the State pursuant to the Program Resolution, all or a portion of the proceeds of which shall be applied to make the Loan.

"Build America, Buy America" means Title IX of the Infrastructure Investment and Jobs Act, Publ. L. No. 117-58, §§ 70901-52.

"Business Day" means any day on which State offices are open to conduct business.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor provisions.

"CWFP" means the State of Wisconsin Clean Water Fund Program, established pursuant to ss. 281.58 and 281.59, Wis. Stats., and managed and administered by DNR and DOA.

"DNR" means the State of Wisconsin Department of Natural Resources and any successor entity.

"DOA" means the State of Wisconsin Department of Administration and any successor entity.

"EPA" means the United States Environmental Protection Agency or any successor entity that may succeed to the administration of the program established by the Act.

"FAA" means this Financial Assistance Agreement.

"Fees and Charges" means the costs and expenses of DNR and DOA in administering the SDWLP.

"Final Completion" means the Project construction is complete, DNR or agents thereof have certified that the Project was constructed according to DNR approved Plans and Specifications and that the facilities are operating according to design, and DNR has completed all necessary Project closeout procedures.

"Financial Assistance" means any proceeds provided under this Financial Assistance Agreement in the form of a Loan of which part of the Loan principal will be forgiven.

"Financial Assistance Agreement" means this Financial Assistance Agreement between the SDWLP by DNR, DOA, and the Municipality, as the same may be amended from time to time in accordance with Section 6.04 hereof.

"Loan" means the loan or loans made by the SDWLP to the Municipality of which a portion of the principal will be forgiven pursuant to this FAA.

"Loan Disbursement Table" means the table with columns for inserting the following information for the portion of the Loan which is to be repaid with interest:

- (a) amount of each disbursement,
- (b) date of each disbursement,
- (c) the series of Bonds from which each disbursement is made,
- (d) principal amounts repaid, and
- (e) outstanding principal balance.

"Municipal Obligation Counsel Opinion" means the opinion of counsel satisfactory to DOA, issued in conjunction with the Municipal Obligations, stating that:

- (a) this FAA and the performance by the Municipality of its obligations thereunder have been duly authorized by all necessary actions by the governing body of the Municipality, and this FAA has been duly executed and delivered by the Municipality;
- (b) the Municipal Obligations have been duly authorized, executed, and delivered by the Municipality and sold to the SDWLP;
- (c) each of this FAA and the Municipal Obligations constitutes a legal, valid, and binding obligation of the Municipality, enforceable against the Municipality in accordance with its respective terms (provided that enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that its enforcement may also be subject to the exercise of judicial discretion in appropriate cases);
- (d) the Municipal Obligations constitute special obligations of the Municipality secured as to payment of principal, interest, and redemption price by the pledged revenues as set forth therein;
- (e) interest on the Municipal Obligations is not included in gross income of the owners thereof for federal income taxation purposes under existing laws, regulations, rulings, and judicial decisions;
- (f) the Municipal Obligations are not "arbitrage bonds" within the meaning of Section 148 of the Code and the arbitrage regulations; and
- (g) the Municipal Obligations are not "private activity bonds" as defined in Section 141(a) of the Code.

"Municipal Obligation Resolution" means that action taken by the governing body of the Municipality authorizing the issuance of the Municipal Obligations.

"Municipal Obligations" means the bonds or notes issued and delivered by the Municipality to the SDWLP, a specimen copy of which is included in the Municipal Obligations transcript in exchange for the portion of the Loan which is not subject to Principal Forgiveness.

"Municipality" means the City of Ashland, a "local governmental unit" within the meaning of the Statute, duly organized and existing under the laws of the State, and any successor entity.

"Parity Obligations" means the Municipality's \$585,778 Water System Revenue Bonds, Series 2008, dated April 23, 2008; its \$417,988 Water System Revenue Bonds, Series 2009, dated April 22, 2009; its \$1,883,000 Water System Mortgage Revenue Bonds, dated December 23, 2016; its \$3,315,000 Water System Revenue Refunding Bonds, Series 2017A, dated May 11, 2017; its \$1,585,000 Water System Revenue Bonds, Series 2023B, dated December 28, 2023; its \$847,920 Water System Revenue Bonds, Series 2024, dated July 10, 2024 and any other obligations issued on a parity with the Municipal Obligations pursuant to the restrictive provisions of Section 11 of the Municipal Obligation Resolution.

"Plans and Specifications" means the Project design plans and specifications assigned No. W-2023-0412, approved by DNR on May 19, 2023 and No. W-2023-0412A, approved by DNR on March 29, 2024, as the same may be amended or modified from time to time in accordance with this FAA.

"Principal Forgiveness" means Financial Assistance received in the form of forgiveness of a portion of the Loan principal pursuant to the Act, Regulations, and this FAA of which no repayment thereof shall be required except as may be required per the Act, Statute, Regulations, or this FAA. The total amount of principal forgiveness available for this Project as of the date of this FAA is \$1,600,000. The applicable percentage of principal forgiveness for this Project, as shown on the Final Funding List, is 45%.

"Program Resolution" means the Amended and Restated Program Resolution for State of Wisconsin Environmental Improvement Fund Revenue Obligations adopted by the State of Wisconsin Building Commission, as such may from time to time be further amended or supplemented by Supplemental Resolutions in accordance with the terms and provisions of the Program Resolution.

"Progress Payments" means payments for work in place and materials or equipment that have been delivered or are stockpiled in the vicinity of the construction site. This includes payments for undelivered specifically manufactured equipment if: (1) designated in the specifications, (2) could not be readily utilized or diverted to another job, and (3) a fabrication period of more than 6 months is anticipated.

"Project" means the project assigned SDWLP Project No. 4759-27 by DNR, described in the Project Manager Summary Page (Exhibit F), and further described in the DNR approval letter(s) for the Plans and Specifications, or portions thereof, issued under s. 281.41, Wis. Stats.

"Project Costs" means the costs of the Project that are eligible for financial assistance from the SDWLP under the Statute, which are allowable costs under the Regulations, which have been incurred by the Municipality, an estimate of which is set forth in Exhibit A hereto and made a part hereof.

"Regulations" means the Act; chs. NR 108, NR 150, NR 151, NR 166, NR 809, NR 810, and NR 811, Wis. Adm. Code, the regulations of DNR; and ch. Adm. 35, Wis. Adm. Code, the regulations of DOA, adopted pursuant to and in furtherance of the Statute, as such may be adopted or amended from time to time.

"SDWLP" means the State of Wisconsin Safe Drinking Water Loan Program, established pursuant to the Statute and managed and administered by DNR and DOA.

"Servicing Fee" means any servicing fee that may be imposed by DNR and DOA pursuant to s. 281.61(5)(b), Wis. Stats., which shall cover the estimated costs of reviewing and acting upon the Application and servicing this FAA, and which the Municipality is obligated to pay as set forth in Section 3.09 hereof.

"State" means the State of Wisconsin.

"Statute" means ss. 281.59 and 281.61, Wis. Stats., as amended.

"Substantial Completion" means the date on which construction of the Project is sufficiently complete in accordance with the contract documents so that the owner can occupy and utilize the Project for its intended use.

"Supplemental Resolution" shall have the meaning set forth in the Program Resolution.

"Trustee" means the trustee appointed by the State pursuant to the Program Resolution and any successor trustee.

"User Fees" means fees charged or to be charged to users of the Project or the Water System of which the Project is a part pursuant to the Municipality's Water Rates or otherwise.

"Water Diversion Permit" means a DNR permit issued to the Municipality under s. 30.18(2), Wis. Stats., to divert water from a stream or lake in Wisconsin.

"Water Rates" means a charge or system of charges levied on users of a water system for the user's proportional share of the revenue requirement of a water system which consists of operation and maintenance expenses, depreciation, taxes, and return on investment.

"Water System" means all structures, conduits, and appurtenances by means of which water is delivered to consumers, except piping and fixtures inside buildings served and service pipes from buildings to street mains.

Section 1.02. Rules of Interpretation Unless the context clearly indicates to the contrary, the following rules shall apply to the context of this FAA:

- (a) Words importing the singular number shall include the plural number and vice versa, and one gender shall include all genders.
- (b) All references herein to particular articles or sections are references to articles or sections of this FAA.
- (c) The captions and headings herein are solely for convenience of reference and shall not constitute a part of this FAA, nor shall they affect its meaning, construction, or effect.
- (d) The terms "hereby", "hereof", "hereto", "herein", "hereunder", and any similar terms as used in this FAA refer to this FAA in its entirety and not the particular article or section of this FAA in which they appear. The term "hereafter" means after and the term "heretofore" means before the date of delivery of this FAA.
- (e) All accounting terms not otherwise defined in this FAA have the meanings assigned to them in accordance with generally accepted accounting principles, and all computations provided for herein shall be made in accordance with generally accepted accounting principles.

ARTICLE II REPRESENTATIONS

Section 2.01. Representations of the SDWLP The SDWLP represents and warrants as follows:

- (a) The State is authorized to issue the Bonds in accordance with the Statute and the Program Resolution and to use the proceeds thereof to provide funds for the Financial Assistance provided to the Municipality to undertake and complete the Project.
- (b) The SDWLP has complied with the provisions of the Statute and has full power and authority to execute and deliver this FAA, consummate the transactions contemplated hereby, and perform its obligations hereunder.
- (c) The SDWLP is not in violation of any of the provisions of the Constitution or laws of the State which would affect its powers referred to in the preceding paragraph (b).
- (d) Pursuant to the Statute, the SDWLP is authorized to execute and deliver this FAA, and to take actions and make determinations that are required of the SDWLP under the terms and conditions of this FAA.

(e) The execution and delivery by the SDWLP of this FAA and the consummation of the transactions contemplated by this FAA shall not violate any indenture, mortgage, deed of trust, note, agreement, or other contract or instrument to which the State is a party, or by which it is bound, or, to the best of the SDWLP's knowledge, any judgment, decree, order, statute, rule, or regulation applicable to the SDWLP; all consents, approvals, authorizations, and orders of governmental or regulatory authorities that are required for the consummation of the transactions contemplated thereby have been obtained.

(f) To the knowledge of the SDWLP, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court, public board, or body, threatened against, pending, or affecting the SDWLP, or, to the knowledge of the SDWLP, any basis therefore, wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated hereby or which, in any way, could adversely affect the validity of this FAA or any agreement or instrument to which the State is a party and which is used or contemplated for use in consummation of the transactions contemplated by each of the foregoing.

(g) The Project is on the DNR funding list for the 2024 state fiscal year.

Section 2.02. Representations of the Municipality The Municipality represents, and warrants as of the date of this FAA, and with respect to paragraphs (n), (s), and (u), covenants throughout the term of this FAA, as follows:

(a) The Municipality possesses the legal municipal form of a city under ch. 62, Wis. Stats. The Municipality is located within the State and is a "municipality" within the meaning of the Statute, duly organized and existing under the laws of the State, and has full legal right, power, and authority to:

- (1) conduct its business and own its properties,
- (2) enter into this FAA,
- (3) adopt the Municipal Obligation Resolution,
- (4) issue and deliver the Municipal Obligations to the SDWLP as provided herein, and
- (5) carry out and consummate all transactions contemplated by each of the aforesaid documents.

(b) The Municipality is in compliance with its Water Diversion Permit (if any).

(c) With respect to the issuance of the Municipal Obligations, the Municipality has complied with the Municipal Obligation Resolution and with all applicable laws of the State.

(d) The governing body of the Municipality has duly approved the execution and delivery of this FAA and the issuance and delivery of the Municipal Obligations in the aggregate principal amount of \$9,166,606 and authorized the taking of any and all action as may be required on the part of the Municipality and its authorized officers to carry out, give effect to, and consummate the transactions contemplated by each of the foregoing.

(e) This FAA and the Municipal Obligations have each been duly authorized, executed, and delivered, and constitute legal, valid, and binding obligations of the Municipality, enforceable in accordance with their respective terms.

(f) To the knowledge of the Municipality, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board, or body, threatened against, pending, or affecting the Municipality, or to the knowledge of the Municipality any basis therefor:

(1) affecting the creation, organization, or existence of the Municipality or the title of its officers to their respective offices;

(2) seeking to prohibit, restrain, or enjoin the execution of this FAA or the issuance or delivery of the Municipal Obligations;

(3) in any way contesting or affecting the validity or enforceability of the Municipal Obligation Resolution, the Municipal Obligations, this FAA, or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by this FAA; or

(4) wherein an unfavorable decision, ruling, or finding could adversely affect the transactions contemplated hereby or by the Municipal Obligation Resolution or the Municipal Obligations.

(g) The Municipality is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States, any applicable judgment or decree, or any agreement or other instrument to which the Municipality is a party, or by which it or any of its properties is bound, and no event has occurred that, with the passage of time, the giving of notice, or both, could constitute such a breach or default. The execution and delivery of this FAA, the issuance and delivery of the Municipal Obligations, the adoption of the Municipal Obligation Resolution, and compliance with the respective provisions thereof shall not conflict with, or constitute a breach of or default under, any applicable law or administrative regulation of the State or of the United States, any applicable judgment or decree, or any agreement or other instrument to which the Municipality is a party, or by which it or any of its property is bound.

(h) The Municipal Obligations constitute validly-issued legally-binding special obligations of the Municipality secured as set forth therein.

(i) The resolutions of the Municipality accepting the Financial Assistance and the Municipal Obligation Resolution have been duly adopted by the Municipality and remain in full force and effect as of the date hereof.

(j) The Municipality has full legal right and authority and all necessary permits, licenses, easements, and approvals (other than such permits, licenses, easements, or approvals that are not by their nature obtainable prior to Substantial Completion of the Project) required as of the date hereof to own the Project, carry on its activities relating thereto, undertake and complete the Project, and carry out and consummate all transactions contemplated by this FAA.

(k) The Municipality represents that it has not made any commitment or taken any action that shall result in a valid claim for any finders' or similar fees or commitments in respect to the issuance and sale of the Municipal Obligations and the making of the Loan under this FAA.

(l) The Project is eligible under s. 281.61(2), Wis. Stats., for financing from the SDWLP, and the Project Costs are equal to or in excess of the principal amount of the Municipal Obligations. The Project has satisfied the requirements of the State Environmental Review Procedures contained in the Regulations. Portions of the Project that are ineligible for financing from the SDWLP are listed within the Project Manager Summary Page attached hereto as Exhibit F. The Municipality intends the Project to be eligible under the Statute throughout the term of this FAA.

(m) All amounts shown in Exhibit A of this FAA are costs of a Project eligible for financial assistance from the SDWLP under the Statute. All proceeds of any borrowing of the Municipality that have been spent and which are being refinanced with the proceeds of the Financial Assistance made hereunder have been spent on eligible Project Costs. All Project Costs are reasonable, necessary, and allocable by the Municipality to the Project under generally accepted

accounting principles. None of the proceeds of the Financial Assistance shall be used directly or indirectly by the Municipality as working capital or to finance inventory, as opposed to capital improvements.

(n) The Project is and shall remain in compliance with all applicable federal, state, and local laws and ordinances (including rules and regulations) relating to zoning, building, safety, and environmental quality. The Municipality has complied with and completed all requirements of DNR necessary to commence construction of the Project prior to the date hereof. The Municipality intends to proceed with due diligence to complete the Project pursuant to Section 4.04 hereof.

(o) The Municipality does not intend to lease the Project or enter into a long-term contract for operation of the Project except as set forth in Exhibit D.

(p) The Municipality shall not take or omit to take any action which action or omission shall in any way cause the proceeds of the Bonds to be applied in a manner contrary to that provided in the Program Resolution.

(q) The Municipality has not taken and shall not take any action, and presently knows of no action that any other person, firm, or corporation has taken or intends to take, that would cause interest on the Municipal Obligations to be includable in the gross income of the owners of the Municipal Obligations for federal income tax purposes. The representations, certifications, and statements of reasonable expectation made by the Municipality as referenced in the Municipal Obligation Counsel Opinion and No Arbitrage Certificate are hereby incorporated by this reference as though fully set forth herein.

(r) Other than (1) "preliminary expenditures" as used in Treas. Regs. 26 CFR 1.150-2 in an amount not exceeding 20% of the principal amount of the Municipal Obligations, or (2) an amount not exceeding the lesser of \$100,000 or 5% of the principal amount of the Municipal Obligations, all of the proceeds of the Bonds loaned to the Municipality (other than refunding proceeds, if any) shall be used for Project Costs paid by the Municipality subsequent to a date which is 60 days prior to the date on which the Municipality adopted a reimbursement resolution pursuant to Treas. Regs. 26 CFR 1.150-2 stating its intent to reimburse other funds of the Municipality used to finance the Project, or subsequent to the issuance date of the Municipal Obligations.

(s) The Municipality represents that it has satisfied and shall continue to satisfy all the applicable requirements in ss. 281.61(4), (5), and (8m), Wis. Stats., and ch. NR 166, Wis. Adm. Code.

(t) The Municipality has adopted a rate, charge, or assessment schedule that will generate annually sufficient revenue to pay the principal of and interest on the Municipal Obligations.

(u) The Municipality is in substantial compliance and shall remain in substantial compliance with all applicable conditions, requirements, and terms of financial assistance previously awarded through any federal construction grants program, the SDWLP, or the CWFP.

(v) The Municipality has met all terms and conditions contained within and received DNR approval for the Plans and Specifications described in the definitions hereof.

(w) The Municipality represents that it submitted to DNR a bid tabulation for the Project with a recommendation to DNR for review and concurrence. The expected Substantial Completion date of the Project is October 31, 2025.

(x) If a municipality fails to make a principal repayment or interest payment after its due date, the department of administration shall place on file a certified statement of all amounts due

under this section and s. [281.58](#) or [281.61](#) or s. [281.60](#), 2021 stats. After consulting the department, the department of administration may collect all amounts due by deducting those amounts from any state payments due the municipality or may add a special charge to the amount of taxes apportioned to and levied upon the county under s. [70.60](#). If the department of administration collects amounts due, it shall remit those amounts to the fund to which they are due and notify the department of that action.

(y) The Municipality acknowledges that the State reserves the right upon default by the Municipality hereunder to have a receiver appointed to collect User Fees from the operation of the Water System or, in the case of a joint utility system, to bill the users of the Water System directly.

(z) The representations of the Municipality in the Application are true and correct as of the date of this FAA and are incorporated herein by reference as if fully set forth in this place.

(aa) There has been no material adverse change in the financial condition or operation of the Municipality or the Project since the submission date of the Application.

(bb) The Municipality submitted a water rate application to the Public Service Commission. This water rate application is for Water Rates that shall generate sufficient revenues, together with other funds available to the Municipality, to pay all costs of operating and maintaining the facilities of the Municipality's entire Water System, in accordance with this FAA. The Municipality implemented the Water Rates upon the Wisconsin Public Service Commission's approval of the rate order.

(cc) The Municipality acknowledges that it is eligible to receive Financial Assistance in the form of a Loan of \$10,766,606 with Principal Forgiveness of \$1,600,000 for payment of Project Costs.

ARTICLE III LOAN PROVISIONS

Section 3.01. Loan Clauses

(a) Subject to the conditions and in accordance with the terms of this FAA, the SDWLP hereby agrees to make the Loan and the Municipality agrees to accept the Loan. As evidence of the portion of the Loan made to the Municipality remaining subsequent to the Principal Forgiveness, the Municipality hereby agrees to sell to the SDWLP Municipal Obligations in the aggregate principal amount of \$9,166,606. The SDWLP shall pay for the Municipal Obligations in lawful money of the United States, which shall be disbursed as provided in this FAA.

(b) Prior to disbursement, Loan proceeds shall be held by the SDWLP or by the Trustee for the account of the SDWLP. Earnings on undisbursed Loan proceeds shall be for the account of the SDWLP. Loan proceeds shall be disbursed only upon submission by the Municipality of disbursement requests and approval thereof as set forth in Section 3.05 hereof.

(c) The Loan shall bear interest at the rate of one and 485/1000ths percent (1.485%) per annum, and interest shall accrue and be payable only on Loan principal amounts actually disbursed on the Municipal from the date of disbursement until the date such amounts are repaid or forgiven.

(d) Disbursements of Financial Assistance shall generally be made: first, in the form of a Loan disbursement on the Municipal Obligations, which must be at least 5% of the Municipal Obligation amount or an excess of \$50,000, whichever is less; second in the form of Loan disbursements that include the applicable percentage of Principal Forgiveness up to \$1,600,000;

and third, if the Principal Forgiveness cap has been reached, in the form of Loan disbursements on the Municipal Obligations. Principal Forgiveness will be applied at the time of Loan disbursement.

(e) The Department of Administration shall maintain a Loan Disbursement Table on its website <http://eif.doa.wi.gov/start.asp> [eif.doa.wi.gov]. DOA shall make entries as each disbursement is made and as each principal amount is repaid; the SDWLP and the Municipality agree that such entries shall be mutually binding.

(f) Upon Final Completion of the Project, DOA may request that the Municipality issue substitute Municipal Obligations in the aggregate principal amount equal to the outstanding principal balance of the Municipal Obligations.

(g) The Municipality shall deliver, or cause to be delivered, a Municipal Obligation Counsel Opinion to the SDWLP concurrently with the delivery of the Municipal Obligations.

Section 3.02. Municipal Obligations Amortization Principal and interest payments on the Municipal Obligations shall be due on the dates set forth in Exhibit B of this FAA. The payment amounts shown on Exhibit B are for informational purposes only and assume the full amount of the Municipal Obligations is disbursed and that the full amount of Principal Forgiveness available is applied to the Loan on October 9, 2024. It is understood that the actual amounts of the Municipality's Municipal Obligations payments shall be based on the actual dates and amounts of disbursements on the Municipal Obligations. Notwithstanding the foregoing or anything in the Municipal Obligations, the Municipal Obligations shall be for no longer than thirty (30) years from the date of this FAA and shall mature and be fully amortized not later than thirty (30) years after the original issue date of the Municipal Obligations. Repayment of principal on the Municipal Obligations shall begin not later than twelve (12) months after the expected or actual Substantial Completion date of the Project.

Section 3.03. Type of Municipal Obligation and Security The Municipality's obligation to meet annual debt service requirements on the Municipal Obligations shall be a revenue obligation evidenced by issuance of revenue bonds pursuant to s. 66.0621, Wis. Stats. The security for the Municipality's obligation shall be a pledge of revenues to be derived from the Water System, and the Municipality shall agree that, if revenues from the Water System are insufficient to meet annual debt service requirements, the Municipality shall purchase water services in amounts sufficient to meet annual debt service requirements as provided in and set forth in Section 9 of the Municipal Obligation Resolution. The annual revenues net of all current expenses shall be equal to not less than the annual principal and interest requirements on the Municipal Obligations, any Parity Obligations, and any other debt obligations payable from the revenues of the Water System then outstanding, times the greater of (i) 110 percent or (ii) the highest debt service coverage ratio required with respect to any Parity Obligations, or any other debt obligations payable from the revenues of the Water System then outstanding. As of the date of this FAA, the required debt service coverage ratio is 125 percent; however, this percentage is subject to change as outlined in the prior sentence. The Municipal Obligations are also secured as provided in Section 3.07 hereof.

Section 3.04. Sale and Redemption of Municipal Obligations

(a) Municipal Obligations may not be prepaid without the prior written consent of the SDWLP. The SDWLP has sole discretion to withhold such consent.

(b) The Municipality shall pay all costs and expenses of the SDWLP in effecting the redemption of the Bonds to be redeemed with the proceeds of the prepayment of the Municipal Obligations. Such costs and expenses may include any prepayment premium applicable to the SDWLP and any investment losses incurred or sustained by the SDWLP resulting directly or indirectly from any such prepayment.

- (c) Subject to subsection (a), the Municipality may prepay the Municipal Obligations with any settlements received from any third party relating to the design or construction of the Project.
- (d) Prepayments of the Municipal Obligations shall be applied pro rata to all maturities of the Municipal Obligations.

Section 3.05. Disbursement of Financial Assistance

- (a) Under this FAA, Financial Assistance shall be drawn in the order specified in Section 3.01(d) of this document.
- (b) Each disbursement request shall be delivered to DNR. Each request must contain invoices or other evidence acceptable to DNR and DOA that Project Costs for which disbursement of Financial Assistance is requested have been incurred by the Municipality.
- (c) The SDWLP, through its agents or Trustee, plans to make disbursements of Financial Assistance on a semimonthly basis upon approval of each disbursement request by DNR and DOA. Such approval by DNR and DOA may require adjustment and corrections to the disbursement request submitted by the Municipality. The Municipality shall be notified whenever such an adjustment or correction is made by DNR or DOA.
- (d) Disbursements made to the Municipality are subject to pre- and post-payment adjustments by DNR or DOA.
 - (1) If the Financial Assistance is not yet fully disbursed, and SDWLP funds were previously disbursed for costs not eligible for SDWLP funding or not eligible under this FAA, the SDWLP shall make necessary adjustments to future disbursements.
 - (2) If the Financial Assistance is fully disbursed, including disbursements for any costs not eligible for SDWLP funding or not eligible under this FAA, the Municipality agrees to repay to the SDWLP an amount equal to the non-eligible costs within 60 days of notification by DNR or DOA. The SDWLP shall then apply the amount it receives as a Loan prepayment or as a recovery of a Loan disbursement with Principal Forgiveness (if there is no outstanding Loan principal balance available to which the recovery may be applied).
- (e) The SDWLP or its agent shall disburse Financial Assistance only to the Municipality's account by electronic transfer of funds. The Municipality hereby covenants that it shall take actions and provide information necessary to facilitate these transfers.
- (f) Disbursement beyond ninety-five percent (95%) of the Financial Assistance, unless otherwise agreed to by DNR and DOA pursuant to a written request from the Municipality, may be withheld until:
 - (1) DNR is satisfied that the Project has been completed in accordance with the Plans and Specifications, and DNR has approved all change orders relating to the Project;
 - (2) the Municipality certifies to DNR its acceptance of the Project from its contractors;
 - (3) the Municipality certifies in writing to DNR its compliance with applicable Federal requirements (certification must be as prescribed on Exhibit C);
 - (4) the Municipality furnishes reports and provides data and such other information as SDWLP may require prior to Project closeout; and

(5) DNR certifies in writing to DOA the Municipality's compliance with all applicable requirements of this FAA.

(g) Treas. Regs. 26 CFR § 1.148-6(d)(1)(iii) applies to project expenditures; it states, in part, "An issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service".

Section 3.06. Remedies

(a) If the Municipality:

(1) or any authorized representative is not complying with federal or state laws, regulations, or requirements relating to the Project, and following due notice by DNR the Project is not brought into compliance within a reasonable period of time; or

(2) is not complying with or is in violation of any provision set forth in this FAA; or

(3) is not in compliance with the Statute or the Regulations;

then DNR may, until the Project is brought into compliance or the FAA non-compliance is cured to the satisfaction of DNR or DOA, impose one (1) or more of the following sanctions:

(i) Progress payments or disbursements otherwise due the Municipality of up to 20% may be withheld.

(ii) Project work may be suspended.

(iii) DNR may request a court of appropriate jurisdiction to enter an injunction or afford other equitable or judicial relief as the court finds appropriate.

(iv) Other administrative remedies may be pursued.

(b) If the Municipality fails to make any payment when due on the Municipal Obligations or fails to observe or perform any other covenant, condition, or agreement on its part under this FAA for a period of thirty (30) days after written notice is given to the Municipality by DNR, specifying the default and requesting that it be remedied, the SDWLP is provided remedies by law and this FAA. These remedies include, but are not limited to, the following rights:

(1) Pursuant to s. 281.59(11)(b), Wis. Stats., DOA shall place on file a certified statement of all amounts due the SDWLP under this FAA. DOA may collect all amounts due the SDWLP by deducting those amounts from any State payments due the Municipality or adding a special charge to the amount of taxes apportioned to and levied upon the county in which the Municipality is located under s. 70.60, Wis. Stats.

(2) The SDWLP may, without giving bond to the Municipality or anyone claiming under it, have a receiver appointed for the SDWLP's benefit of the Project and the Water System and of the earnings, income, rents, issues, and profits thereof, with such powers as the court making such appointment shall confer. The Municipality hereby irrevocably consents to such appointment.

(3) In the case of a joint utility system, the SDWLP may bill the users of the Water system directly.

(4) The SDWLP may declare the principal amount of the Municipal Obligations immediately due and payable.

(5) The SDWLP may enforce any right or obligation under this FAA, including the right to seek specific performance or mandamus, whether such action is at law or in equity.

(6) The SDWLP may increase the interest rate set forth in Section 3.01 hereof to the market interest rate as defined in the Statute and Regulations.

Section 3.07. Security for the Municipal Obligations In accordance with the terms of the Municipal Obligation Resolution:

(a) as security for the Municipal Obligations, the Municipality hereby pledges the revenue to be derived from the Municipality's Water Rates (which is a dedicated source of revenue); and

(b) other than as already pledged to the outstanding Parity Obligations, the Municipality shall not pledge the revenues, except as provided in Section 11 of the Municipal Obligation Resolution, to be derived from the Municipality's Water Rates or other revenues pledged under Section 3.07(a) above, to any person other than the SDWLP, unless the revenues pledged to such other person meet the highest debt coverage ratio then applicable to the Municipality.

Section 3.08. Effective Date and Term This FAA shall become effective upon its execution and delivery by the parties hereto, shall remain in full force and effect from such date, and shall expire on such date as the Municipal Obligations shall be discharged and satisfied in accordance with the provisions thereof.

Section 3.09. Other Amounts Payable The Municipality hereby expressly agrees to pay to the SDWLP:

(a) such Servicing Fee as the SDWLP may impose pursuant to s. 281.61(5)(b), Wis. Stats., which shall be payable in semiannual installments on each interest payment date; such a Servicing Fee shall be imposed upon the Municipality after approval of a future Biennial Finance Plan by the State of Wisconsin Building Commission which contains a Servicing Fee requirement, schedule, and amount; and

(b) the Municipality's allocable share of the Fees and Charges as such costs are incurred. Allocable share shall mean the proportionate share of the Fees and Charges based on the outstanding principal of the Loan.

Amounts paid by the Municipality pursuant to this Section 3.09 shall be deposited in the Equity Fund established pursuant to the Program Resolution.

ARTICLE IV CONSTRUCTION OF THE PROJECT

Section 4.01. Insurance The Municipality agrees to maintain property and liability insurance for the Water System and Project that is reasonable in amount and coverage and that is consistent with prudent municipal insurance practices for the term of this FAA. The Municipality agrees to provide written evidence of insurance coverage to the SDWLP upon request at any time during the term of this FAA.

In the event the Water System or Project is damaged or destroyed, the Municipality agrees to use the proceeds from its insurance coverage either to repay the Loan or to repair or replace the Water System.

Section 4.02. Construction of the Project The Municipality shall construct the Project, or cause it to be constructed, to Final Completion in accordance with the Application and the Plans and Specifications. The Municipality shall proceed with the acquisition and construction of the Project in conformity with law

and with all applicable requirements of governmental authorities having jurisdiction with respect thereto, subject to such modifications of Plans and Specifications that alter the cost of the Project, use of space, Project scope, or functional layout, as may be previously approved by DNR.

Section 4.03. Performance Bonds The Municipality shall provide, or cause to be provided, performance bonds assuring the performance of the work to be performed under all construction contracts entered into with respect to the Project. All performance bonds required hereunder shall be issued by independent surety companies authorized to transact business in the State.

Section 4.04. Completion of the Project

(a) The Municipality agrees that it shall undertake and complete the Project for the purposes and in the manner set forth in this FAA and in accordance with all federal, state, and local laws, ordinances, and regulations applicable thereto. The Municipality shall, with all practical dispatch and in a sound and economical manner, complete or cause to be completed the acquisition and construction of the Project and do all other acts necessary and possible to entitle it to receive User Fees with respect to the Project at the earliest practicable time. The Municipality shall obtain all necessary approvals from any and all governmental agencies prior to construction which are requisite to the Final Completion of the Project.

(b) The Municipality shall notify DNR of the Substantial Completion of the Project. The Municipality shall cause to be prepared as-built plans for the Project at or prior to completion thereof.

(c) The Municipality shall take and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently and in accordance with the terms of the contracts including, without limitation, the correcting of defective work.

(d) Upon Final Completion of the Project in accordance with the Plans and Specifications, the Municipality shall:

- (1) certify to DNR its acceptance of the Project from its contractors, subject to claims against contractors and third parties;
- (2) complete and deliver to DNR the completed Utilization of Disadvantaged Business Enterprises (DBE) form attached hereto as Exhibit E of this FAA;
- (3) prepare and deliver to DNR the completed Federal Requirements Compliance Certification attached hereto as Exhibit C of this FAA; and
- (4) obtain all required permits and authorizations from appropriate authorities for operation and use of the Project.

Section 4.05. Payment of Additional Project Costs

(a) In the event of revised eligibility determinations, cost overruns, and amendments exceeding the Financial Assistance amount, the SDWLP may allocate additional financial assistance to the Project. The allocation of additional financial assistance may be in the form of a loan at less than the market interest rate, which is established pursuant to the Statute and Regulations. The allocation of additional financial assistance shall depend upon availability of funds pursuant to the Statute and the Regulations.

(b) In the event this Financial Assistance is not sufficient to pay the costs of the Project in full, the Municipality shall nonetheless complete the Project and pay that portion of the Project Costs

as may be in excess of available Financial Assistance, and shall not be entitled to any reimbursement therefor from the SDWLP, or the owners of any bonds, except from the proceeds of additional financing which may be provided by the SDWLP pursuant to an amendment of this FAA or through a separate financial assistance agreement.

Section 4.06. No Warranty Regarding Condition, Suitability, or Cost of Project Neither the SDWLP, DOA, DNR, nor the Trustee makes any warranty, either express or implied, as to the Project or its condition, or that it shall be suitable for the Municipality's purposes or needs, or that the Financial Assistance shall be sufficient to pay the costs of the Project. Review or approval of engineering reports, facilities plans, the Plans and Specifications, or other documents, or the inspection of Project construction by DNR, does not relieve the Municipality of its responsibility to properly plan, design, build, and effectively operate and maintain the Project as required by laws, regulations, permits, and good management practices. DNR or its representatives are not responsible for increased costs resulting from defects in the Plans and Specifications or other Project documents. Nothing in this section prohibits a Municipality from requiring more assurances, guarantees, indemnity, or other contractual requirements from any party performing Project work.

ARTICLE V COVENANTS

Section 5.01. Application of Financial Assistance The Municipality shall apply the proceeds of the Financial Assistance solely to Project Costs.

Section 5.02. Operation and Maintenance

(a) After completion of the Project, the Municipality shall:

- (1) at all times operate the Project or otherwise cause the Project to be operated properly and in a sound and economical manner, including proper training of personnel;
- (2) maintain, preserve, and keep the Project or cause the Project to be maintained, preserved, and kept in good repair, working order, and condition; and
- (3) periodically make, or cause to be made, all necessary and proper repairs, replacements, and renewals so that at all times the operation of the Project may be properly conducted in a manner that is consistent with the Project performance standards contained in the Application and the requirements of the Water Diversion Permit (if any).

(b) So long as the Loan is outstanding, the Municipality shall not, without the approval of DNR, discontinue operation of, sell, or otherwise dispose of the Water System or Project, except for portions of the Water System sold or otherwise disposed of in the course of ordinary repair and replacement of parts.

Section 5.03. Compliance with Law At all times during construction of the Project and operation of the Water System, the Municipality shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, permits, and approvals, including, without limitation, the Statute, the Regulations, and the Water Diversion Permit (if any), and with this FAA.

Section 5.04. Public Ownership The Municipality shall at all times retain ownership of the Project and the Water System of which it is a part.

Section 5.05. Establishment of Project Accounts; Audits

(a) The Municipality shall maintain Project accounts in accordance with generally accepted accounting principles (GAAP), including standards relating to the reporting of infrastructure assets and directions issued by the SDWLP. Without any request the Municipality shall furnish to DOA as soon as available, and in any event within one hundred eighty (180) days after the close of each fiscal year, a copy of the audit report for such year and accompanying GAAP-based financial statements for such period, as examined and reported by independent certified public accountants of recognized standing selected by the Municipality and reasonably satisfactory to DOA, whose reports shall indicate that the accompanying financial statements have been prepared in conformity with GAAP and include standards relating to the reporting of infrastructure assets.

(b) The Municipality shall maintain a separate account that reflects the receipt and expenditure of all SDWLP funds for the Project. All Financial Assistance shall be credited promptly upon receipt thereof and shall be reimbursement for or expended only for Project Costs. The Municipality shall: permit any authorized representative of DNR or DOA, or agents thereof, the right to review or audit all records relating to the Project or the Financial Assistance; produce, or cause to be produced, all records relating to any work performed under the terms of this FAA for examination at such times as may be designated by any of them; permit extracts and copies of the Project records to be made by any of them; and fulfill information requests by any of them.

Section 5.06. Records The Municipality shall retain all files, books, documents, and records relating to construction of the Project for at least three years following the date of Final Completion of the Project, or for longer periods if necessary due to any appeal, dispute, or litigation. All other files and records relating to the Project shall be retained so long as this FAA remains in effect. As-built plans for the Project shall be retained for the useful life of the Project.

Section 5.07. Project Areas The Municipality shall permit representatives of DNR access to the Project and related records at all reasonable times, include provisions in all contracts permitting such access during construction and operation of the Water System, and allow extracts and copies of Project records to be made by DNR representatives.

Section 5.08. Engineering Inspection The Municipality shall provide competent and adequate inspection of all Project construction under the direction of a professional engineer licensed in the State. The Municipality shall direct such engineer to inspect work necessary for the construction of the Project and to determine whether such work has been performed in accordance with the Plans and Specifications. Any such work not in accordance with the Plans and Specifications shall be remedied unless such noncompliance is waived by DNR.

Section 5.09. Tax Covenants

(a) The Municipality covenants and agrees that it shall not take any action, or omit to take any action, which action or omission would result in the loss of the exclusion of the interest on any Municipal Obligations now or hereafter issued from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Code or any successor provision.

(b) The Municipality shall not take any action, or omit to take any action, which action or omission would cause its Municipal Obligations to be "private activity bonds" within the meaning of Section 141(a) of the Code or any successor provision.

(c) The Municipality shall not directly or indirectly use, or permit the use of, any proceeds of the Bonds (or amounts replaced with such proceeds) or any other funds, or take any action, or omit to take any action, which use or action or omission would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code or any successor provision. The Municipality hereby further covenants to ensure that all amounts actually received by such Municipality from the SDWLP are advanced within three Business Days to the entity submitting the invoice (or to reimburse the Municipality) to which each amount relates, and that all amounts

actually received by such Municipality from the SDWLP shall not be invested in any interest-bearing account.

(d) The Municipality shall not use (directly or indirectly) the proceeds of the Bonds in any manner that would constitute an "advance refunding" within the meaning of Section 149(d)(2) of the Code or any successor provision. Without limiting the foregoing, any proceeds of the Bonds used to repay interim or other prior financing of Project Costs shall be applied within three (3) Business Days of receipt of the proceeds to the payment of principal of such financing.

Section 5.10. User Fee Covenant

(a) The Municipality hereby certifies that it has adopted and shall charge User Fees with respect to the Project in accordance with applicable laws and the Statute and in amounts such that revenues of the Municipality with respect to the Project shall be sufficient, together with other funds available to the Municipality for such purposes, to pay all costs of operating and maintaining the Project in accordance with this FAA and to pay all amounts due under this FAA and the Municipal Obligations.

(b) The Municipality covenants that it shall adopt, and adequately maintain for the design life of the Project, a system of User Fees with respect to the Project. The Municipality covenants that it shall, from time to time, revise and charge User Fees with respect to the Project such that the revenues and funds described in paragraph (a) shall be sufficient to pay the costs described in paragraph (a).

Section 5.11. Notice of Impaired System The Municipality shall promptly notify DNR and DOA in the case of: any material damage to or destruction of the Project or any part thereof; any actual or threatened proceedings for the purpose of taking or otherwise affecting by condemnation, eminent domain, or otherwise, all or a part of the Water System; or any action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or agency, or any other event which may impair the ability of the Municipality to construct the Project, operate the Water System, or set and collect User Fees as set forth in Section 5.10.

Section 5.12. Hold Harmless The Municipality shall save, keep harmless, and defend DNR and DOA, and all their officers, employees, and agents, against any and all liability, claims, and costs of whatever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with or in any way incident to or arising out of the construction, occupancy, use, service, operation, or performance of work in connection with the Project, the Water System, or acts or omissions of the Municipality's employees, agents, or representatives.

Section 5.13. Nondiscrimination Covenant

(a) In connection with the Project, the Municipality agrees to comply with fair employment practices pursuant to subchapter II of ch. 111, Wis. Stats. This provision shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Municipality agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provision of the nondiscrimination clause.

(b) The Municipality shall incorporate the following provision into all Project contracts which have yet to be executed: "In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant because of age, race, religion, color, handicap, sex, physical condition, developmental disability, or national origin. The contractor further agrees to comply with fair employment practices pursuant to subchapter II of ch. 111, Wis. Stats. This provision shall include, but not be limited to, the following: employment, upgrading,

demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor further agrees to take affirmative action to ensure equal employment opportunities for persons with disabilities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause."

Section 5.14. Employees The Municipality or its employees or agents are not employees or agents of the DNR or DOA for any purpose including worker's compensation.

Section 5.15. Adequate Funds The Municipality shall have sufficient funds available to repay the Municipal Obligations. The Municipality shall have sufficient funds available when construction of the Project is completed to ensure effective operation and maintenance of the Project for purposes constructed.

Section 5.16. Management The Municipality shall provide and maintain competent and adequate management, supervision, and inspection at the construction site to ensure that the completed work conforms to the Plans and Specifications. The Municipality shall furnish progress reports and such other information as DNR may require.

Section 5.17. Reimbursement Any disbursement of Financial Assistance to the Municipality in excess of the amount determined by final audit to be due the Municipality shall be reimbursed to DOA within 60 days after DNR or DOA provides a notice stating the amount of excess funds disbursed.

Section 5.18. Unpaid User Fees The Municipality shall, to the fullest extent permitted by law, take all actions necessary to certify any unpaid User Fees to the county treasurer in order that such unpaid User Fees shall be added as a special charge to the property tax bill of the user.

Section 5.19. Rebates The Municipality agrees to pay to the SDWLP any refunds, rebates, credits, or other amounts received for Project Costs for which disbursement of funds has already been made by the SDWLP. The SDWLP shall then apply the amount it receives as a Loan prepayment or as a recovery of a Loan disbursement with Principal Forgiveness (if there is no outstanding principal balance for the Project).

Section 5.20. Maintenance of Legal Existence

(a) Except as provided in par. (b), the Municipality shall maintain its legal existence and shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another legal entity.

(b) A Municipality may consolidate with or merge into any other legal entity, dissolve or otherwise dispose of all of its assets or substantially all of its assets, or transfer all or substantially all of its assets to another legal entity (and thereafter be released of all further obligation under this FAA and the Municipal Obligations) if:

(1) the resulting, surviving, or transferee legal entity is a legal entity established and duly existing under the laws of Wisconsin;

(2) such resulting, surviving, or transferee legal entity is eligible to receive financial assistance under the Statute;

(3) such resulting, surviving, or transferee legal entity expressly assumes in writing all of the obligations of the Municipality contained in this FAA and the Municipal Obligations and any other documents the SDWLP deems reasonably necessary to protect its environmental and credit interests; and

(4) the SDWLP consents in writing to such transaction, which consent may be withheld in the absolute discretion of the SDWLP.

Section 5.21. Wage Rate Requirements The Municipality represents that it shall comply with Section 1450(e) of the Act (42 USC 300j-9(e)), which requires that all laborers and mechanics employed by contractors and subcontractors funded directly by, or assisted in whole or in part with, funding under the Loan shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Section 5.22. American Iron and Steel The Municipality agrees to comply with requirements for use of American Iron and Steel contained in Public Law 115-141 for products used in the Project that are made primarily of iron and/or steel.

Section 5.23. Federal Single Audit At the time of signing of this FAA, the funds awarded to the Municipality for this Project are not considered to be subject to federal single audit requirements, but such consideration may change subsequent to this FAA if any changes are made to federal single audit requirements applicable to municipalities. If the Municipality is required to submit a Federal Single Audit, without any request the Municipality shall furnish to DOA, at doaeif@wisconsin.gov as soon as available, and in any event within 30 days after completion, the Federal Single Audit. Notification must include acknowledgement of any SRF findings and/or resolution to prior year findings.

Section 5.24. Bipartisan Infrastructure Law Signage The Municipality agrees to comply with all signage requirements as described in the Implementing the BIL Signage Requirement Packet (available at <https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/BILsignageReqPacket.pdf>).

ARTICLE VI MISCELLANEOUS

Section 6.01. Notices All notices, certificates, or other communications hereunder shall be sufficiently given, and shall be deemed given, when hand delivered or mailed by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below:

- (a) DEPARTMENT OF ADMINISTRATION
OFFICE OF CAPITAL FINANCE
SAFE DRINKING WATER LOAN PROGRAM
101 EAST WILSON STREET 10TH FLOOR
MADISON WI 53702-0004
OR
PO BOX 7864
MADISON WI 53707-7864
- (b) DEPARTMENT OF NATURAL RESOURCES
BUREAU OF COMMUNITY FINANCIAL ASSISTANCE
101 SOUTH WEBSTER STREET CF/2
MADISON WI 53702-0005
OR
PO BOX 7921
MADISON WI 53707-7921
- (c) US BANK CORP TRUST
MATTHEW HAMILTON EP-MN-WS3T
60 LIVINGSTON AVENUE

ST PAUL MN 55101-2292

(d) CITY OF ASHLAND
601 MAIN STREET WEST
ASHLAND WI 54806

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent, by notice in writing given to the others. Any notice herein shall be delivered simultaneously to DNR and DOA.

Section 6.02. Binding Effect This FAA shall be for the benefit of, and shall be binding upon, the SDWLP and the Municipality, and their respective successors and assigns.

Section 6.03. Severability In the event any provision of this FAA shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any other provision hereof.

Section 6.04. Amendments, Supplements, and Modifications This FAA may be amended, supplemented, or modified to provide for additional financial assistance for the Project by the SDWLP to the Municipality or for other purposes. All amendments, supplements, and modifications shall be in writing between the SDWLP by DNR and DOA acting under authority of the Statute and the Municipality.

Section 6.05. Execution in Counterparts This FAA may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 6.06. Applicable Law This FAA shall be governed by and construed in accordance with the laws of the State, including the Statute.

Section 6.07. Benefit of Financial Assistance Agreement This FAA is executed, among other reasons, to induce the purchase of the Municipal Obligations. Accordingly, all duties, covenants, obligations, and agreements of the Municipality herein contained are hereby declared to be for the benefit of, and are enforceable by, the SDWLP, the Trustee, or their authorized agents.

Section 6.08. Further Assurances The Municipality shall, at the request of DNR and DOA, authorize, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments as may be necessary or desirable for: better assuring, conveying, awarding, assigning, and confirming the rights, security interests, and agreements awarded or intended to be awarded by this FAA and relating to the Municipal Obligations.

Section 6.09. Assignment of Municipal Obligations The Municipality hereby agrees that the Municipal Obligations may be sold, transferred, pledged, or hypothecated to any third party without the consent of the Municipality.

Section 6.10. Covenant by Municipality as to Compliance with Program Resolution The Municipality covenants and agrees that it shall comply with the provisions of the Program Resolution with respect to the Municipality, and that the Trustee and the owners of the Bonds shall have the power and authority provided in the Program Resolution. The Municipality further agrees to aid in the furnishing to DNR, DOA, or the Trustee of opinions that may be required under the Program Resolution.

Section 6.11. Termination This FAA may be terminated in whole or in part pursuant to one or more of the following:

(a) The SDWLP and the Municipality may enter into an agreement to terminate this FAA at any time. The termination agreement shall establish the effective date of termination of this FAA, the

basis for settlement of termination costs, and the amount and date of payment of any sums due either party.

(b) If the Municipality wishes to unilaterally terminate all or any part of the Project work for which Financial Assistance has been awarded, the Municipality shall promptly give written notice to DNR. If the SDWLP determines that there is a reasonable basis for the requested termination, the SDWLP may enter into a termination agreement, including provisions for FAA termination costs, effective with the date of cessation of the Project work by the Municipality. If the SDWLP determines that the Municipality has ceased work on the Project without reasonable basis, the SDWLP may unilaterally terminate Financial Assistance or rescind this FAA.

Section 6.12. Rescission The SDWLP may rescind this FAA prior to the first disbursement of any funds hereunder if it determines that:

- (a) there has been substantial non-performance of the Project work by the recipient without justification under the circumstances;
- (b) there is substantial evidence this FAA was obtained by fraud;
- (c) there is substantial evidence of gross abuse or corrupt practices in the administration of the Project;
- (d) the Municipality has failed to comply with the covenants contained in this FAA; or
- (e) any of the representations of the Municipality contained in this FAA were false in any material respect.

IN WITNESS WHEREOF, the SDWLP and the Municipality have caused this FAA to be executed and delivered, as of the date and year first written above.

CITY OF ASHLAND

By: _____
Matthew MacKenzie
Mayor

Attest: _____
Denise Oliphant
City Clerk

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

By: _____
Authorized Officer

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By: _____
Authorized Officer

EXHIBIT A
PROJECT BUDGET SHEET

CITY OF ASHLAND
SDWLP Project No. 4759-27

	Total Project Costs	Ineligible U.S. Army Corps of Engineers	Eligible U.S. Army Corps of Engineers	SDWLP Total Award Amount for this Project
Force Account	0.00	0.00	0.00	0.00
Interim Financing	0.00	0.00	0.00	0.00
Preliminary Engineering	1,002,030.00	15,000.00	644,122.50	342,907.50
Land or Easement Acquisition	0.00	0.00	0.00	0.00
Engineering/Construction Mgmt.	848,024.00	0.00	0.00	848,024.00
Construction/Equipment	10,333,900.00	0.00	1,240,877.50	9,093,022.50
Contingency	454,652.00	0.00	0.00	454,652.00
Miscellaneous Costs	0.00	0.00	0.00	0.00
SDWLP Closing Costs	28,000.00	0.00	0.00	28,000.00
TOTAL	12,666,606.00	15,000.00	1,885,000.00	10,766,606.00
Principal Forgiveness Amount (A)				1,600,000.00
Net SDW Loan Amount				9,166,606.00

A = Principal Forgiveness is calculated and awarded up to 45% of the total SDWLP Principal Forgiveness Eligible Costs for this Project.

City of Ashland , Wisconsin
Exhibit B

Project # 4759-27 Safe Drinking Water Loan Program

Loan Closing Date:

October 9, 2024

Payment Date	Principal Payment	Interest Rate	Interest Payment	Principal & Interest	Bond Year Debt Service	Calendar Year Debt Service
1-May-25	0.00	1.485%	76,380.74	76,380.74	76,380.74	0.00
1-Nov-25	0.00	1.485%	68,062.05	68,062.05	0.00	144,442.79
1-May-26	255,203.54	1.485%	68,062.05	323,265.59	391,327.64	0.00
1-Nov-26	0.00	1.485%	66,167.16	66,167.16	0.00	389,432.75
1-May-27	258,993.32	1.485%	66,167.16	325,160.48	391,327.64	0.00
1-Nov-27	0.00	1.485%	64,244.14	64,244.14	0.00	389,404.62
1-May-28	262,839.37	1.485%	64,244.14	327,083.51	391,327.65	0.00
1-Nov-28	0.00	1.485%	62,292.56	62,292.56	0.00	389,376.07
1-May-29	266,742.53	1.485%	62,292.56	329,035.09	391,327.65	0.00
1-Nov-29	0.00	1.485%	60,311.99	60,311.99	0.00	389,347.08
1-May-30	270,703.66	1.485%	60,311.99	331,015.65	391,327.64	0.00
1-Nov-30	0.00	1.485%	58,302.02	58,302.02	0.00	389,317.67
1-May-31	274,723.61	1.485%	58,302.02	333,025.63	391,327.65	0.00
1-Nov-31	0.00	1.485%	56,262.19	56,262.19	0.00	389,287.82
1-May-32	278,803.25	1.485%	56,262.19	335,065.44	391,327.63	0.00
1-Nov-32	0.00	1.485%	54,192.08	54,192.08	0.00	389,257.52
1-May-33	282,943.48	1.485%	54,192.08	337,135.56	391,327.64	0.00
1-Nov-33	0.00	1.485%	52,091.23	52,091.23	0.00	389,226.79
1-May-34	287,145.19	1.485%	52,091.23	339,236.42	391,327.65	0.00
1-Nov-34	0.00	1.485%	49,959.17	49,959.17	0.00	389,195.59
1-May-35	291,409.30	1.485%	49,959.17	341,368.47	391,327.64	0.00
1-Nov-35	0.00	1.485%	47,795.46	47,795.46	0.00	389,163.93
1-May-36	295,736.73	1.485%	47,795.46	343,532.19	391,327.65	0.00
1-Nov-36	0.00	1.485%	45,599.61	45,599.61	0.00	389,131.80
1-May-37	300,128.42	1.485%	45,599.61	345,728.03	391,327.64	0.00
1-Nov-37	0.00	1.485%	43,371.16	43,371.16	0.00	389,099.19
1-May-38	304,585.33	1.485%	43,371.16	347,956.49	391,327.65	0.00
1-Nov-38	0.00	1.485%	41,109.61	41,109.61	0.00	389,066.10
1-May-39	309,108.42	1.485%	41,109.61	350,218.03	391,327.64	0.00
1-Nov-39	0.00	1.485%	38,814.48	38,814.48	0.00	389,032.51
1-May-40	313,698.68	1.485%	38,814.48	352,513.16	391,327.64	0.00
1-Nov-40	0.00	1.485%	36,485.27	36,485.27	0.00	388,998.43
1-May-41	318,357.10	1.485%	36,485.27	354,842.37	391,327.64	0.00
1-Nov-41	0.00	1.485%	34,121.47	34,121.47	0.00	388,963.84
1-May-42	323,084.71	1.485%	34,121.47	357,206.18	391,327.65	0.00
1-Nov-42	0.00	1.485%	31,722.57	31,722.57	0.00	388,928.75
1-May-43	327,882.51	1.485%	31,722.57	359,605.08	391,327.65	0.00
1-Nov-43	0.00	1.485%	29,288.04	29,288.04	0.00	388,893.12
1-May-44	332,751.57	1.485%	29,288.04	362,039.61	391,327.65	0.00
1-Nov-44	0.00	1.485%	26,817.36	26,817.36	0.00	388,856.97
1-May-45	337,692.93	1.485%	26,817.36	364,510.29	391,327.65	0.00
1-Nov-45	0.00	1.485%	24,309.99	24,309.99	0.00	388,820.28
1-May-46	342,707.67	1.485%	24,309.99	367,017.66	391,327.65	0.00
1-Nov-46	0.00	1.485%	21,765.38	21,765.38	0.00	388,783.04
1-May-47	347,796.88	1.485%	21,765.38	369,562.26	391,327.64	0.00
1-Nov-47	0.00	1.485%	19,182.99	19,182.99	0.00	388,745.25
1-May-48	352,961.66	1.485%	19,182.99	372,144.65	391,327.64	0.00
1-Nov-48	0.00	1.485%	16,562.25	16,562.25	0.00	388,706.90
1-May-49	358,203.14	1.485%	16,562.25	374,765.39	391,327.64	0.00
1-Nov-49	0.00	1.485%	13,902.59	13,902.59	0.00	388,667.98
1-May-50	363,522.46	1.485%	13,902.59	377,425.05	391,327.64	0.00
1-Nov-50	0.00	1.485%	11,203.44	11,203.44	0.00	388,628.49
1-May-51	368,920.77	1.485%	11,203.44	380,124.21	391,327.65	0.00
1-Nov-51	0.00	1.485%	8,464.20	8,464.20	0.00	388,588.41
1-May-52	374,399.24	1.485%	8,464.20	382,863.44	391,327.64	0.00
1-Nov-52	0.00	1.485%	5,684.29	5,684.29	0.00	388,547.73
1-May-53	379,959.07	1.485%	5,684.29	385,643.36	391,327.65	0.00
1-Nov-53	0.00	1.485%	2,863.09	2,863.09	0.00	388,506.45
1-May-54	385,601.46	1.485%	2,863.09	388,464.55	391,327.64	388,464.55
Totals	9,166,606.00		2,258,276.42	11,424,882.42	11,424,882.42	11,424,882.42

Net Interest Rate 1.4850%
 Bond Years 152,072.4851
 Average Life 16.5898

The above schedule assumes full disbursement of the loan on the loan closing date.
 06-Sep-24 Wisconsin Department of Administration

Loan Payment Schedule Comments

Please review the preceding loan payment schedule. It shows the dates of your first interest and principal payments. The preceding loan payment schedule assumes you draw all the loan funds on the loan closing date. Borrowers often draw loan funds over time. Interest only accrues on the funds disbursed and only after the date of each disbursement.

You can view your payment schedule based on disbursements to date at <http://eif.doa.wi.gov/>. Select Loan Payment Schedule on the lower half of the page. You can also request loan payment information from doaeif@wisconsin.gov.

You can generate additional reports at <http://eif.doa.wi.gov/>.

<u>Available Report</u>	<u>Information Provided</u>
Auditor Verification Report	Information commonly requested by municipal auditors. Available for completed calendar years.
Loan Account History	Loan disbursements, principal payments, and loan balance.
Loan Payment Schedule	Future principal and interest payments for disbursements.
Payment History	Past principal and interest payments.
Disbursement History	Past loan and grant disbursements.

Use the Output to Excel button at the bottom of the page to create your report in Microsoft Excel. Find details on generating reports at <http://eif.doa.wi.gov/siteDescr.htm>.

The Environmental Improvement Fund sends invoices semi-annually. You will receive an invoice approximately 45 days prior to the due date. If you have multiple loans, we will send a single invoice showing the payment amount for each loan.

May 1: principal and interest payments due
November 1: interest payments due

For more information about your payment schedule, please email doaeif@wisconsin.gov. The first available staff will respond to your inquiry.

EXHIBIT C

FEDERAL REQUIREMENTS COMPLIANCE CERTIFICATION

[Prepare on Municipal Letterhead at Project Completion and Closeout]

The undersigned officials of the City of Ashland (the "Municipality") hereby certify that, for all expenditures made for construction of DNR Project No. 4759-27 (the "Project"), the Municipality has met the prevailing wage rate requirements of the Davis-Bacon Act.

The Municipality further certifies that, after taking into account any national or project-specific waivers approved by the U.S. Environmental Protection Agency, DNR Project No. 4759-27 has met the requirements for the use of American Iron and Steel mandated under EPA's Drinking Water State Revolving Fund Program.

The above certification is determined, after due and diligent investigation, to be true and accurate to the best of my knowledge.

By: _____
[Name of Municipal Official or
Authorized Representative]
[Title]

Dated as of: _____

Attest: _____
[Name of Clerk or Secretary]
[Title]

Dated as of: _____

EXHIBIT D

OPERATING CONTRACTS

As of the date of this FAA, the Municipality does not have any contracts with private entities or other governmental units to operate its Water System.

EXHIBIT F

PROJECT MANAGER SUMMARY PAGE

CITY OF ASHLAND
SDWLP Project No. 4759-27

1. **Project Description:** This Project includes a new intake pipeline and timber crib intake structure in Chequamegon Bay, new manhole structures and existing structure modifications, yard piping, and a new pre-chlorination system for the new intake.

To secure a water revenue pledge and U.S. Department of Agriculture Rural Development parity consent for this Project, the DNR granted a one-month loan closing extension.

2. **Ineligible Costs:** \$15,000.00 of the Greeley and Hansen preliminary design contract is ineligible for work related to U.S. Army Corps of Engineers funding.
3. **Other Funding Sources:** A total of \$1,900,000.00 will be funded by the U.S. Army Corps of Engineers. Of that, \$15,000.00 is ineligible costs and \$1,885,000.00 is eligible costs.
4. **Contingency Allowance:** The Contingency allowance of \$454,652.00 is five percent of the amount of uncompleted construction work. The Municipality must obtain CME approval of change orders prior to requesting reimbursement.
5. **DBE Good Faith Effort:** The Municipality and prime contractor, Roen Salvage Company, made good faith efforts to solicit DBE participation for the Project by publishing advertisements that encouraged DBEs to apply. No DBEs are expected to be utilized on the Project.
6. **Green Project Reserve:** No GPR elements were identified during the review of this Project.
7. **American Iron and Steel:** This Project is subject to the use of American Iron and Steel (AIS) requirements mandated under EPA's Drinking Water State Revolving Fund program.
8. **Environmental Review:** Based on an Environmental Assessment, the Project will result in a Categorical Exclusion. A construction site storm water permit may be required if the contiguous project area exceeds 1 acre.
9. **Principal Forgiveness:** The Municipality is eligible to receive general Principal Forgiveness for this Project in an amount of up to 45% of the total eligible Project Costs, as indicated on the State Fiscal Year 2024 SDWLP Funding List. The SDWLP awards \$1,600,000 in general Principal Forgiveness for the Project through this FAA. The SDWLP will process all disbursements at a rate of 14.86% Principal Forgiveness (\$1,600,000 total Principal Forgiveness/\$10,766,606 total FAA amount), up to the maximum of \$1,600,000.

EXHIBIT E

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Notice: This form is authorized by ss. 281.58, 281.59, and 281.61, Wis. Stats. Submittal of a completed form to the Department is mandatory prior to receiving a final disbursement. Dollar amounts listed on the form should only include amounts paid under the Financial Assistance Agreement. Information collected on this form will be used for administrative purposes and may be provided to requesters to the extent required by Wisconsin's Public Records Law [ss. 19.31–19.39, Wis. Stats.].

Municipality
City of Ashland

Project Number
4759-27

Project Description
Install Raw Water Intake

Are any DBEs expected to be utilized on the project? If yes, list below. Yes ☐ No ☒				Enter at Project Closeout	
DBE Firm	Indicate DBE Type	Construction or Non-construction*	Contract Estimate (\$)	Actual Amount Paid to the DBE (\$)	Certifying Agency or List
SAMPLE: ABC Engineering, LLC.	X MBE ☐ WBE ☐ Other	Non-construction	10,000	9,950	WisDOT
	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				
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	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				
	☐ MBE ☐ WBE ☐ Other				

* Construction costs include but are not limited to paving, excavation, HVAC, plumbing, electrical, carpentry, trucking, and equipment. Non-construction costs include but are not limited to professional services, engineering, land acquisition, and supplies.

I hereby certify that, to the best of my knowledge and belief, the information provided on this form is accurate and correct.

Signature of Municipal Representative		Date Signed
Name of Person Completing This Form	Email Address	Phone Number

Ref: 2024-213

COUNCIL AGENDA: 9.B.
(9/24/2024)

SUBJECT: Consider a Resolution to Combine Wards and Establish the Polling Place
for the November 5, 2024 General Election (*Clerk*) Roll

RECOMMENDATION: Approval

**DEPARTMENT OF
ORIGIN:** City Clerk

CLEARANCES: City Clerk

EXHIBITS: 1. Proposed Resolution No. 17794

**EXPENDITURES
REQUIRED:** None

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH CHAPTER 51: N/A

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN: N/A

SUMMARY STATEMENT:

[WI State Statute 5.25](#) requires that a city's governing body is required to designate polling places for Elections. The Clerk's Staff is recommending the use of the Bretting Community Center for use in the November 5, 2024 General Election. For efficiency and end of night reconciliation, the Clerk's office is also recommending the combination of all wards into one reporting unit as there will be only one Ballot Style.

RESOLUTION No. 17794

RESOLUTION TO COMBINE WARDS AND ESTABLISH THE POLLING PLACE FOR THE NOVEMBER 5, 2024 GENERAL ELECTION

WHEREAS, the City of Ashland will hold a General Election on November 5, 2024; and

WHEREAS, the Council must establish official polling places for elections; and

WHEREAS, combining wards strategically ensures easy and simple result reporting.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Ashland that Wards shall be combined and Polling Places shall be designated as follows for the November 5, 2024 General Election:

Reporting Unit	Aldermanic District (s)	City Wards
1	1-7	1-21
2		22
Polling Place for all Wards: Bretting Community Center, 400 4 th Ave W		

PASSED: September 24, 2024

Charlie Ortman, Council President

ATTEST:

Denise Oliphant, City Clerk

Matthew MacKenzie, Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

Ref: 2024-214

**COUNCIL AGENDA: 9.C.
(9/24/2024)**

SUBJECT: Creation of Finance Task Force and Communication Task Force (*Mayor*)

RECOMMENDATION: Discussion and Action

**DEPARTMENT OF
ORIGIN:** Mayor

CLEARANCES: Mayor

EXHIBITS:

**EXPENDITURES
REQUIRED:** NA

AMOUNT BUDGETED:

**APPROPRIATION
REQUIRED:**

**TREASURER'S
CERTIFICATE:** NA

COMPLIANCE WITH CHAPTER 51: NA

STATEMENT OF CONFORMANCE WITH COMPREHENSIVE PLAN:

SUMMARY STATEMENT:

As discussed at a recent Council Retreat, the Mayor wishes to begin compiling mission statements and drafts for ordinances for each of the newly developed Finance Task Force and Communication Task Force, to include but not limited to purpose, meeting dates and times, members, and duties. He will be asking for each Councilor's input during this process.