



CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WI
COMMON COUNCIL MEETING
WEDNESDAY, APRIL 3, 2024 AT 6:30 P.M.
Port Washington City Hall, 100 W. Grand Avenue, Port Washington, WI 53074

AGENDA

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. CONSENT AGENDA

All items listed under the Consent Agenda are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed and considered at this point on the agenda.

A. Approve Minutes of Previous Meeting

4. MAYOR'S BUSINESS

A. Mayor's Updates

5. OFFICERS/STAFF REPORT

6. PUBLIC COMMENTS/APPEARANCES

Your comments are welcome. Please limit comments to three (3) minutes. If you need more time, contact the City Administrator, and ask that your topic be placed on a Common Council Agenda.

7. FROM STANDING COUNCIL COMMITTEES

A. GENERAL GOVERNMENT AND FINANCE COMMITTEE

- 1. Resolution 2024-2: Resolution Authorizing the Issuance and Sale of up to \$21,505,374 Taxable Water System Revenue Bonds, Series 2024, and Providing for Other Details and Covenants with Respect Thereto**
- 2. Consideration and Possible Action on Scope of Engagement with Quarles and Brady LLP for the \$12,800,000 Clean Water Loan Fund for the City of Port Washington, WI**
- 3. Consideration and Possible Action on a Municipal Advisory Agreement with Wisconsin Public Finance Professionals, LLC for the \$12,800,000 Clean Water Fund Loan**
- 4. Consideration and Possible Action for a One-Day Alcohol Premise Extension for Sir James Pub, 316 N. Franklin Street for May 26, 2024**
- 5. Consideration and Possible Action on a Revised Developer's Agreement for Hidden Hills North Subdivision (Bielinski Homes, Inc)**

8. FROM CITY BOARDS/COMMISSIONS

A. PLAN COMMISSION

1. Ordinance 2024-3: Amending and/or Creating Zoning Ordinances to Allow and Regulate Accessory Dwelling Units in Certain Residential Zoning Districts and in the CCM Multiple Family (Central City Mixed) Zoning District- 1st Reading

2. Ordinance 2024-4: Amending and/or Creating Zoning Ordinances to Allow and Regulate Private Ambulance Services as a Conditional Use in the R-1 Single Family Detached Residence District - 1st Reading

9. UNFINISHED BUSINESS

10. NEW BUSINESS

11. PUBLIC COMMENTS/APPEARANCES

12. ADJOURNMENT

Special Accommodations: *Persons with disabilities requiring special accommodations for attendance at the meeting should contact the City Clerk's Office at (262) 284-5585. Every effort will be made to arrange accommodations for all meetings, please provide notice at least one (1) business day prior to a meeting.*

Notice of Possible Quorum: *Notice is hereby given that Common Council members or members of other governmental bodies who are not members of this board, commission or committee may be present at this meeting to gather information about a subject over which they have decision-making authority. In that event this meeting may also constitute a simultaneous meeting of the Council or of such other governmental bodies. Whether a simultaneous meeting is occurring depends on whether the presence of one or more Council members or members of such other governmental bodies results in a quorum of the Council or of such other governmental bodies and, if there is a quorum, whether any agenda items listed above involve matters within the Council's or the other governmental bodies' jurisdiction. If a simultaneous meeting is occurring, no action other than information gathering will be taken at the simultaneous meeting. [State ex rel. Badke vs. Greendale Village Board, 173 Wis. 2d 553 (1993).]*

NOTE: *To help protect public health, persons desiring to monitor this meeting remotely by telephone conference, rather than in person, may call (262) 268-4270, and then dial the Pass/Access Code of 9801 when prompted to do so.*



CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WI
COMMON COUNCIL MEETING
TUESDAY, MARCH 19, 2024 AT 6:30 P.M.
Port Washington City Hall, 100 W. Grand Avenue, Port Washington, WI 53074

MINUTES

1. **ROLL CALL-** Mayor Ted Neitzke IV convened the meeting of the Common Council at 6:30 p.m. Members present were Alderpersons Deborah Postl, Mike Gasper, Dan Benning, Jonathan Pleitner, Patrick Tearney, and John Sigwart. Ald. Paul Neumyer arrived at 6:38 p.m. Also present was City Administrator Melissa Pingel, City Clerk Susan Westerbeke, City Attorney Eric Eberhardt, ADA/HR Director Emily Blakeslee, Public Works Director Rob Vanden Noven.
2. **PLEDGE OF ALLEGIANCE TO THE FLAG-** Recitation of the Pledge of Allegiance was led by Boy Scout Dylan Yass.
3. **CONSENT AGENDA**
 - A. **Approve Minutes of Previous Meeting**
 - B. **Accept Monthly Invoice Report**MOTION MADE BY ALD. POSTL, SECONDED BY ALD. BENNING TO APPROVE AND ACCEPT THE CONSENT AGENDA AS PRESENTED. Motion carried unanimously.
4. **MAYOR'S BUSINESS-** The Mayor introduced City Administrator Melissa Pingel. Administrator Pingel thanked everyone for the warm welcome she is receiving. The City Clerk noted that In Person Early Voting by Absentee Ballot and Voter Registration is underway at City Hall through March 29th. The Mayor thanked the Fire/EMS staff for his recent ride-along. The April 2nd Common Council meeting is postponed one day until April 3rd due to the Spring Election/Presidential Preference Primary.
5. **OFFICERS/STAFF REPORT- Monthly Department Reports-** Reports were distributed in writing.
6. **PUBLIC COMMENTS/APPEARANCES-** None.
7. **FROM STANDING COUNCIL COMMITTEES**
 - A. **GENERAL GOVERNMENT AND FINANCE COMMITTEE**
 1. **Consideration and Possible Action on a National Fish and Wildlife Foundation Grant Agreement for Creating a Resilient and Sustainable Valley Creek Corridor-** The Public Works Director discussed the grant agreement. In response to recent flooding, streambank erosion and stream downcutting threatening existing sewer and water utilities that run alongside or underneath Valley Creek, combined with significant vegetation loss caused by invasives and erosion, the City has responded by researching solutions to these problems as well as the funding sources to pay for them. In 2023, with the assistance of the Lakeshore Natural Resources Partnership and Stantec, the City applied for a grant to provide engineering assistance from NFWF to create a resilient and sustainable Valley Creek. In January 2024, it was announced that the City of Port Washington would be the recipient of a grant for \$915,000. The grant will also fund engineered solutions for flooding, human access, conservation, and protection of the bike trail and various street crossings. The next step will be to select an engineering firm. Melissa Curran, Environmental Scientist/Botanist for Stantec was present to provide a presentation on the grant and its objectives. The anticipated timeline for this project is five years. Discussion was held on the project. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO APPROVE THE NATIONAL FISH AND WILDLIFE FOUNDATION GRANT AGREEMENT FOR CREATING A RESILIENT AND SUSTAINABLE VALLEY CREEK CORRIDOR AS PRESENTED. Motion carried unanimously.
 2. **Resolution 2024-1: Resolution Authorizing The Redemption Of The City's Taxable Water System Revenue Bond Anticipation Notes, Series 2021, Dated October 28, 2021-** Finance Director-Treasurer Mark Emanuelson was present to review the Bond Anticipation Note (BAN). As part of the closing process on the Safe Drinking Water Loan to fund the Water Plant Renovation Project, the current outstanding BAN must be paid off by the Friday after closing, which is currently scheduled for Wednesday April 24, 2024. The General Government and

Finance Committee recommended approval of this agreement. MOTION MADE BY ALD. PLEITNER, SECONDED BY ALD. POSTL TO APPROVE RESOLUTION 2024-1, AUTHORIZING THE REDEMPTION OF THE CITY'S TAXABLE WATER SYSTEM REVENUE BOND ANTICIPATION NOTES, SERIES 2021, DATED OCTOBER 28, 2021 AS PRESENTED. Motion carried unanimously.

3. Consideration and Possible Action on a Municipal Advisory Agreement with Wisconsin Public Finance Professionals, LLC for the \$21,500,000 Safe Drinking Water Loan- The Finance Director-Treasurer reviewed the Municipal Advisory Agreement from Wisconsin Public Finance Professionals, LLC, to serve as the City's municipal advisor for the \$21,500,000 Safe Drinking Water Loan. The Municipal Advisory fees for these services are \$15,000. The General Government and Finance Committee recommended approval of this agreement. MOTION MADE BY ALD. PLEITNER, SECONDED BY ALD. POSTL TO APPROVE THE MUNICIPAL ADVISORY AGREEMENT WITH WISCONSIN PUBLIC FINANCE PROFESSIONALS, LLC FOR THE \$21,500,000 SAFE DRINKING WATER LOAN AS PRESENTED. Motion carried unanimously.

4. Consideration and Possible Action on Scope of Engagement with Quarles and Brady LLP for the \$21,500,000 Safe Drinking Water Loan for the City of Port Washington, WI- The Finance Director-Treasurer reviewed the Scope of Engagement Letter. The attached letter from Quarles and Brady, is an engagement letter to serve as the City's bond counsel for the \$21,500,000 Safe Drinking Water Loan for the City of Port Washington, Wisconsin. The letter identifies what the role of bond counsel is in this transaction. The estimated fee to complete these services is \$20,000. The General Government and Finance Committee recommended approval of this agreement. MOTION MADE BY ALD. PLEINTER, SECONDED BY ALD. POSTL TO APPROVE THE SCOPE OF ENGAGEMENT WITH QUARLES AND BRADY LLP FOR THE \$21,500,000 SAFE DRINING WATER LOAN AS PRESENTED. Motion carried unanimously.

8. FROM CITY BOARDS/COMMISSIONS

A. PLAN COMMISSION

1. Public Hearing to Amend Section 485-170 of the Zoning Code To Allow Recording Studios in the I-1 Existing Industrial District- The Mayor opened the public hearing. There being no comments for or against, Mayor Neitzke closed the hearing.

2. Ordinance 2024-2: Amending and/or Creating Zoning Ordinances to Allow and Regulate Recording Studios as a Conditional Use in the I-1 Existing Industrial District- 2nd Reading- The Mayor read the Ordinance 2024-2 and discussion regarding the Plan Commission was held. The applicant is the owner of a .5-acre vacant parcel located on the east side of S. Park Street directly facing the Park Street Business Barn Condominiums. In 2023, this was approved to construct a 6,225 square foot office and warehouse building for the applicants. The applicant desires to construct a similar building to the one that was previously approved, but for space as a recording studio and associated activities. The Plan Commission recommended approval of this ordinance. The City Attorney requested verification that the correct applicant is listed on the application. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. NEUMYER TO RECOMMEND APPROVAL OF ORDINANCE 2024-2, AMENDING AND/OR CREATING ZONING ORDINANCES TO ALLOW AND REGULATE RECORDING STUDIOS AS A CONDITIONAL USE IN THE I-1 EXISTING INDUSTRIAL DISTRICT SUBJECT TO THE CORRECT APPLICANT BEING LISTED AS REQUESTED BY THE CITY ATTORNEY. Motion carried unanimously.

9. UNFINISHED BUSINESS- None.

10. NEW BUSINESS- None.

11. PUBLIC COMMENTS/APPEARANCES- None.

12. ADJOURNMENT- MOTION MADE BY ALD. POSTL, SECONDED BY ALD. NEUMYER TO ADJOURN THE MEETING AT 7:12 P.M. Motion carried unanimously.

Respectfully submitted,
Susan L. Westerbeke, City Clerk

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: General Government & Finance Committee; Common Council

FROM: Mark Emanuelson, Finance Director / Treasurer

DATE: Wednesday, April 4, 2024

SUBJECT: Consideration and Possible Action on Resolution 2024-2 Authorizing the Issuance and Sale of up to \$21,505,374 Taxable Water System Revenue Bonds, Series 2024, and Providing for Other Details and Covenants with Respect Thereto.

ISSUE: Should the Common Council approve a Resolution 2024-2 Authorizing the Issuance and Sale of up to \$21,505,374 Taxable Water System Revenue Bonds, Series 2024, and Providing for Other Details and Covenants with Respect Thereto?

STAFF RECOMMENDATION: Staff recommends approving Resolution 2024-2 Authorizing the Issuance and Sale of up to \$21,505,374 Taxable Water System Revenue Bonds, Series 2024, and Providing for Other Details and Covenants with Respect Thereto.

RECOMMENDED MOTION: "I move that the Resolution 2024-2 Authorizing the Issuance and Sale of up to \$21,505,374 Taxable Water System Revenue Bonds, Series 2024, and Providing for Other Details and Covenants with Respect Thereto be approved." OR "Move to approve staff's recommendation."

BACKGROUND/DISCUSSION: As an outcome of its 2018 sanitary survey, the WDNR required the city to raise floor of the clear well tanks above groundwater level and to provide emergency backup power. The city subsequently evaluated the plant for additional needs. As a result of the WDNR's requirements and the study on the plant needs, the City prepared plans for improvements, conducted a rate study, obtained construction authorization from the PSC, obtained plan approval from the WDNR and solicited bids for the project.

To pay for the plant design and construction, the City has opted to obtain a loan from the WDNR through its Safe Drinking Water Loan Fund. The Safe Drinking Water Loan Fund provides a long-term loan (20 years) at a reduced interest rate (55% of market rate) to finance drinking water projects. The current advertised rate is 2.145% for our loan.

The loan amount is \$21,505,374. This amount includes design costs \$960,000, construction administration \$1,200,000, construction costs \$18,200,000, contingency \$910,000, and \$220,000 of miscellaneous and closing costs.

STRATEGIC PLAN:

1. **Strategic Direction:** Ranking Priorities to Identify Funding Sources.
2. **Impact on Strategic Direction:** By issuing this debt it allows the City to make the needed improvements to the city's water treatment plant.

LEGAL:

1. **City Attorney Review:** Yes
2. **Legal Comments & Conclusions:** None
3. **Statutory References:** N/A

FISCAL IMPACT: Increased debt service for the water utility.

1. **Amount of Recommendation/Cost of Project:**
Initial Project Cost Estimate: \$18,000,000
Approved Budget Project Cost: \$21,505,374
Prior Year Expenditures: \$1,064,263
Total Project Costs to Date: \$1,068,656
2. **Source of Funding:** Utility Charges for services
3. **Operating and Maintenance Cost:** N/A

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government and Finance Committee will review the item prior to the Common Council meeting.

PUBLIC OUTREACH: N/A

IF APPROVED, NEXT STEPS: Loan Closing on April 24,2024.
Municipality retires 2021 \$960,000 Bond Anticipation Notes

ATTACHMENTS:

- Resolution 2024-2
- Safe Drinking Water Loan Fund Budget.
- Financial Assistance Agreement.

RESOLUTION NO. 2024-2

RESOLUTION AUTHORIZING THE ISSUANCE AND
SALE OF UP TO \$21,505,374 TAXABLE WATER SYSTEM
REVENUE BONDS, SERIES 2024,
AND PROVIDING FOR OTHER DETAILS AND
COVENANTS WITH RESPECT THERETO

WHEREAS, the City of Port Washington, Ozaukee County, 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, pursuant to a resolution adopted by the Governing Body on June 21, 2016 (the "2016 Resolution"), the Municipality has heretofore issued its Water System Revenue Bonds, dated July 6, 2016 (the "2016 Bonds"), which are payable from the income and revenues of the System; and

WHEREAS, pursuant to a resolution adopted by the Governing Body on March 20, 2018 (the "2018 Resolution"), the Municipality has heretofore issued its Water System Revenue Bonds, dated April 5, 2018 (the "2018 Bonds"), which are payable from the income and revenues of the System on a parity with the 2016 Bonds; and

WHEREAS, pursuant to a resolution adopted by the Governing Body on June 18, 2019 (the "2019 Resolution"), the Municipality has heretofore issued its Water System Revenue Bonds, dated June 28, 2019 (the "2019 Bonds"), which are payable from the income and revenues of the System on a parity with the 2016 Bonds and the 2018 Bonds; and

WHEREAS, pursuant to a resolution adopted by the Governing Body on September 7, 2021, as supplemented by the Certificate Approving the Details of Water System Revenue Bonds, Series 2021, dated October 13, 2021 (collectively, the "2021 Resolution"), the Municipality has heretofore issued its Water System Revenue Bonds, Series 2021, dated October 28, 2021 (the "2021 Bonds"), which are payable from the income and revenues of the System on a parity with the 2016 Bonds, the 2018 Bonds and the 2019 Bonds; and

WHEREAS, the 2016 Bonds, the 2018 Bonds, the 2019 Bonds and the 2021 Bonds shall collectively be referred to as the "Prior Bonds"; and

WHEREAS, the 2016 Resolution, the 2018 Resolution, the 2019 Resolution and the 2021 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. 4883-03 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-2023-0697 and dated February 8, 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 has heretofore issued its Taxable Water System Revenue Bond Anticipation Notes, Series 2021, dated October 28, 2021 (the "Prior Notes") for the purpose of paying a portion of the costs of the Project; and

WHEREAS, pursuant to Section 66.0621(4)(b), Wisconsin Statutes any municipality may also issue new bonds to provide funds for the payment of any outstanding municipal obligations issued for purchasing, acquiring, constructing, extending, adding to, improving, conducting, controlling, operating and managing a public utility; 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 to refund the Prior Notes; and

WHEREAS, due to certain provisions of the Internal Revenue Code of 1986, as amended, it is necessary to issue such bonds on a taxable basis, and the State of Wisconsin Safe Drinking Water Loan Program has determined to allow such bonds to be issued on a taxable basis; 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 Notes and 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 \$21,505,374 Taxable Water System Revenue Bonds, Series 2024, 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 improvements to the System;

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

(l) "Municipality" means the City of Port Washington, Ozaukee County, 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 2016 Bonds, the 2018 Bonds, the 2019 Bonds and the 2021 Bonds, collectively;

(p) "Prior Notes" means the Municipality's Taxable Water System Revenue Bond Anticipation Notes, Series 2021, dated October 28, 2021;

(q) "Prior Resolutions" means the 2016 Resolution, the 2018 Resolution, the 2019 Resolution and the 2021 Resolution, collectively;

(r) "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;

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

(t) "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, treatment, storage and distribution of 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;

(u) "2016 Bonds" means the Municipality's Water System Revenue Bonds, dated July 6, 2016;

(v) "2016 Resolution" means a resolution adopted by the Governing Body on June 21, 2016 authorizing the issuance of the 2016 Bonds;

(w) "2018 Bonds" means the Municipality's Water System Revenue Bonds, dated April 5, 2018;

(x) "2018 Resolution" means a resolution adopted by the Governing Body on March 20, 2018 authorizing the issuance of the 2018 Bonds;

(y) "2019 Bonds" means the Municipality's Water System Revenue Bonds, dated June 28, 2019;

(z) "2019 Resolution" means a resolution adopted by the Governing Body on June 18, 2019 authorizing the issuance of the 2019 Bonds;

(aa) "2021 Bonds" means the Municipality's Water System Revenue Bonds, Series 2021, dated October 28, 2021; and

(bb) "2021 Resolution" means a resolution adopted by the Governing Body on September 7, 2021, as supplemented by the Certificate Approving the Details of Water System Revenue Bonds, Series 2021, dated October 13, 2021, authorizing the issuance of the 2021 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) and refunding the Prior Notes, there shall be borrowed on the credit of the income and revenue of the System up to the sum of \$21,505,374; 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.

The Governing Body hereby determines that the refunding of the Prior Notes is advantageous and necessary to the Municipality.

Section 3. Terms of the Bonds. The Bonds shall be designated "Taxable Water System Revenue Bonds, Series 2024" (the "Bonds"); shall be dated their date of issuance; shall be numbered one and upward; shall bear interest at the rate of 2.255% 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 November 1, 2024 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, 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 created and established by a resolution adopted on July 20, 1989 are hereby continued and shall be used solely for the following respective purposes:

- (a) Revenue Fund (the "Revenue Fund"), into which shall be deposited as received the Gross Earnings of the System, which money shall then be transferred to 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 (the "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. The Reserve Account within the Debt Service Fund is not pledged to the payment of principal of or interest on the Bonds and moneys in the Reserve Account shall under no circumstances be used to pay principal of or interest on the Bonds.
- (d) Water System Depreciation Fund (the "Depreciation Fund"), which shall be used to provide a proper and adequate depreciation account for the System.
- (e) Water System Surplus Fund (the "Surplus Fund"), which shall first be used whenever necessary to meet requirements of the Operation and Maintenance Fund including the one month reserve, the Debt Service Fund including the Reserve Account, and the Depreciation Fund. 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), Wis. Stats. Money thereafter remaining in the Surplus Fund may be transferred to any of the funds or accounts provided in 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; money not immediately required for Current Expenses shall be used to accumulate a reserve in the Operation and Maintenance Fund equal to estimated Current Expenses for one month;

- (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), and any amount required by the Prior Resolutions or future resolutions authorizing the issuance of Parity Bonds to fund the Reserve Account;
- (c) to the Depreciation Fund, until an amount determined by the Governing Body to be sufficient to provide a proper and adequate depreciation account for the System is accumulated therein; and
- (d) 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 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 (d) 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, and to meet the Reserve Requirement established in connection with the Prior Bonds or any Parity Bonds secured by the Reserve Account.

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 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 \$21,505,374 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 SDWLP Project Fund." The Water System SDWLP Project Fund shall be used solely for the purpose of paying the costs of the Project and refunding expended proceeds of the Prior Notes as more fully described in the preamble hereof and in the Financial Assistance Agreement. Moneys in the Water System 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 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 17. 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 18. Redemption of the Prior Notes. At a meeting held on March 19, 2024, the Governing Body heretofore authorized the redemption of the Prior Notes on April 26, 2024. The Governing Body hereby ratifies all prior actions taken to effect the redemption of the Prior Notes on April 26, 2024.

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: April 3, 2024

Approved: April 3, 2024

Theodore Neitzke IV
Mayor

Attest:

Susan L. Westerbeke
City Clerk

EXHIBIT A

(Form of Municipal Obligation)

REGISTERED
NO. _____

UNITED STATES OF AMERICA
STATE OF WISCONSIN
OZAUKEE COUNTY
CITY OF PORT WASHINGTON

REGISTERED
\$ _____

TAXABLE WATER SYSTEM REVENUE BOND, SERIES 2024

Final
Maturity Date

May 1, 2053

Date of
Original Issue

_____, 20__

REGISTERED OWNER: STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM

FOR VALUE RECEIVED the City of Port Washington, Ozaukee County, 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 2.255% 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 November 1, 2024.

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 Two and 255/1000ths percent (2.255%) 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 and refunding obligations of the Municipality issued for that purpose, pursuant to Article XI, Section 3, of the Wisconsin Constitution, Section 66.0621, Wisconsin Statutes, and a resolution adopted April 3, 2024, and entitled: "Resolution Authorizing the Issuance and Sale of Up to \$21,505,374 Taxable Water System Revenue Bonds, Series 2024, 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, dated July 6, 2016, Water System Revenue Bonds, dated April 5, 2018, Water System Revenue Bonds, dated June 28, 2019 and Water System Revenue Bonds, Series 2021, dated October 28, 2021, 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 PORT WASHINGTON,
WISCONSIN

(SEAL)

By: _____
Theodore Neitzke IV
Mayor

By: _____
Susan L. Westerbeke
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

\$21,505,374

CITY OF PORT WASHINGTON, WISCONSIN
TAXABLE WATER SYSTEM REVENUE BONDS, SERIES 2024

<u>Amount of Disbursement</u>	<u>Date of Disbursement</u>	<u>Series of Bonds</u>	<u>Principal Repaid</u>	<u>Principal Balance</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

COPY

SCHEDULE A (continued)

PRINCIPAL REPAYMENT SCHEDULE

<u>Date</u>	<u>Principal Amount</u>
May 1, 2026	\$ 559,273.91
May 1, 2027	571,885.54
May 1, 2028	584,781.56
May 1, 2029	597,968.38
May 1, 2030	611,452.57
May 1, 2031	625,240.82
May 1, 2032	639,340.00
May 1, 2033	653,757.12
May 1, 2034	668,499.34
May 1, 2035	683,574.00
May 1, 2036	698,988.60
May 1, 2037	714,750.79
May 1, 2038	730,868.42
May 1, 2039	747,349.50
May 1, 2040	764,202.24
May 1, 2041	781,435.00
May 1, 2042	799,056.36
May 1, 2043	817,075.08
May 1, 2044	835,500.12
May 1, 2045	854,340.65
May 1, 2046	873,606.03
May 1, 2047	893,305.84
May 1, 2048	913,449.89
May 1, 2049	934,048.18
May 1, 2050	955,110.97
May 1, 2051	976,648.73
May 1, 2052	998,672.15
May 1, 2053	1,021,192.21

Project Budget Sheet		A	B	C	E
Budget Line Items			Total Project Costs	Ineligible Costs*	Loan Costs Requested
1	Force Account Work	#1 Total			
			\$ -	\$ -	\$ -
		#1 Total	\$ -	\$ -	\$ -
2	Interim Financing				
b.	Interest on 2021 \$960,000 BAN		\$ 3,033.33		\$ 3,033.33
		#2 Total	\$ 3,033.33	\$ -	\$ 3,033.33
3	Preliminary Design/Engineering				\$ -
	SEH PD		\$ 914,000.00		\$ 914,000.00
	SEH Plant Assessment		\$ 45,750.00		\$ 45,750.00
		#3 Total	\$ 959,750.00	\$ -	\$ 959,750.00
4	Land or Easement Acquisition				\$ -
		#4 Total	\$ -	\$ -	\$ -
5	Construction Management/Engineering				
a.	SEH CM		\$ 1,210,942.00		\$ 1,210,942.00
		#5 Total	\$ 1,210,942.00	\$ -	\$ 1,210,942.00
6	Construction/Equipment				
a.	C. D. Smith		\$ 18,198,184.00		\$ 18,198,184.00
		#6 Total	\$ 18,198,184.00	\$ -	\$ 18,198,184.00
7	Contingency & Change Orders				
			\$ 909,910.67	\$ -	\$ 909,910.67
		#7 Total	\$ 909,910.67	\$ -	\$ 909,910.67
8	Miscellaneous Costs				
	WE Energies: Moving Utilities		\$ 74,906.00		\$ 74,906.00
	J&H Heating: Relocating HVAC		\$ 16,011.00		\$ 16,011.00
	Balestreri - Asbestos removal		\$ 12,035.00		\$ 12,035.00
	Sippel Electrical: Relocating interior electrical		\$ 44,902.00		\$ 44,902.00
	Lab Equipment		\$ 15,000.00		\$ 15,000.00
	Office Equipment		\$ 10,000.00		\$ 10,000.00
	City Attorney		\$ 5,000.00		\$ 5,000.00
		#8 Total	\$ 177,854.00	\$ -	\$ 177,854.00
9	Closing Costs				
a.	Financial Advisor		\$ 15,000.00	\$ -	\$ 15,000.00
b.	Bond Counsel		\$ 30,700.00	\$ -	\$ 30,700.00
		#9 Total	\$ 45,700.00	\$ -	\$ 45,700.00
10	Total Project Costs TOTAL		\$ 21,505,374.00	\$ -	\$ 21,505,374.00

DOUBLE-C \$21,505,374.00

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 07/23

STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
DEPARTMENT OF ADMINISTRATION

and

CITY OF PORT WASHINGTON

—————
\$21,505,374

FINANCIAL ASSISTANCE AGREEMENT

—————
Dated as of April 24, 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. 45271
Safe Drinking Water Loan Program Project No. 4883-03

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WITNESSETH:

WHEREAS, this is a FINANCIAL ASSISTANCE AGREEMENT (the "FAA"), dated April 24, 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 Port Washington, 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, 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

WHEREAS, the Municipality pledged the security, if any, required by DOA, and the Municipality has 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 Loan; 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 July 3, 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.

"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 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 pursuant to this FAA.

"Loan Disbursement Table" means the table with columns for inserting the following information:

- (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; and
- (e) interest on the Municipal Obligations is included in gross income of the owners thereof for federal income taxation purposes.

"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.

"Municipality" means the City of Port Washington, 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 \$2,500,000 Water System Revenue Bonds, dated July 6, 2016 ; its \$2,635,000 Water System Revenue Bonds, dated April 5, 2018; its \$1,820,000 Water System Revenue Bonds, dated June 28, 2019; its \$2,235,000 Water System Revenue Bonds, Series 2021, dated October 28, 2021; 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-2023-0697, approved by DNR on February 8, 2024, as the same may be amended or modified from time to time in accordance with this FAA.

"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. 4883-03 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.

"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 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 making of the Loan 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 therefor, 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 \$21,505,374 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 Loan 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 Loan 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 Bonds 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) Reserved – Section omitted for taxable bonds.

(r) Reserved – Section omitted for taxable bonds.

(s) The Municipality represents that it has satisfied and shall continue to satisfy all the applicable requirements in ss. 281.61(3), (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 Municipality's Plans and Specifications for the Project 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 March 31, 2026.

(x) The Municipality acknowledges that s. 281.59(11)(b), Wis. Stats., and the Program Resolution provide that, if the Municipality fails to repay the Loan when due, the State shall recover amounts due the SDWLP by deducting those amounts from any State payments due the Municipality. State aids information is available on: the Wisconsin Department of Revenue's website at <https://www.revenue.wi.gov/Pages/Report/Shared-Revenue-Estimates.aspx>, and the Wisconsin Department of Transportation's website <https://wisconsindot.gov/Pages/doing-business/local-gov/astnce-pgms/highway/gta.aspx>.

The Municipality acknowledges that ss. 281.59(11)(b) and 70.60, Wis. Stats., and the Program Resolution provide that, if the Municipality fails to repay the Loan when due, the State shall recover amounts due the SDWLP by adding a special charge to the amount of taxes apportioned to and levied upon the county in which the Municipality is located.

(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 Municipality's Water System or, in the case of a joint utility system, to bill the users of the Municipality's 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.

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 Loan made to the Municipality, the Municipality hereby agrees to sell to the SDWLP Municipal Obligations in the aggregate principal amount of \$21,505,374. 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 two and 255/1000ths percent (2.255%) per annum, and interest shall accrue and be payable only on Loan proceeds actually disbursed from the date of disbursement until the date such amounts are repaid.
- (d) 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.
- (e) 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 Loan.
- (f) 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. Loan Amortization Principal and interest payments on the Loan (and on the Municipal Obligations evidencing the Loan) 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 Loan is disbursed to the Municipality on April 24, 2024. It is understood that the actual amount of the Municipality's Loan payments shall be based on the actual dates and amounts of Loan disbursements for the Project. Notwithstanding the foregoing or anything in the Municipal Obligations, the Loan 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 Loan 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 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 Municipality's 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 120 percent; however, this percentage is subject to change as outlined in the prior sentence. The Loan is 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 Loan 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 Loan Proceeds

(a) 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 Loan proceeds is requested have been incurred by the Municipality.

(b) The SDWLP, through its agents or Trustee, plans to make disbursements of Loan proceeds 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.

(c) Disbursements made to the Municipality are subject to pre- and post-payment adjustments by DNR or DOA.

(1) If the Loan proceeds are 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 Loan proceeds are 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.

(d) The SDWLP or its agent shall disburse Loan proceeds 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.

(e) Disbursement beyond ninety-five percent (95%) of the principal amount of the Loan, 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); and
- (4) DNR certifies in writing to DOA the Municipality's compliance with all applicable requirements of this FAA.

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 Municipality's 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 Municipality's 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 Loan In accordance with the terms of the Municipal Obligation Resolution:

(a) as security for the Loan hereunder, 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.

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 the Loan. The Municipality agrees to provide written evidence of insurance coverage to the SDWLP upon request at any time during the term of the Loan.

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 Contract 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 Loan 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 Loan proceeds are 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 Loan proceeds, 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 to 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 proceeds of the Loan shall be sufficient to pay the costs of the Project. Review or approval of engineering reports, facilities plans, 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, or indemnity or other contractual requirements from any party performing Project work.

ARTICLE V
COVENANTS

Section 5.01. Application of Loan Proceeds The Municipality shall apply the proceeds of the Loan 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, and with this FAA, including, without limitation, the Statute, the Regulations, and the Water Diversion Permit (if any).

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 Loan proceeds 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 Loan; 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. Reserved – Section omitted for taxable bonds.

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 shall 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 Loan. 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 with the Plans and Specifications. The Municipality shall furnish progress reports and such other information as DNR may require.

Section 5.17. Reimbursement Any disbursement made under the Loan 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.

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.

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 PORT WASHINGTON
100 WEST GRAND AVENUE
PORT WASHINGTON WI 53074

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 loans 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, granting, assigning, and confirming the rights, security interests, and agreements granted or intended to be granted by this FAA and 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 PORT WASHINGTON

By: _____
Theodore Neitzke IV
Mayor

Attest: _____
Susan L. Westerbeke
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 PORT WASHINGTON
SDWLP Project No. 4883-03

	SDWLP Loan Amount
Force Account	0
Interim Financing	3,033.33
Preliminary Engineering	959,750.00
Land or Easement Acquisition	0
Engineering/Construction Management	1,210,942.00
Construction/Equipment	18,198,184.00
Contingency	909,910.67
Miscellaneous Costs	177,854.00
SDWLP Closing Costs	45,700.00
TOTAL	\$21,505,374

Port Washington, City, Wisconsin

Exhibit B

Project # 4883-03 Safe Drinking Water Loan Program

Loan Closing Date:

April 24, 2024

Payment Date	Principal Payment	Interest Rate	Interest Payment	Principal & Interest	Bond Year Debt Service	Calendar Year Debt Service
1-Nov-24	0.00	2.255%	251,902.60	251,902.60	0.00	251,902.60
1-May-25	0.00	2.255%	242,473.09	242,473.09	494,375.69	0.00
1-Nov-25	0.00	2.255%	242,473.09	242,473.09	0.00	484,946.18
1-May-26	559,273.91	2.255%	242,473.09	801,747.00	1,044,220.09	0.00
1-Nov-26	0.00	2.255%	236,167.28	236,167.28	0.00	1,037,914.28
1-May-27	571,885.54	2.255%	236,167.28	808,052.82	1,044,220.10	0.00
1-Nov-27	0.00	2.255%	229,719.27	229,719.27	0.00	1,037,772.09
1-May-28	584,781.56	2.255%	229,719.27	814,500.83	1,044,220.10	0.00
1-Nov-28	0.00	2.255%	223,125.86	223,125.86	0.00	1,037,626.69
1-May-29	597,968.38	2.255%	223,125.86	821,094.24	1,044,220.10	0.00
1-Nov-29	0.00	2.255%	216,383.76	216,383.76	0.00	1,037,478.00
1-May-30	611,452.57	2.255%	216,383.76	827,836.33	1,044,220.09	0.00
1-Nov-30	0.00	2.255%	209,489.64	209,489.64	0.00	1,037,325.97
1-May-31	625,240.82	2.255%	209,489.64	834,730.46	1,044,220.10	0.00
1-Nov-31	0.00	2.255%	202,440.05	202,440.05	0.00	1,037,170.51
1-May-32	639,340.00	2.255%	202,440.05	841,780.05	1,044,220.10	0.00
1-Nov-32	0.00	2.255%	195,231.49	195,231.49	0.00	1,037,011.54
1-May-33	653,757.12	2.255%	195,231.49	848,988.61	1,044,220.10	0.00
1-Nov-33	0.00	2.255%	187,860.38	187,860.38	0.00	1,036,848.99
1-May-34	668,499.34	2.255%	187,860.38	856,359.72	1,044,220.10	0.00
1-Nov-34	0.00	2.255%	180,323.05	180,323.05	0.00	1,036,682.77
1-May-35	683,574.00	2.255%	180,323.05	863,897.05	1,044,220.10	0.00
1-Nov-35	0.00	2.255%	172,615.75	172,615.75	0.00	1,036,512.80
1-May-36	698,988.60	2.255%	172,615.75	871,604.35	1,044,220.10	0.00
1-Nov-36	0.00	2.255%	164,734.65	164,734.65	0.00	1,036,339.00
1-May-37	714,750.79	2.255%	164,734.65	879,485.44	1,044,220.09	0.00
1-Nov-37	0.00	2.255%	156,675.84	156,675.84	0.00	1,036,161.28
1-May-38	730,868.42	2.255%	156,675.84	887,544.26	1,044,220.10	0.00
1-Nov-38	0.00	2.255%	148,435.30	148,435.30	0.00	1,035,979.56
1-May-39	747,349.50	2.255%	148,435.30	895,784.80	1,044,220.10	0.00
1-Nov-39	0.00	2.255%	140,008.93	140,008.93	0.00	1,035,793.73
1-May-40	764,202.24	2.255%	140,008.93	904,211.17	1,044,220.10	0.00
1-Nov-40	0.00	2.255%	131,392.55	131,392.55	0.00	1,035,603.72
1-May-41	781,435.00	2.255%	131,392.55	912,827.55	1,044,220.10	0.00
1-Nov-41	0.00	2.255%	122,581.87	122,581.87	0.00	1,035,409.42
1-May-42	799,056.36	2.255%	122,581.87	921,638.23	1,044,220.10	0.00
1-Nov-42	0.00	2.255%	113,572.51	113,572.51	0.00	1,035,210.74
1-May-43	817,075.08	2.255%	113,572.51	930,647.59	1,044,220.10	0.00
1-Nov-43	0.00	2.255%	104,359.99	104,359.99	0.00	1,035,007.58
1-May-44	835,500.12	2.255%	104,359.99	939,860.11	1,044,220.10	0.00
1-Nov-44	0.00	2.255%	94,939.72	94,939.72	0.00	1,034,799.83
1-May-45	854,340.65	2.255%	94,939.72	949,280.37	1,044,220.09	0.00
1-Nov-45	0.00	2.255%	85,307.03	85,307.03	0.00	1,034,587.40
1-May-46	873,606.03	2.255%	85,307.03	958,913.06	1,044,220.09	0.00
1-Nov-46	0.00	2.255%	75,457.13	75,457.13	0.00	1,034,370.19
1-May-47	893,305.84	2.255%	75,457.13	968,762.97	1,044,220.10	0.00
1-Nov-47	0.00	2.255%	65,385.10	65,385.10	0.00	1,034,148.07
1-May-48	913,449.89	2.255%	65,385.10	978,834.99	1,044,220.09	0.00
1-Nov-48	0.00	2.255%	55,085.95	55,085.95	0.00	1,033,920.94
1-May-49	934,048.18	2.255%	55,085.95	989,134.13	1,044,220.08	0.00
1-Nov-49	0.00	2.255%	44,554.56	44,554.56	0.00	1,033,688.69
1-May-50	955,110.97	2.255%	44,554.56	999,665.53	1,044,220.09	0.00
1-Nov-50	0.00	2.255%	33,785.69	33,785.69	0.00	1,033,451.22
1-May-51	976,648.73	2.255%	33,785.69	1,010,434.42	1,044,220.11	0.00
1-Nov-51	0.00	2.255%	22,773.97	22,773.97	0.00	1,033,208.39
1-May-52	998,672.15	2.255%	22,773.97	1,021,446.12	1,044,220.09	0.00
1-Nov-52	0.00	2.255%	11,513.94	11,513.94	0.00	1,032,960.06
1-May-53	1,021,192.21	2.255%	11,513.94	1,032,706.15	1,044,220.09	1,032,706.15
Totals	21,505,374.00		8,227,164.39	29,732,538.39	29,732,538.39	29,732,538.39

Net Interest Rate 2.2550%
 Bond Years 364,840.9856
 Average Life 16.9651

The above schedule assumes full disbursement of the loan on the loan closing date.
 12-Mar-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 Port Washington (the "Municipality") hereby certify that, for all expenditures made for construction of DNR Project No. 4883-03 (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. 4883-03 has met the requirements for Build America, Buy America of the Infrastructure Investment and Jobs Act, Public Law No. 117-58, §§ 70901-52, and 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 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 Port Washington	Project Number 4883-03
---	---------------------------

Project Description
Upgrade Water Treatment Plant

Are any DBEs expected to be utilized on the project? If yes, list below. Yes <input type="checkbox"/> No <input type="checkbox"/>				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
<i>SAMPLE: ABC Engineering, LLC.</i>	<i>X MBE</i> <input type="checkbox"/> WBE <input type="checkbox"/> Other	<i>Non-construction</i>	<i>10,000</i>	<i>9,950</i>	<i>WisDOT</i>
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other				
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other				
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* 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

EXHIBIT F

PROJECT MANAGER SUMMARY PAGE

CITY OF PORT WASHINGTON
SDWLP Project No. 4883-03

1. **Project Description:** The Project includes updates to the water treatment plant in the Municipality. The treatment plant improvements include replacing rapid mix equipment, reconstructing the existing filters, installation of new low lift, backwash, sludge, clarifier drain, and intermediate pumps, replacing chemical feed equipment, addition of new chlorine contact clear well and equalization tanks, a new high service pump facility and generator room, and the addition of UV treatment.
2. **Ineligible Costs:** No ineligible costs were identified in the review of this Project. If the Department identifies ineligible costs as the Project progresses, the Department will notify the Municipality.
3. **Other Funding Sources:** There are no other funding sources for this Project.
4. **Miscellaneous Costs:** As shown in the Project Budget Sheet (Exhibit A), SDWLP funding in the amount of \$177,854 is included in the Miscellaneous category for:
 - ◆ WE Energies: Moving Utilities - \$74,906 *
 - ◆ J&H Heating: Relocating HVAC - \$16,011 *
 - ◆ Balestreri: Asbestos Removal - \$12,035 *
 - ◆ Sippel Electrical: Relocating Interior Electrical - \$44,902 *
 - ◆ Lab Equipment - \$15,000 *
 - ◆ Office Equipment - \$10,000
 - ◆ City Attorney - \$5,000

Items denoted by an asterisk (*), require review and approval by the DNR construction management engineer (CME) **prior** to reimbursement from the SDWLP. The Municipality must provide the CME a copy of the vendor's invoice, procurement method used, and applicable state documentation. After the CME determines eligibility and gives approval, the Municipality may then request reimbursement from the SDWLP.

5. **Contingency Allowance:** The contingency allowance of \$909,910.67 is five percent of the amount of uncompleted construction work. The Municipality must obtain CME approval of change orders prior to requesting reimbursement.
6. **DBE Good Faith Effort:** The Municipality made a good faith effort by encouraging DBEs to submit bids in their bid ad. The contractor made a good faith effort by reaching out to individual DBEs to submit bids. There are no DBEs performing work on this project.
7. **Green Project Reserve:** No GPR elements were identified during the review of this Project.
8. **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.
9. **Environmental Review:** A construction site storm water permit may be required if the contiguous project area exceeds 1 acre. Some project areas are within 300 feet of waterways therefore erosion mitigation measures should be utilized as circumstances dictate.

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: General Government and Finance Committee; Common Council

FROM: Mark Emanuelson, Finance Director

DATE: Wednesday April 3, 2024

SUBJECT: Consideration and Possible Action on Scope of Engagement with Quarles and Brady LLP for the \$12,800,000 Clean Water Fund Loan for the City of Port Washington, WI.

ISSUE: Should the Common Council approve engaging Quarles and Brady as the City's bond counsel for the \$12,800,000 Clean Water Fund Loan for the City of Port Washington, WI?

STAFF RECOMMENDATION: Staff recommends the Council approve the scope of engagement letter from Quarles & Brady LLP, dated March 14, 2024.

RECOMMENDED MOTION: "I move that the scope of engagement with Quarles and Brady to serve as bond counsel for the \$12,800,000 Clean Water Fund Loan be approved." OR "Move to approve staff's recommendation."

BACKGROUND/DISCUSSION: The attached letter from Quarles and Brady, is an engagement letter to serve as the City's bond counsel for the \$12,800,000 Clean Water Fund Loan for the City of Port Washington, Wisconsin Wastewater treatment plant project. The letter identifies what the role of bond counsel is in this transaction.

The estimated fee to complete these services is \$26,000.

STRATEGIC PLAN:

1. **Strategic Direction:** Ranking Priorities to Identify Funding Sources
2. **Impact on Strategic Direction:** By issuing this debt it allows the City to leverage one of the available funding resources available.

LEGAL:

1. **City Attorney Review:** No
2. **Legal Comments & Conclusions:** N/A
3. **Statutory References:** N/A

FISCAL IMPACT: The engagement of Quarles and Brady will cost \$26,000.

1. **Amount of Recommendation/Cost of Project:**
 - Initial Project Cost Estimate: N/A
 - Approved Budget Project Cost: N/A
 - Prior Year Expenditures: N/A
 - Total Project Costs to Date: N/A

2. **Source of Funding:** N/A
3. **Operating and Maintenance Cost:** N/A

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government and Finance Committee will review the item prior to the Common Council meeting.

PUBLIC OUTREACH: N/A

IF APPROVED, NEXT STEPS: Staff will continue to work with Wisconsin Public Finance Professionals, LLC to complete the debt financing.

ATTACHMENTS:

- Scope of Engagement Re: 2024 \$12,800,000 Clean Water Fund Loan.



411 East Wisconsin Avenue
Suite 2400
Milwaukee, Wisconsin 53202-4428
414.277.5000
Fax 414.271.3552
www.quarles.com

Attorneys at Law in
Chicago
Denver
Indianapolis
Madison
Milwaukee
Minneapolis
Naples
Phoenix
St. Louis
San Diego
Tampa
Tucson
Washington, D.C.

March 14, 2024

VIA EMAIL

Mr. Mark Emanuelson
Finance Director/City Treasurer
City of Port Washington
100 West Grand Avenue
Port Washington, WI 53074

Scope of Engagement Re: Proposed Issuance of Approximately \$12,800,000 City of Port Washington (the "City") Taxable Sewerage System Revenue Bonds, Series 2024 (Clean Water Fund Loan)

Dear Mr. Emanuelson:

We are pleased to be working with you again as the City's bond counsel.

The purpose of this letter is to set forth the role we propose to serve and responsibilities we propose to assume as bond counsel in connection with the issuance of the above-referenced bonds (the "Bonds") by the City.

Role of Bond Counsel

Bond counsel is engaged as a recognized independent expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of municipal obligations. As bond counsel we will: examine applicable law; prepare authorizing and closing documents; consult with the parties to the transaction, including the City's financial advisor (if any), prior to the issuance of the Bonds; review certified proceedings; and undertake such additional duties as we deem necessary to render the opinion. As bond counsel, we do not advocate the interests of the City or any other party to the transaction. We assume that the parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction.

Subject to the completion of proceedings to our satisfaction, we will render our opinion that:

QB\88943014.1

- 1) the City has authority to issue the Bonds for the purpose in question and has followed proper procedures in doing so;
- 2) the Bonds are valid and binding obligations of the City according to their terms; and,
- 3) the interest paid on the Bonds will be included in gross income for federal income tax purposes.

The opinion will be executed and delivered by us in written form on the date the Bonds are exchanged for their purchase price (the "Closing") and will be based on facts and law existing as of its date. Upon delivery of the opinion, our responsibilities as bond counsel will be concluded with respect to this financing; specifically, but without implied limitation, we do not undertake (unless separately engaged) to provide any post-closing compliance services including any assistance with the City's continuing disclosure commitment, ongoing advice to the City or any other party, or participating in an Internal Revenue Service, Securities and Exchange Commission or other regulatory body survey or investigation regarding or audit of the Bonds.

In rendering the opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation.

The services we will provide under this engagement are strictly limited to legal services. We are neither qualified nor engaged to provide financial advice and we will make no representation about the desirability of the proposed plan of finance, the feasibility of the projects financed or refinanced by the Securities, or any related matters.

Diversity of Practice; Consent to Unrelated Engagements

Because of the diversity of practice of our firm, the firm may be asked to represent other clients in matters adverse to the City, for example, in zoning, licensing, land division, real estate, property tax or other matters which are unrelated to our bond counsel work. Ethical requirements require that we obtain the City's consent to such representations. We do not represent you in legal matters regularly, although we may be called upon for special representation occasionally, and our bond counsel work does not usually provide us information that will be disadvantageous to you in other representations. We do not believe that such representations of others would adversely affect our relationship with you, and we have found that local governments generally are agreeable to the type of unrelated representation described above. Your approval of this letter will serve to confirm that the City consents and agrees to our representation of other present or future clients in matters adverse to the City which are not substantially related to the borrowing and finance area or any other area in which we have agreed to serve it. We agree, however, that your prospective consent to conflicting representation contained in this paragraph shall not apply in any instance where, as a result of our representation of the City, we have obtained proprietary or other confidential information, that, if

Mr. Mark Emanuelson
March 14, 2024
Page 3

known to the other client, could be used by that client to your material disadvantage. We will not disclose to the other client(s) any confidential information received during the course of our representation of the City. If you have any questions or would like to discuss this consent further, please call us.

We also want to advise you that from time to time we represent the purchaser of the Bonds, the State of Wisconsin, and various departments and agencies of the State (collectively, the "State") or other bond market participants such as the City's financial advisor, if any. In past and current transactions that are not related to the issuance of the Bonds and our role as bond counsel to the City, we may have served or be serving as bond counsel or other counsel to the State or the City's financial advisor. We may also be asked to represent the State or the City's financial advisor in future transactions that are not related to the issuance of the Bonds or our role as bond counsel to the City. Your approval of this letter will serve to confirm that the City consents to our firm undertaking representations of this type.

As bond counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or other disclosure document with respect to the Bonds, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. However, if a disclosure document is prepared and adopted or approved by the City, we will either prepare or review any description therein of: i) Wisconsin and federal law pertinent to the validity of the Bonds and the tax treatment of interest paid thereon and (ii) our opinion.

Fees

Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing, (ii) the duties we will undertake pursuant to this letter, (iii) the time we anticipate devoting to the financing, and (iv) the responsibilities we assume, we estimate that our fee as bond counsel would be approximately \$26,000, including all expenses. Such fee and expenses may vary: (i) if the principal amount of Bonds actually issued differs significantly from the amount stated above, (ii) if material changes in the structure of the financing occur, or (iii) if unusual or unforeseen circumstances arise which require a significant increase in our time, expenses or responsibility. If at any time we believe that circumstances require an adjustment of our original fee estimate, we will consult with you. It is our understanding that the City is responsible for our fee.

If, for any reason, the financing is not consummated or is completed without the rendition of our opinion as bond counsel, we will expect to be compensated at our normal hourly rates for time actually spent, plus out-of-pocket expenses. Our fee is usually paid either at the Closing out of proceeds of the Bonds or pursuant to a statement rendered shortly thereafter. We customarily do not submit any statement until the Closing unless there is a substantial delay in completing the financing.

Mr. Mark Emanuelson
March 14, 2024
Page 4

Limited Liability Partnership

Our firm is a limited liability partnership ("LLP"). Because we are an LLP, no partner of the firm has personal liability for any debts or liabilities of the firm except as otherwise required by law, and except that each partner can be personally liable for his or her own malpractice and for the malpractice of persons acting under his or her actual supervision and control. As an LLP we are required by our code of professional conduct to carry at least \$10,000,000 of malpractice insurance; currently, we carry coverage with limits substantially in excess of that amount. Please call me if you have any questions about our status as a limited liability partnership.

Conclusion and Request for Signed Copy

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning a copy of this letter dated and signed by an appropriate officer, retaining the original for your files. If we do not hear from you within thirty (30) days, we will assume that these terms are acceptable to you, but we would prefer to receive a signed copy of this letter from you.

We are looking forward to working with you and the City in this regard.

Very truly yours,

QUARLES & BRADY LLP



Rebecca A. Speckhard

RAS:JPL:TAB
#760016.00045

cc: Susan Westerbeke (via email)
Roger Strohm (via email)
Carol Ann Wirth (via email)
Jacob P. Lichter (via email)
Tracy A. Berrones (via email)

Accepted and Approved:

CITY OF PORT WASHINGTON

By: _____

Its: _____

Title

Date: _____

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: General Government & Finance Committee; Common Council

FROM: Mark Emanuelson, Finance Director / Treasurer

DATE: Wednesday April 3, 2024

SUBJECT: Consideration and Possible Action on a Municipal Advisory Agreement with Wisconsin Public Finance Professionals, LLC for the \$12,800,000 Clean Water Fund Loan.

ISSUE: Should the Common Council approve a Municipal Advisory Agreement with Wisconsin Public Finance Professionals, LLC for the \$12,800,000 Clean Water Fund Loan?

STAFF RECOMMENDATION: Staff recommend engaging Wisconsin Public Finance Professionals, LLC for the 12,800,000 Clean Water Fund Loan.

RECOMMENDED MOTION: “I move that the Municipal Advisory Agreement with Wisconsin Public Finance Professionals, LLC for the \$12,800,000 Clean Water Fund Loan be approved.”
OR “Move to approve staff’s recommendation.”

BACKGROUND/DISCUSSION: The attached Municipal Advisory Agreement from Carol Wirth, Wisconsin Public Finance Professionals, LLC, is an engagement letter to serve as the City’s municipal advisor for the \$12,800,000 Clean Water Fund Loan for the Wastewater treatment plant project. The letter identifies what the role of municipal advisor will be for this transaction. The Municipal Advisor fees for these services are \$7,500.

STRATEGIC PLAN:

1. **Strategic Direction:** Ranking Priorities to Identify Funding Sources.
2. **Impact on Strategic Direction:** By issuing this debt it allows the City to make the needed improvements to the city’s water treatment plant.

LEGAL:

1. **City Attorney Review:** No
2. **Legal Comments & Conclusions:** N/A
3. **Statutory References:** N/A

FISCAL IMPACT: \$7,500.

1. Amount of Recommendation/Cost of Project:

Initial Project Cost Estimate: N/A
Approved Budget Project Cost: N/A
Prior Year Expenditures: N/A
Total Project Costs to Date: N/A

2. Source of Funding: N/A

3. Operating and Maintenance Cost: N/A

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government and Finance Committee will review the item prior to the Common Council meeting.

PUBLIC OUTREACH: N/A

IF APPROVED, NEXT STEPS: Staff will continue to work with Wisconsin Public Finance Professionals, LLC to complete the debt financing for this project.

ATTACHMENTS:

- Municipal Advisory Agreement, Wisconsin Public Finance Professionals, LLC.



WISCONSIN

Public Finance Professionals, LLC

155 South Executive Drive, Suite 211 | Brookfield WI 53005

414-434-9644 | Fax 414-226-2014 | wipublicfinance.com

Municipal Advisory Agreement

City of Port Washington, Ozaukee County, Wisconsin

Wastewater Treatment Plant Upgrade Project No. 4269-05 State of Wisconsin Clean Water Fund Loan 2024

Wisconsin Public Finance Professionals, LLC (“WPPF”) is a “municipal advisor” as defined by the Securities and Exchange Commission (“SEC”) Final Rule adopted September 18, 2013. WPPF is registered and regulated by the SEC and the Municipal Securities Rulemaking Board (“MSRB”). The City of Port Washington, Ozaukee County, Wisconsin (“City”), hereby retains WPPF to serve as its “Municipal Advisor” in accordance with the terms and conditions of this Municipal Advisory Agreement (“Agreement”) effective the date of execution (the “Effective Date”). As Municipal Advisor, WPPF will have fiduciary duties, including a duty of care and a duty of loyalty. WPPF is required to act in the City’s best interests without regard to its own financial and other interests.

MSRB Rule G-10 and G-42 Notifications, Disclosures of Conflicts of Interest and Other Information

As a Municipal Advisor registered with the MSRB and the SEC, WPPF is required to provide certain notifications, disclosures and information to the City, in writing, no less than once each calendar year. Included on the last page of the Agreement are notifications and disclosures in accordance with MSRB Rule G-10 regarding a brochure available on the MSRB’s website at www.msrb.org that describes the protections available under MSRB rules and how to file a complaint with an appropriate regulatory authority; and, disclosures in accordance with MSRB Rule G-42 related to conflicts of interest and other information. All municipal advisory services are performed by employees of WPPF. WPPF has no relationships with other firms, or employees of the City, that could present a real or perceived conflict of interest. Carol Ann Wirth is the responsible party for WPPF in its relationship with the City.

Scope of Municipal Advisory Services

WPPF is engaged by the City as its Municipal Advisor to provide certain services with respect to the State of Wisconsin’s Clean Water Fund Loan for the Wastewater Treatment Plant Upgrade (the “Project”). The Clean Water Fund Loan (“CWF Loan”) will be an approximately \$12,800,000 taxable sewerage system revenue bond, series 2024, issued to the State of Wisconsin as a “direct borrowing” and not a municipal security. The Clean Water Fund Loan Program is part of the Wisconsin Environmental Improvement Fund, a state revolving loan fund that combines federal capitalization grants with state funding to provide affordable financial assistance to municipalities.

(a) Services to be Provided:

1. Evaluate Federal and State funding programs for the Project as requested by the City
2. Participate in conference calls with City Administration, City staff and City’s consulting engineers

3. Coordinate information requests from Wisconsin Department of Administration (“DOA”), Department of Natural Resources (“DNR”), City Administration, City staff and City’s consulting engineers
4. Provide DOA and DOR with documentation and confirmation of existing sewerage system revenue bond’s borrowing resolution, Official Statement and debt repayment information.
5. Assist City with application to DOA for variance from the CWF Loan tax-exempt bond requirement to preserve the City’s 2024 bank qualified limit for capital project issuance.
6. Attend meetings of City’s Common Council and Finance Committee
7. Review and coordinate with Bond Counsel retained by City, DOA and DNR, borrowing documents for approval by the Common Council, and for Bond Counsel to issue an unqualified opinion approving the legality and tax status of the CWF Loan
8. Coordinate execution of CWF Loan documents
9. Provide such other usual and customary municipal advisory services as may be requested by City including services related to debt payments, debt management and preliminary structuring of potential future issues, credit management and continuing disclosure requirements

(b) Limitations on Scope of Municipal Advisory Services. The Scope of Municipal Advisory Services is subject to the following limitations:

(i) The scope of services is limited solely to the services described herein and is subject to any limitations set forth within the description of the Scope of Municipal Advisory Services.

(ii) The Scope of Municipal Advisory Services does not include tax, legal, accounting or engineering advice with respect to the CWF Loan or in connection with any opinion or certificate rendered by counsel or any other person at closing; and, does not include review or advice on any feasibility study.

(c) Amendment to Scope of Municipal Advisory Services

The Scope of Municipal Advisory Services may be changed only by written amendment or supplement to the Scope of Municipal Advisory Services described herein. The parties agree to amend or supplement the Scope of Municipal Advisory Services described herein promptly to reflect any material changes or additions to the Scope of Municipal Advisory Services

Municipal Advisor’s Regulatory Duties When Servicing City

MSRB Rule G-42 requires that Municipal Advisor make a reasonable inquiry as to the facts that are relevant to City’s determination whether to proceed with a course of action with a course of action or that form the basis for and advice provided by Municipal Advisor to City. The rule also requires that Municipal Advisor undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Municipal Advisor is also required under the rule to use reasonable diligence to know the essential facts about City and the authority of each person acting on City’s behalf. The City agrees to cooperate, and to cause its agents to cooperate, with Municipal Advisor in carrying out these regulatory duties, including providing to Municipal Advisor accurate and complete information and reasonable access to relevant documents, other information and personnel needed to fulfill such duties.

Term of this Engagement

The term of this Agreement begins on the Effective Date and ends, unless earlier terminated as provided below, on December 31, 2025. This Agreement may be terminated with or without cause by either party upon the giving of at least sixty (60) days’ prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. In the event of termination, the Municipal Advisor shall be paid in full for any services performed to the date of that termination at the normal hourly rates (\$195/hour professional staff, \$95/hour support staff) for time actually spent. WPPF may not assign this Agreement without the City’s prior written consent. The laws of the State of Wisconsin shall apply to this Agreement.

Compensation - Fees and Expenses

WPFP’s fee for services performed under this Agreement shall be \$7,500. WPFP’s fee includes all necessary in-state travel and general out-of-pocket expenses. WPFP’s fee is due and payable upon the closing of the CWF Loan.

Limitation of Liability/Insurance

In the absence of intentional misconduct, bad faith, or reckless disregard of obligations or duties hereunder on the part of Municipal Advisor, and except for claims for damages covered under WPFP’s professional general liability insurance policy required under this Agreement, Municipal Advisor shall have no liability to City for damages for any act or omission in the course of, or connected with, rendering services hereunder, or for any error of judgment or mistake of law, or for any financial or other damages resulting from City’s election to act or not to act, as the case may be, contrary to any advice or recommendation provided by Municipal Advisor to the City. No recourse shall be had against Municipal Advisor for loss, damage, liability, cost or expense (whether direct, indirect or consequential) of City arising out of or in defending, prosecuting, negotiating or responding to any inquiry, questionnaire, audit, suit, action, or other proceeding brought or received from the Internal Revenue Service in connection with the CWF Loan or otherwise relating to the tax treatment of the CWF Loan, or in connection with any opinion or certificate rendered by counsel or any other party. Notwithstanding the foregoing, nothing contained in this paragraph or elsewhere in this Agreement shall constitute a waiver by the City of any of its legal rights under applicable U.S. federal securities laws or any other laws whose applicability is not permitted to be contractually waived, nor shall it constitute a waiver or diminution of Municipal Advisor’s fiduciary duty to City under Section 15B(c)(1) of the Securities Exchange Act of 1934, as amended, and the rules thereunder.

WPFP maintains professional general liability insurance in the amount of \$1,000,000 per occurrence.

Authority

The undersigned represents and warrants that he/she has full legal authority to execute this Agreement on behalf of the City. The following individuals have the authority to direct Municipal Advisor’s performance of its activities under this Agreement: Mayor Ted Neitzke, Melissa Pingel, City Administrator, Susan Westerbeke, City Clerk, and Mark Emanuelson, Finance Director/Treasurer.

WISCONSIN PUBLIC FINANCE
PROFESSIONALS, LLC

By *Carol Ann Wirth*
Carol Ann Wirth, President

CITY OF PORT WASHINGTON, WISCONSIN

By: _____

Title: Mayor Ted Neitzke IV

By: _____

Title: Susan L. Westerbeke, City Clerk

By: _____

Title: Mark Emanuelson, Finance Director/Treasurer

Date: _____

Wisconsin Public Finance Professionals, LLC

MSRB Rule G-10 Disclosure - Notifications

- Wisconsin Public Finance Professionals, LLC (“WPFP”) is a Municipal Advisor registered with the Municipal Securities Rulemaking Board (“MSRB”) and the Securities and Exchange Commission (“SEC”).
- The MSRB’s website address is as follows: www.msrb.org.
- A brochure is available on the MSRB website that describes protections available under MSRB rules and how to file a complaint with an appropriate regulatory authority.

MSRB Rule G-42 Disclosure

1. Wisconsin Public Finance Professionals, LLC (“WPFP”) is an MSRB Registered Municipal Advisor that conducts all municipal advisory activities subject to the fiduciary standards of conduct.
2. The Form MA of WPFP along with the most recent Form MA-I for each MSRB associated person is posted in the Edgar Database located on the US Securities and Exchange Commission website (www.sec.gov/edgar/searchedgar/companysearch.html) searching under the name “Wisconsin Public Finance Professionals, LLC.” If you require a hard-copy of any of these forms, please send a written request to the Firm’s Chief Compliance Officer’s attention at the address below.
3. To the best of our knowledge and belief, neither WPFP nor any Associated Person has any material undisclosed conflict of interest.
 - A. WPFP has no financial interest in, nor does WPFP receive any undisclosed compensation from, any firm or person that WPFP may use in providing any advice, service, or product to or on behalf of any WPFP client.
 - B. WPFP does not pay MSRB registered solicitors or other MSRB Registered Municipal Advisors directly or indirectly in order to obtain or retain an engagement to perform municipal advisory services for any municipal entity.
 - C. WPFP does not receive any payments from a third party to enlist WPFP’s recommendation of services, municipal securities transactions, or any municipal financial product or service.
 - D. WPFP does not have any undisclosed fee-splitting arrangements with any provider of investments or services to any municipal entity.
 - E. WPFP does not have any conflicts of interest arising from compensation for municipal activities to be performed that are contingent on the size or closing of any transaction for which WPFP is providing advice.
 - F. There is no other actual or potential conflict of interest that could reasonably be anticipated to impair WPFP’s ability to provide advice to any municipal entity in accordance with the standards of fiduciary conduct.
4. WPFP (“the Firm”) nor any of its Associated Person are not currently subject to or have been subject to any legal or disciplinary event that could be material to a client’s evaluation of the Firm or the integrity of its management or Associated Persons.

155 South Executive Drive, Suite 211, Brookfield, WI 53005

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: General Government & Finance Committee and Common Council

FROM: Susan Westerbeke, City Clerk

DATE: Wednesday, April 3, 2024

SUBJECT: Consideration and Possible Action for a One-Day Alcohol Premise Extension for Sir James Pub, 316 N. Franklin Street for May 26, 2024

ISSUE: Should the General Government & Finance Committee and Common Council approve a request from Sir James Pub for a one-day Alcohol License extension to allow the sales, serving and/or consumption of beer or wine in plastic cups only in the designated area directly behind their establishment on May 26, 2024 for their Kraken the Firkin Fest event?

STAFF RECOMMENDATION: The City Clerk has reviewed the request and recommends approval as presented.

RECOMMENDED MOTION: "I move to approve a one-day alcohol extension of premise for Sir James Pub on May 26, 2024, as presented."

BACKGROUND/DISCUSSION: This one-day extension of alcohol license request from the owner has been requested for the past number of years. The designated alcohol extension area directly abuts their property to the east and is owned by Port Washington State Bank, who has submitted a letter of approval for its use. Sir James Pub has also provided a copy of their business certificate of liability insurance. There have been no issues with any of their previous held annual events, therefore there are no immediate concerns about their proposed event for this year.

STRATEGIC PLAN:

1. **Strategic Direction:** Creating Accountability through Policies and Procedures
2. **Impact on Strategic Direction:** This process is in alignment with the licensing procedures of the City.

LEGAL:

1. **City Attorney Review:** No
2. **Legal Comments & Conclusions:** N/A
3. **Statutory References:** N/A

FISCAL IMPACT:

1. **Amount of Recommendation/Cost of Project:** N/A
Initial Project Cost Estimate: N/A
Approved Budget Project Cost: N/A
Prior Year Expenditures: N/A
Total Project Costs to Date: N/A
2. **Source of Funding:** N/A
3. **Operating and Maintenance Cost:** N/A

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: The General Government and Finance Committee will have met prior to this meeting to consider the application.

PUBLIC OUTREACH: N/A

IF APPROVED, NEXT STEPS: Once approved the establishment one-day extension of premise license will be issued to the establishment for posting.

ATTACHMENTS: Letter of Request and Letter of Permission for Use.

Wednesday, March 14, 2024

City of Port Washington

100 W. Grand Ave.

Port Washington, WI 53074

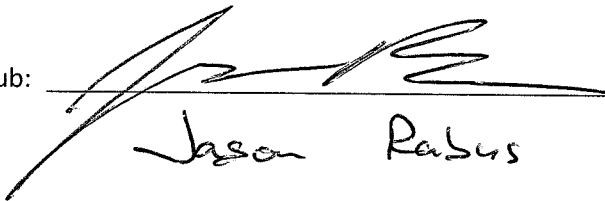
To whom it may concern,

We, Sir James Pub, the undersigned licensed business located at 316 N Franklin St, petition the City of Port Washington to amend the premises description on our liquor license, for the date of **Sunday, May 26th, 2024**. We would like to serve beer and wine products for *Kraken the Firkin Fest*, in the PWSB parking lot directly behind our establishment and request that this amendment be made to accommodate such service.

The service would be limited to the direct exterior area (to the east) of our establishment, in the Port Washington State Bank Parking lot. PWSB has given permission for Sir James Pub Inc. to use their property (see attached). The area will be completely enclosed by fencing, separate from the remainder of the Bank's property, from adjoining properties, sidewalks and streets, and contiguous with the indoor licensed area, accessible only through the doorway on the East end of the Sir James Pub building. We agree to provide, at minimum, 6 licensed bartenders throughout the event to check and verify attendees identification, oversee additional staff, monitor the outdoor area closely to ensure that alcohol beverages are not passed over or around the fence to other persons, and ensure proper management and control of both the indoor and outdoor licensed areas. We understand that only plastic service containers may be used and that all due diligence will be taken to not allow indoor tavern patrons to leave the building with other such containers.

We thank the City of Port Washington for this opportunity and look forward to a great event!

Sir James Pub: _____ (Agent/Owner)


Jason Rabus 4-14-2024



Yesterday, Today, Tomorrow... Since 1890

January 29, 2024

City of Port Washington

Re: Parking Lot Use Permission

Kraken the Firkin Fest May 26, 2024

To whom it may concern:

Port Washington State Bank grants Sir James Pub, 316 N. Franklin St. Port Washington use of our entire parking lot directly behind their property and west of our storage building at 215 E. Jackson St. Port Washington, WI. The use will be for their festival, Kraken the Firkin Fest to be held on May 26, 2024. We also will allow them to do some setup prior on May 25, 2024. The festival will add the bank as an additional insured on their coverage of the event policy.

Please contact me with any questions.

Chris Chojnowski

PWSB Building and Grounds Manager

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: Common Council

FROM: Rob Vanden Noven, Director of Public Works

DATE: Tuesday, April 3, 2024

SUBJECT: Consideration and Possible Action on a Revised Developer's Agreement for Hidden Hills North Subdivision (Bielinski Homes, Inc)

ISSUE: Should the Common Council approve a Revised Developer's Agreement with Bielinski Homes, Inc. for the development of the Hidden Hills North residential subdivision?

STAFF RECOMMENDATION: Staff recommends approval of a revised Developer's Agreement with Bielinski Homes, Inc. for the development of the Hidden Hills North residential subdivision.

RECOMMENDED MOTION: "I move that the revised Developer's Agreement with Bielinski Homes, Inc. for the development of the Hidden Hills North residential subdivision be approved as presented." OR "Move to approve staff's recommendation."

BACKGROUND/DISCUSSION: On June 21, 2022, the Common approved a Developer's Agreement with Bielinski homes for the development of the Hidden Hills North subdivision. The approved developer's agreement was never executed by the City because the developer did not provide all the required attachments and decided to delay construction until 2024. In the past two years, recodification has changed the code references in the agreement so those have been updated, and the language regarding impact fees for park development has replaced the previous language which required the developer to pay those fees upfront.

Here is a summary of the material terms and conditions of the proposed Developer's Agreement referenced above:

1. Developer: **Bielinski Homes, Inc. (the "Developer")**; or its permitted assignee.
2. Development: Residential subdivision on 25.50 acres; all built per approved Preliminary Plat for Hidden Hills North dated 12/1/2020 and approved by the City on 1/21/2021 (the "Preliminary Plat"), and a single-family estate lot referenced as Lot 32 on the Preliminary Plat (the "Estate Lot").
3. Phasing: Single family lot phase, consisting of Lots 1-30 (the "Single Family Phase"), a duplex condominium phase consisting of seven (7) duplex buildings with fourteen (14) condominium units (the "Condominium Phase"), and a single-family estate lot.
4. Roads & Streets: Developer to install and dedicate Sweetwater Boulevard and Clover Drive to the City within three years after the completion of the base course of asphalt; Developer to build/maintain Sweetwater Court as private.

5. Public Utilities: Developer to reimburse the City the proportional cost of previous improvements made to Lift Station No. 2 for new property development south and west of Sauk Creek; Developer to install a complete sanitary sewage collection system for the entire Subdivision, including laterals to the lot line of each parcel; Developer to install water main and laterals for entire Subdivision, including water service laterals to serve each lot in the Plat.
6. Sidewalks: Developer to install sidewalks on both sides of the street within the Plat.
7. Landscaping: City to plant street trees along all public roadways; Developer will pay the City a lump sum before the first building permit for this work.
8. Inspection Costs: Developer to pay actual cost of inspections for all construction and improvement requirements.
9. Guaranties: Developer to guaranty dedicated improvements for one (1) year after acceptance by City.
10. Certification of Cost for Developer Improvements: Developer to provide the City with a list of as-built costs of required improvements.
11. Irrevocable Standby Letter of Credit or Cash: Developer will, at their expense, provide the City an irrevocable standby letter of credit as a financial guarantee for the installation by Developer of all improvements in the Subdivision.
12. Park Fees: This development will be served by the existing park in Hidden Hills. Impact fees will be collected when building permits are issued to support future park improvements in the City.
13. Building Permits: Building permits will not be issued until the City accepts the sanitary sewer main and laterals, the water main and laterals, and until the gravel base course, and the binder lift of asphalt for all streets is completed; Developer is permitted to obtain building permits for up to eight (8) model homes, spec homes or "Redi Homes" ("Early-Start Permits") and up to four duplex condominiums prior to Developer's installation of the above improvements.
14. Occupancy Permits: City will not issue occupancy permits until the terms and conditions of the Developer's Agreement, and all dedications and improvements are approved and accepted by the City, except the second lift of asphalt provided there is sufficient financial guarantee.

STRATEGIC PLAN:

1. **Strategic Direction**: Catalyzing Development to Generate Revenue
2. **Impact on Strategic Direction**: This development will add to the City's base value, enabling the City to increase the tax levy to cover increasing costs to support basic services.

LEGAL:

1. **City Attorney Review**: Yes
2. **Legal Comments & Conclusions**: N/A
3. **Statutory References**: N/A

FISCAL IMPACT: N/A

1. **Amount of Recommendation/Cost of Project**: N/A

Initial Project Cost Estimate: N/A
Approved Budget Project Cost: N/A
Prior Year Expenditures: N/A
Total Project Costs to Date: N/A

2. **Source of Funding:** N/A
3. **Operating and Maintenance Cost:** N/A

BOARD/COMMITTEE/COMMISSION RECOMMENDATION: N/A

PUBLIC OUTREACH: N/A

IF APPROVED, NEXT STEPS: Execute agreement and begin construction.

ATTACHMENTS:

- Developer's Agreement, Hidden Hills North subdivision
- Preliminary Plat

DEVELOPER'S AGREEMENT

This Developer's Agreement (this "Agreement") is made this ___ day of _____, 2024, by and between Bielinski Homes, Inc., a Wisconsin corporation (the "Developer"), and the City of Port Washington, a municipal corporation of the State of Wisconsin, located in Ozaukee County, Wisconsin, (the "City"), (hereinafter separately referred to as a "Party," or collectively as the "Parties").

WHEREAS, the Developer is seeking to develop lands in the City of Port Washington to be known as "Hidden Hills North" subdivision (the "Subdivision"), which shall consist of a single family lot phase consisting of Lots 1-30 (the "Single Family Phase"), a duplex condominium phase consisting of seven (7) duplex buildings with fourteen (14) condominium units (the "Condominium Phase") as shown on Lot 31 of the Preliminary Plat for Hidden Hills North dated 01/18/2021 and approved by the City on 1/21/2021 (the "Preliminary Plat"), and a single-family estate lot referenced as Lot 32 on the Preliminary Plat (the "Estate Lot") (A true and correct copy of the Preliminary Plat is attached hereto and marked as Exhibit "A".) The Developer intends to develop the Single Family Phase and the Condominium Phase concurrently upon execution of this Agreement.

WHEREAS, the Subdivision will be developed in accordance with Chapters 440, 450, 455, 467, 473, 478 and 485 of the City Code of the City of Port Washington (the "City Code");

NOW, THEREFORE, in consideration of the approval by the City of the Preliminary Plat prior to completion and installation of all required improvements, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

SECTION I. REQUIRED IMPROVEMENTS

A. ROADS AND STREETS

1. Developer, at Developer's expense, shall grade and improve all roads and streets in accordance with the Plat of said Subdivision and the civil engineering plans, dated November 30, 2023 attached hereto, made a part hereof and marked as Exhibit "B", all in accordance with the City's street specifications and as approved by the City Engineer.
2. The second course of asphalt shall be paved by the Developer, at Developer's expense, on all streets in the Plat within three (3) years after the completion of the base course of asphalt or when 75% of the total number of lots in the Subdivision have been built upon and their respective owners have received occupancy permits, whichever occurs earlier.
3. Notwithstanding the foregoing, Developer may develop the Estate Lot separately and at a different time than the Single Family Phase and the Condominium Phase and any requirements regarding roads and streets improvements shall be applicable separately to each subject phase.
4. After the completion of the base course of asphalt, Developer shall maintain public streets, except as it relates to snowplowing and salting/ice control, until such public streets are accepted by the City. The City shall plow snow from, and shall perform salt/ice control services with respect to, the public streets upon completion of the base course of asphalt.

B. STORM AND SURFACE WATER DRAINAGE AND MASTER GRADING PLAN

1. The Developer acknowledges the City's requirement to manage the storm water runoff for new developments, and agrees that prior to any earthwork or construction, a stormwater management plan shall be prepared at the Developer's expense, in accordance with, Chapter 473 of the City Code, the current edition of the City's Stormwater Management Policies and Guidelines Manual, and all applicable State, County, and local stormwater management plans. The Developer's stormwater management plan shall meet all requirements of ch. NR 151, Wis. Admin. Code, and must be reviewed and approved by the City Engineer. The Developer shall promptly reimburse the City for all reasonable costs and expenses incurred (including professional fees) in reviewing the stormwater management plans.
2. Developer shall, at Developer's expense, construct, install, furnish and provide facilities as approved by the City Engineer and Board of Public Works for storm and surface water drainage throughout the entire Subdivision, and a Master Grading Plan, all in accordance with the plans and specifications attached hereto, made a part hereof and marked Exhibit "B". The City retains the right to require the Developer, at Developer's expense, to install additional storm drainage and erosion control measures prior to acceptance of improvements by the City.
3. Developer shall, at Developer's expense, grade and improve all lots in accordance with the Master Grading Plan, as previously approved by the City Engineer. At the conclusion of grading and prior to the issuance of occupancy permits, the Developer shall, at Developer's expense, supply the City with a hard copy document (and electronic format as requested by the City) prepared by its engineer or surveyor, certifying that the grading work is in general compliance with the Master Grading Plan. The certification shall represent to the City that the lot corners and grade breaks on lot lines are at or below proposed finish subgrade, and the building pads are sufficiently lower than the proposed grade at the house, so as to allow for the basement excavation spoil to be placed within the boundaries of said lot, and that the overall drainage scheme shall perform as proposed so as not to block runoff or pond water.
4. Developer shall, at Developer's expense, clean and televise all storm sewers prior to acceptance of improvements by the City.

Notwithstanding the foregoing, Developer may develop the Estate Lot separately and at a different time than the Single Family Phase and the Condominium Phase, and any requirements regarding storm and surface water drainage improvements shall be applicable separately to each subject phase.

C. LIFT STATION NO. 2 IMPROVEMENTS

It has been determined that all new property development south and west of Sauk Creek shall share equally the cost of previous improvements made to Lift Station No. 2. Therefore, Developer agrees to pay a pro-rated cost of \$1,546.00 per acre for those improvements, for a total due the City in the sum of \$39,299.32 (i.e., 25.42 acres x \$1,546.00 per acre). Developer agrees to pay said sum to the City in five (5) equal installments of \$7,859.86 each (together with accrued interest thereon at the rate set forth hereinbelow), with the first payment due and payable on the date of execution of this Agreement, and four (4) consecutive annual installments each due and payable on each succeeding anniversary of such date, with the final installment due on the fourth anniversary of such

date. Each installment shall include accrued interest on the unpaid principal balance calculated at the rate of four percent (4.0%) per annum, and all payments shall be applied first to accrued interest and the balance thereof to principal.

D. SANITARY SEWER

Developer shall, at Developer's expense:

1. Construct, install, furnish, and provide a complete sanitary sewage collection system throughout the entire Subdivision including laterals completed to the lot line, as approved by the City Engineer and the Board of Public Works, all in accordance with the plans, specifications and drawings attached hereto as Exhibit "B".
2. Complete punch list items and provide as-builts prior to the issuance of building permits (excluding the Early-Start Permits as set forth in Section IV.B. of this Agreement).
3. Clean and televise the sanitary sewer system, and supply to the City digital video and reports that shall contain the location of all wyes, structures, and any defects. The Developer shall, at Developer's expense, repair any defects, as determined by the City Engineer, prior to the issuance of building permits.
4. Notwithstanding the foregoing, Developer may develop the Estate Lot separately and at a different time than the Single Family Phase and the Condominium Phase, and any requirements regarding sanitary sewer installations shall be applicable separately to each subject phase.

E. WATER DISTRIBUTION

1. The Developer shall, at Developer's expense, furnish, construct and install water mains and laterals in accordance with the design plans prepared and marked as Exhibit "B".
2. The Developer shall, at Developer's expense, install water service laterals to serve each lot in the Plat.
3. All water main and service lateral construction shall be completed by the Developer prior to the application of the first lift of asphalt street paving.
4. Notwithstanding the foregoing, Developer may develop the Estate Lot separately and at a different time than the Single Family Phase and the Condominium Phase, and any requirements regarding water distribution installations shall be applicable separately to each subject phase.

F. SIDEWALKS

The Developer shall, at Developer's expense, construct and install five foot (5') wide concrete sidewalks on both sides of the streets within the Plat, and a five foot (5') wide concrete sidewalk along the eastern boundary of the subdivision (along Green Bay Road), which sidewalk shall commence at the south-eastern corner of the intersection of Clover Drive and Green Bay Road and shall extend approximately two hundred seventy-five feet (275') along Green Bay Road to the south-eastern boundary of the Subdivision, all in accordance with the standard specifications of the City and the plans marked as Exhibit "B". In no event shall the City require the Developer to construct

sidewalks beyond a point sixteen feet (16') left of the centerline of the right-of-way adjacent to the wetland. All sidewalks required to be constructed and installed by Developer under this Section I.F. shall be completed no later than two (2) years after the date of execution of this Agreement.

G. STREET LIGHTS

The Developer shall, at Developer's expense, install street lamps including concrete ornamental poles, ornamental fixtures, and all wiring and restoration. Street lamps shall be placed at intervals and in locations as set forth on a street lamp plan approved by the City Engineer. The City Engineer prior to installation must approve the type and specifications for the street lamps, which approval shall not be unreasonably delayed, conditioned, or withheld. The City agrees to pay the electrical utility for the monthly usage charge and maintenance fee. Each homeowners' association and condominium owners' association for or within the Subdivision shall be responsible for reimbursing the City for the maintenance fee (if We Energies is contracted) within thirty (30) days of invoicing by the City.

In addition to the (We Energies) street light system, the Developer shall, at Developer's expense, install a yard light on the lot of each home near the driveway and not less than three feet (3') nor more than ten feet (10') from the front lot line. Placement of such yard light at each home shall be evenly spaced between the homes to the greatest extent practicable, and each yard light shall be at the same height as installed. Notwithstanding the foregoing, the Developer shall not be required to install a yard light for each condominium unit but shall install a minimum of one (1) yard light per condominium building in the Condominium Phase. The placement of the yard lamps by the condominium buildings shall not conform to the distances set forth above as there are no lot lines, but the Developer shall place them near the driveways of the condominium buildings. Prior to installation, the City Engineer must approve the type and specifications for the yard lights, which approval shall not be unreasonably delayed, conditioned, or withheld. The homeowner whose lot it serves shall energize each yard light. All maintenance and electrical costs shall be the responsibility of the individual homeowner. Each homeowners' association and condominium owners' association for or within the Subdivision shall be responsible for ensuring proper maintenance of each yard light fixture, including, but not limited to, the prompt replacement of burned out bulbs with similar bulbs.

H. STREET SIGNS

The City shall install all street name and traffic control signs. The Developer shall promptly reimburse the City for all reasonable costs of materials and installation.

I. LANDSCAPING

Developer shall, at Developer's expense, establish lawns on all parkways and shall provide the City an upfront payment in the sum of \$350/tree to plant street trees spaced every 35 feet along all public roadways in the Subdivision. Based on the approved plans marked Exhibit "A," the Developer shall pay the City a lump sum of Thirty-Seven Thousand Eight Hundred and 00/100 Dollars (\$37,800.00) before the first building permit is issued (excluding the Early-Start Permits set forth in Section IV.B. of this Agreement.

J. EROSION CONTROL MEASURES

1. Developer shall, at Developer's expense, submit to the City an application for an Erosion Control Permit and an Erosion Control Plan in accordance with the requirements of Chapter 446 of the City Code. No construction or grading shall begin until the City issues said permit.
2. Developer shall, at Developer's expense, construct, install, furnish and provide a complete system of Erosion Control Devices or measures in specified areas of the Subdivision, as approved by the City Engineer and the Building Inspection Department, as shown in the plans attached hereto as Exhibit "B," and in accordance with Chapters 159, 446, 473 and 478 of the City Code, the approved Erosion Control Plan, and all applicable State, County, and local requirements.
3. Developer shall, at Developer's expense, install silt fencing in conformance with the approved plans prior to the grading and construction work. The Developer shall, at Developer's expense, maintain such fences until such time as vegetative cover is established in the Subdivision.
4. If, upon a written notice to Developer from the City Engineer or Building Inspector of non-compliance with Chapters 159, 446, 473 or 478 of the City Code, the non-compliant item(s) are not corrected within twenty-four (24) hours, the City may draw upon the Developer's irrevocable standby letter of credit provided for hereinbelow all reasonable costs incurred by the City to correct the non-compliant item(s). In addition to said cost of correction (e.g., street sweeping), all non-compliant items that are not corrected within twenty-four (24) hours of written notice from the City Engineer or Building Inspector shall be subject to a penalty of two hundred dollars (\$200.00) per day (the "Compliance Penalty") drawn upon said letter of credit. In no event shall the City impose a Compliance Penalty during any applicable cure period on account of any such defect or deficiency unless Developer has notified the City in writing that Developer does not intend to correct the deficiency.

K. INSTALLATION OF IMPROVEMENTS

The City may replace, repair or construct, or arrange for the replacement, repair or construction, of any improvements not installed, not timely installed or improperly installed by the Developer in accordance with this Agreement and the City's standard specifications. Prior to proceeding with such replacement, repair or construction, the City shall give the Developer written notice of any deficiency in the Developer's performance, whereupon the Developer shall have a period not less than forty-five (45) days from receipt of said notice to complete, correct, and/or repair such deficiency. In no event shall the City declare a default under this Agreement during such forty-five (45) day cure period on account of any such defect or deficiency unless Developer has notified the City in writing that Developer does not intend to complete, correct, or repair the deficiency. The Developer shall promptly reimburse the City for all reasonable costs incurred by the City related to such replacement, repair or construction.

L. CITY BILLING RATES

Developer agrees to pay for storm water management review fees charged by the City's outside consultant, together with the time expended by the City Engineer at the rate of \$ 79.57 per hour and the time expended by the City's Engineering Technician at the rate of \$ 68.96 per hour. These rates shall be automatically increased by 3% each year with the first such increase to take effect on January

1, 2025. Developer agrees to reimburse the City for its actual reasonable expenses incurred for this development project at the rate of cost plus 10%. Developer agrees to pay to the City the actual reasonable cost of the City's outside consulting service(s) incurred for this development project. Developer shall pay all of the above-described fees and expenses to the City within thirty (30) days of invoicing. The City shall provide Developer detailed invoicing including days and hours of work performed, rates charged, and a description of services performed. If such fees and expenses are not timely paid, the City shall have the right to order the cessation of all work on the Subdivision by Developer, its contractors, employees or agents.

SECTION II. APPROVAL AND TRANSFER OF IMPROVEMENTS

A. INSPECTION

All construction shall be inspected and tested by the City Engineer or a consultant retained by the City Engineer to assure that it complies with all construction and improvement requirements of the City. The City shall provide a qualified inspector on a full-time, continuous basis to inspect the construction and improvements. Prior to the City Engineer's inspection and approval of sanitary and storm sewers, the Developer shall have performed, at its cost, a television inspection of those utilities. Before any sureties or other financial guarantees may be released by the City to the Developer, the City Engineer must first report the satisfactory completion and recommend acceptance of such improvements to the Board of Public Works and Common Council. The Developer shall pay the actual cost of such inspections as required by Chapters 440 and 478 of the City Code.

B. AS-BUILTS

After completion of all public improvements, and after final acceptance of said improvements by the City, the City or its consultant shall provide "red-line" drawings to the Developer's engineer, who shall, at Developer's expense, create "as-built" documents for incorporation into a GIS. The Developer shall provide the "as-builts" using the required format (below). In addition, the Developer shall, at Developer's expense, be solely responsible for providing "as-built" information on all final grading, lot corners, benchmarks, etc.

"As built" Surveys

City will require a spatial/geographical digital record based on NAD 83 Datum. The record shall include x, y and z coordinates for the following: Sanitary and storm manhole rims, and invert elevations, catch basins (inlets) top of curb and invert elevations, culvert sizes, material and invert elevations, curb stops, water valves, and hydrants. The City will provide identification for each such item. In addition, the City will require the following:

- a. Distances between all structures.
- b. Calculation of all pipe grades.
- c. Setting of benchmarks on all hydrants for City use.
- d. A set of State of Wisconsin Professional Engineer-stamped paper record drawings.

The City of Port Washington also requires that spatial/geographic digital data be sent in to the City which satisfies the following criteria:

Point, Line and Polygon Information

- Data shall be delivered in vector format. The preferred format is AutoDesk Civil 3D 2015 or newer. Scanned images as raster files and Adobe PDF files will not be accepted for this type of data.
- The coordinates in the data set shall be based on to the Wisconsin State Plane Coordinate System, South Zone, (NAD83 Datum), grid (preferred) or ground. Scale factor must be submitted with ground based coordinates. Vertical datum (NAVD) shall be based on mean sea level, 1988 Adjustment.
- Submit a PDF as-built and a paper as-built plan for the City to review.
- Exceptions will be considered to the above rules on a case-by-case basis upon Developer's submittal of reasons for non-compliance. Written approval of any exceptions must be obtained from the City of Port Washington at the start of the project.

C. DEDICATION

Subject to all of the other provisions of this Agreement and the exhibits hereto attached, the Developer shall, upon completion of all of the above-described improvements located within the right-of-way, unconditionally and without charge to the City, give, grant, convey and fully dedicate the same (but excluding sanitary sewer laterals and water laterals lying outside of the dedicated right-of-way) to the City, its successors and assigns forever, free and clear of all encumbrances whatsoever; together with (without limitation because of enumeration) all mains, conduits, pipes, lines, equipment appurtenances and habiliments which may in any way be a part of or pertain to such improvements, together with any and all necessary easements for access thereto. All improvements not located within the right-of-way or within an easement specifically dedicated to the City shall be maintained by each condominium owners' association and each homeowners' association for or within the Subdivision, and its or their successors or assigns.

D. ACCEPTANCE

Following completion and dedication of the improvements and upon written request by the Developer, the City Engineer shall inspect the improvements within a reasonable timeframe, but in no event more than sixty (60) days after the City's receipt of written notice that Developer wishes to have the City review and inspect the improvements; and if the improvements meet all requirements, the City Engineer shall report completion of the improvements to the Board of Public Works and Common Council. The City shall thereupon accept such improvements in accordance with Chapters 440, 478 and 485 of the City Code. The City shall thereafter have the right to connect or integrate other utility facilities with the facilities provided hereunder without payment or award to, or consent required of, the Developer. The City Clerk shall provide the Developer with a certified copy of the Common Council resolutions accepting improvements hereunder, which the Developer may record to evidence compliance with this Agreement.

E. IMPROVEMENT GUARANTEE

The Developer shall guarantee all improvements against defects which appear within a period of one (1) year (unless otherwise noted) from the date of acceptance of said improvements by the City as herein provided, and shall pay for any damages to City property resulting from such defects.

F. TITLE EVIDENCE

Prior to recording of the Plat, the Developer shall, at Developer's expense, provide the City with title evidence reasonably acceptable to the City showing that the Developer has full right, title and authority to make the promises, warranties, consents and waivers in this Agreement, and that upon recording the City will have good, indefeasible title to all interests in land dedicated or conveyed to the City by the Plat, this Agreement, or other instruments required by or under this Agreement.

G. CERTIFICATION OF COST OF DEVELOPER IMPROVEMENTS

The Developer acknowledges that in accordance with Generally Accepted Accounting Principles (GAAP) and Governmental Accounting Standards Board (GASB) standards, the type and valuation of infrastructure improvements constructed or installed by Developer, at Developer's expense, and dedicated to the City pursuant to the terms of this Agreement, must be recorded on the City's utility books and included in the City's audited financial statements. Therefore, the Developer shall, upon the completion of said required improvements provide the City with a list of the as-built costs of said improvements (by category), including any changes, alterations, or modifications from the designs, plans and specifications previously approved by the City and/or from the terms of this Agreement.

SECTION III. FINANCIAL GUARANTEE

A. IRREVOCABLE STANDBY LETTER OF CREDIT OR CASH

At the time of the final Plat approval and throughout the period of construction of each phase of the Subdivision, the Developer shall, at Developer's expense, provide to the City an irrevocable standby letter of credit issued pursuant to Chapter 405 of the Wisconsin Statutes (Uniform Commercial Code - Letters of Credit) (the "Letter of Credit") in order to provide a financial guarantee for the installation by Developer of all improvements to that phase of the Subdivision not accepted by the City at the time of final Plat, and in such amounts as set forth on Exhibit "C," attached hereto and incorporated by reference herein. In no event shall the amount of said Letter of Credit be less than the aggregate total estimated costs of the improvements for that phase not yet installed or accepted, plus fifteen percent (15%). Said Letter of Credit shall be payable to the City, shall be conditioned upon and guarantee to the City the performance by the Developer of all of its obligations under this Agreement and any amendment(s) hereto, and shall contain an evergreen clause providing that the Letter of Credit shall be automatically extended for an indefinite number of periods until the issuing bank informs the City of its final expiration or until such Letter of Credit is released by the City. The City Attorney shall approve the letter of credit as to form. Notwithstanding the foregoing, Developer, at Developer's option, may deposit cash with the City in the same amount as would have been required hereunder for the Letter of Credit. If so elected by Developer, the City shall hold such cash in escrow until such time as Developer has performed all of its obligations hereunder.

The amount of said Letter of Credit or cash deposit may be reduced from time to time as and to the extent that the portion of work required to be performed by Developer under this Agreement is completed and paid for, provided that the remaining amount of the Letter of Credit or cash deposit is sufficient to secure payment for any remaining improvements, and provided further that no reduction in the amount of said Letter of Credit shall occur until it is approved in writing by the City Engineer. As the amount of cash needed to secure payment for the costs of the remaining improvements is reduced, the excess amount of cash initially deposited by the Developer shall be refunded to the Developer.

B. PRESERVATION OF ASSESSMENT RIGHTS

In addition to other remedies provided to the City by this Agreement, the City shall have the rights as set forth in § 66.0703, Wis. Stat., to impose special assessments upon the Subdivision property, or any parcel or portion thereof, for any amount(s) to which the City is entitled by virtue of this Agreement and § 66.0703, Wis. Stat. This provision constitutes the Developer's consent to the installation by the City of all public work and improvements required by this Agreement.

C. REMEDIES NOT EXCLUSIVE

The remedies provided in this Section III. are not exclusive. The City may use any other remedies available to it under this Agreement or in law or equity in addition to, or in lieu of, the remedies provided above.

SECTION IV. PERMITS AND FEES

A. PARK FEES OR DEDICATION

The Developer acknowledges that upon the issuance of a building permit for each new building or structure to be constructed on the subdivision property, park fees may be charged by, and shall be paid to, the City pursuant to § 236.45(6), Wis. Stat. and the procedures and requirements under § 66.0617, Wis. Stat.

B. BUILDING PERMITS

Building permits shall not be issued by the City for residential construction until the Developer has installed and the City has accepted the sanitary sewer main and laterals, the water main and laterals, and the gravel base course, and the binder lift of asphalt for all streets is completed. In addition, no building permit(s) shall be issued until the deed restrictions or restrictive covenants required under Section VI.D. of this Agreement are recorded. Notwithstanding the foregoing or any other provision of this Agreement, Developer shall be permitted to obtain building permits for (i) up to eight (8) model homes, spec (speculative) homes, or "Redi Homes" and (ii) four (4) condominium duplex buildings prior to the Developer's installation of the improvements listed above in this Section (collectively the "Early-Start Permits"). If a building permit is issued prior to asphalt paving, the Developer shall be responsible for and pay the full cost of removing and replacing all contaminated base course, as and when directed by the City Engineer.

C. IMPACT FEES

The Developer acknowledges that upon the issuance of a building permit for each new separate building or structure upon the Subdivision property, an impact fee shall be determined and paid by the Developer or permittee to the City. Said impact fee shall be calculated and imposed to cover the capital costs necessary to provide new, expanded or improved public facilities that are required to serve land development within the City, including, but not limited to the City's wastewater treatment plant, fire station, police station and public library, among other public facilities. The Developer further acknowledges that the City may impose additional impact fees.

D. OCCUPANCY PERMITS

The City shall not issue an occupancy permit for any dwelling unit until all costs, fees and expenses are paid in accordance with the terms and conditions of this Agreement, and all dedications and improvements are approved and accepted by the City in accordance with this Agreement, except that the second lift of asphalt street paving need not be installed, provided that there is sufficient financial guarantee under Section III.A. hereof to insure the installation of the second lift when required by the City Engineer, but in no event shall such second lift of asphalt be installed later than the date determined under Section I.A.2. of this Agreement.

SECTION V. LEGAL REQUIREMENTS & PUBLIC RESPONSIBILITY

A. LAWS TO BE OBSERVED

The Developer shall at all times observe and comply with all federal, state and local laws, regulations, orders and ordinances which are in effect or which may be placed in effect which may affect the conduct of the work to be accomplished under this Agreement (the "Work"). The Developer shall indemnify and save harmless the City and its contractors, agents, officers and employees, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation or order, whether by the Developer or its agents, employees or contractors.

The Developer shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful prosecution of the Work to be completed under this Agreement.

B. PUBLIC PROTECTION AND SAFETY

The Developer shall be responsible for and pay all damages, including, but not limited to bodily injury and/or death arising out of the Work, whether from maintaining an "attractive nuisance" or otherwise. Where apparent or potential hazards occur, exist or are created incident to its conduct of the Work, the Developer shall provide reasonable safeguards for the protection of the public.

C. DEVELOPER'S RESPONSIBILITY FOR WORK

The Work shall be under the charge and care of the Developer until the City has accepted all improvements in accordance with the terms and conditions of this Agreement.

D. INSURANCE REQUIREMENTS

General

The Developer shall obtain insurance acceptable to the City as required under this Section V.D. The Developer shall maintain all required insurance under this Section V.D. until all improvements have been accepted by the City and during any subsequent period in which the Developer does work under this Agreement pursuant to the improvement guarantee or otherwise.

Certificates and Endorsements of Insurance

Certificates and endorsements of insurance on all policies specified in this Agreement shall be filed with the City Clerk, and shall include a provision requiring a 30-day prior written notice of material change or cancellation to the City, and which clearly states that liability insurance is provided and, if

applicable to the Work under this Agreement, includes explosion, collapse and underground coverage. The Developer's contractor(s) may provide explosion, collapse and underground coverage.

Insurance

Where the City does not specify other limits for liability insurance, the minimum limits of liability shall be as follows:

Employer's Liability (if applicable)	\$ 500,000 per occurrence
Comprehensive Automobile Liability, Bodily Injury & Property Damage combined (if applicable)	\$ 2,000,000 per accident
Commercial General Liability Bodily Injury/Death	\$ 2,000,000 per occurrence
Property Damage	\$ 5,000,000 aggregate

The Developer may furnish coverage for bodily injury, death and property damage for Comprehensive Automobile Liability and Commercial General Liability through the use of primary liability policies or in a combination with umbrella or excess liability policies.

Other coverage shall include the following:

Completed Operations and Products Liability

The Developer shall provide completed Operations and Products Liability coverage for the life of the Agreement and maintain such coverage for a period of (1) year after the City has accepted the improvements. The liability limits shall be as required above for Commercial General Liability.

Owner's Protective liability (Independent Contractor Insurance)

The liability limits shall be the same as those of the Commercial General Liability policy.

Insurance required under this Agreement shall be carried with an insurer authorized to do business in Wisconsin by the Wisconsin Commissioner of Insurance. The City reserves the right to disapprove of any insurance company selected by the Developer or its contractors.

E. INDEMNIFICATION

The Developer shall indemnify and hold harmless the City, its officers, agents, and employees from and against all claims, damages, judgments, losses and expenses, including, but not limited to, reasonable fees for attorneys, consultants, and experts, arising out of or resulting from the performance of the Work, provided that any such claim, damage, judgment, loss or expense: (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused, in whole or in part, by any negligent act or omission of the Developer, its contractor(s) or any subcontractor(s), anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified

hereunder; provided, however, that such indemnification shall not extend to directions given by the City or its employees to perform acts if the acts are performed in accordance with such direction. A claim for indemnification under this Section shall be conditioned upon the City giving to the Developer, within five (5) business days of receiving the same, written notice of any claim made against the City for which indemnification is sought, and if requested to do so by the Developer's insurance carrier, the City shall tender the defense of such claim to the Developer's insurance carrier. If any or all claims are made against the City, its officers, agents and/or employees, by any employee of the Developer, its contractor(s) or any subcontractor(s), or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer, or the contractor(s) or any subcontractor(s), under Workers' Compensation Acts, disability benefit acts or other employee benefit acts. Indemnification shall not extend to claims arising out of the negligent or intentional acts or omissions of the City, its officers, agents, employees, or independent contractors.

F. PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the City's officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the City.

SECTION VI. MISCELLANEOUS PROVISIONS

A. SURVEY MONUMENTS

The Developer has certified that all survey or other monuments required by statute or ordinance have been properly placed and installed. Any monuments disturbed during construction of improvements shall be restored by the Developer's, at Developer's expense. The Developer shall not set interior lot corners until grading is complete.

B. ZONING

The City does not guarantee or warrant that the land subject to this Agreement will not at some later date be rezoned, nor does the City agree to rezone the lands into a different, or any particular, zoning district. It is further understood that any rezoning that may take place shall not void this Agreement.

C. INDEMNIFICATION FOR ENVIRONMENTAL CONTAMINATION

The Developer shall indemnify, defend, and hold the City and its officers, agents, and employees harmless from any claims, judgments, damages, penalties, fines, costs, and losses, including, but not limited to, reasonable fees for attorneys, consultants, and experts, arising out of or resulting from the presence or suspected presence in or on the real property dedicated or conveyed to the City by, under, pursuant to, or in connection with the Plat related to this Agreement (including, but not limited to, street right-of-way and park land) of any toxic or hazardous substances arising from Developer's construction of the Subdivision and occurring prior to the acceptance of all improvements by the City. Without limiting the generality of the foregoing, such indemnification by the Developer shall include costs incurred in connection with any site investigation and any remedial, removal, or restoration work required by any local, state, or federal agencies because of the presence or suspected presence of

toxic or hazardous substances on or under the real property, whether in the soil, groundwater, air or any other receptor. The City agrees that it will immediately notify the Developer of the discovery of any contamination or of any facts or circumstances that reasonably indicate that such contamination may exist in or on the real property. The City also agrees that following notification to the Developer that such contamination may exist, the City shall make all reasonable accommodations to allow the Developer to examine the real property and conduct such clean-up operations as may be required by appropriate local, state, or federal agencies to comply with applicable laws and regulations. Indemnification shall not extend to claims arising out of the negligent or intentional acts or omissions of the City, its officers, agents, employees, or independent contractors.

D. DEED RESTRICTIONS AND RESTRICTIVE COVENANTS

The Developer shall execute and record deed restrictions or restrictive covenants, and provide the City with proof of such recording, prior to the sale of any lot(s) in the Subdivision. Such deed restrictions or restrictive covenants shall contain all of the following provisions:

1. Each lot or unit owner shall strictly adhere to and finish grade his lot in accordance with the Master Grading Plan on file in the office of the Developer and the office of the Building Inspector, unless the City Engineer approves a change. The Developer, the City and/or its or their agents, employees, or contractors shall have the right to enter upon any lot or common area in the Subdivision at any time for the purposes of inspection, maintenance, or correction of any drainage conditions, and the lot or unit owner(s) shall be responsible for and pay the cost of the same.
2. Each Subdivision lot or unit owner adjacent to delineated wetlands shall not mow or otherwise disturb any plants, trees, bushes, grasses, animals or other things growing, living or located in a delineated wetland, or in any environmentally sensitive area.
3. Each condominium owner's association and homeowners' association for or within the Subdivision shall be responsible for and pay the costs of maintaining all outlots and other planting areas. The City shall be provided with and must approve a maintenance agreement for all outlots prior to the City's acceptance of the completed improvements as provided in Section II.D. of this Agreement.

E. GRADES

The Developer shall, at Developer's expense, upon the completion of all public improvements required under this Agreement, furnish to the City a copy of the as-built plans which shall show the street grade in front of each lot, the finished yard grade, the grade of all four (4) corners of the lot, and the grades of the buildings on adjoining lots, where applicable, as existing and as proposed.

F. EASEMENTS

All water, sanitary sewer, storm water drainage and utility easements dedicated to the City or to the public on the Plat shall grant the City the right to construct, install, maintain, inspect, repair and replace the designated improvements in, on, over or under such easements. Lots or units within the Plat shall not be used in any manner which interferes with the City's easement rights. The City's only obligation to restore the lot or property after any use by the City of its easements shall be to place topsoil and grass seed.

G. STORM WATER PONDS

The Developer shall, at Developer's expense, provide the City with three (3) copies of the Storm Water Pond maintenance manual in the form of a stormwater maintenance agreement per Chapter 473 of the City Code, for the City's review and approval. Each homeowners' association and condominium owner's association for or within the Subdivision, and its or their successors and assigns, shall be responsible for the costs of all maintenance required by the stormwater maintenance agreement, and for payment of the associated costs.

H. TIME

For the purpose of computing the commencement and completion periods set forth in this Agreement, and the time periods for Developer or City action, such times in which war, civil disasters, acts of God, pandemics, or extreme weather conditions occur or exist shall not be included if such events are beyond the reasonable control of the Developer or City, and prevent the Developer or City from performing its or their obligations under this Agreement.

SECTION VII. APPROVAL

The City shall, contemporaneously with the approval of this Agreement, approve the Plat of the Subdivision and cause the same to be executed by the appropriate City officers. The Developer shall thereupon provide the City, at Developer's expense, with a conformed digital copy of the Plat in a format acceptable to the City and in accordance with Chapter 478 of the City Code.

SECTION VIII. AMENDMENTS

The City and the Developer may, by mutual written consent, amend this Developer's Agreement.

SECTION IX. BINDING EFFECT

All of Developer's ongoing obligations under this Agreement to provide, pay for, or reimburse the City for, the repair, replacement and/or maintenance of any improvements, and the fees for any utility services shall be included as permanent, irrevocable obligations in the recorded declaration of covenants, conditions, and restrictions for the Subdivision (the "Declaration"). Such obligations also shall be expressly referred to in the document(s) creating the homeowners' association and/or condominium owners' association contemplated by this Agreement. The Declaration, and the documents creating such associations, shall be properly executed and recorded in the office of the Ozaukee County Register of Deeds prior to the sale of any subdivision lot(s) by the Developer or Developer's successors or assigns. The provisions of this Section shall run with the land and shall be binding upon all owners of each lot and condominium unit, and their grantees, successors, and assigns.

SECTION X. MUTUAL DRAFTING

Each Party has participated in the drafting of this Agreement, which each Party acknowledges is the result of negotiations between the Parties and/or their attorneys. Accordingly, the Parties agree that in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed this _____ day of _____, 2024.

BIELINSKI HOMES, INC.
a Wisconsin corporation

CITY OF PORT WASHINGTON, WISCONSIN
a municipal corporation

Frank Bielinski
President

Theodore Neitzke IV
Mayor

ATTEST:

Susan L. Westerbeke
City Clerk

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
) ss
OZAUKEE COUNTY)

Personally came before me this ____ day of _____, 2024, the above-named Theodore Neitzke IV and Susan L. Westerbeke, to me known to be the Mayor and City Clerk, respectively, of the City of Port Washington, a municipal corporation, and to me known to be the persons who executed the foregoing instrument and acknowledged the same as the act and deed of said municipal corporation, by its authority.

Notary Public, State of Wisconsin
My commission: _____

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
) ss
_____ COUNTY)

Personally came before me this ____ day of _____, 2024, the above-named Frank Bielinski, to me known to be the President of Bielinski Homes, Inc. a Wisconsin corporation, and to me known to be the person who executed the foregoing instrument and acknowledged the same as the act and deed of said corporation, by its authority.

Notary Public, State of Wisconsin
My commission: _____

EXHIBIT "A"

PRELIMINARY PLAT OF HIDDEN HILLS NORTH

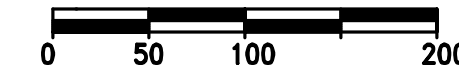
BEING A PART OF THE SOUTHWEST 1/4 AND THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWN 11 NORTH, RANGE 22 EAST, IN THE CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WISCONSIN.



4100 N. CALHOUN ROAD, SUITE 300
BROOKFIELD, WI 53005
PHONE: (262) 790-1480
FAX: (262) 790-1481
EMAIL: ggosser@trioeng.com

N. 1/4 CORNER
SEC. 30-11-22
WIS. STATE PLANE COORD.
SYSTEM - SOUTH ZONE
CONC. MON. W/ BRASS CAP
N 516,331.87
E 2,555,230.12

LOT 2
C.S.M. #3082



- EASEMENT LEGEND:**
- (A) - 20' WIDE PUBLIC STORM SEWER AND DRAINAGE EASEMENT
 - (B) - DRAINAGE EASEMENT (WIDTH VARIES)
 - (C) - 30' WIDE PUBLIC SANITARY SEWER & WATER MAIN EASEMENT
 - (D) - 30' WIDE PRIVATE UTILITY EASEMENT

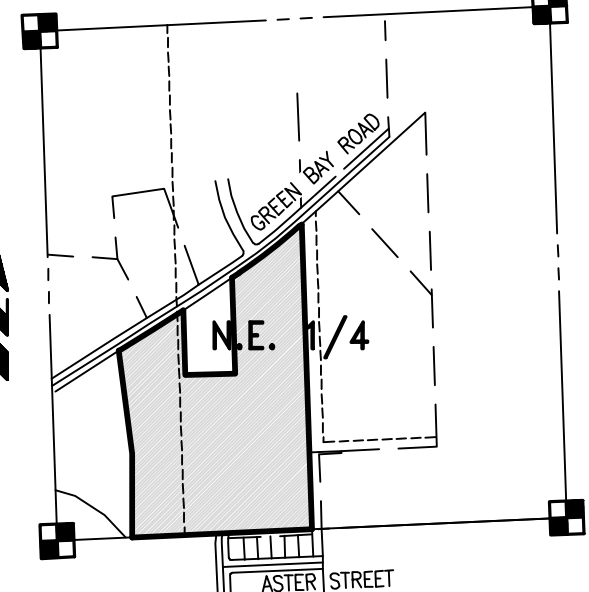
- LEGEND**
- ⊕ INDICATES SOIL BORING LOCATION
 - ⊕ INDICATES PROPOSED FIRE HYDRANT
 - W — INDICATES EXISTING WATERMAIN
 - SAN — INDICATES EXISTING SANITARY SEWER
 - ST — INDICATES EXISTING STORM SEWER
 - 700 — INDICATES EXISTING CONTOUR

Total Allowable Density for Planned Residential Development
(per Sec. 20.21.000)

Proposed Use	RS-3 Single Family (s.f.)	RS-5 Two-Family (s.f.)	RS-1 Single Family (s.f.)
Total Area	620,369	384,864	83,586
- Wetland Area	94,857	165,004	
Total Net Area	525,512	219,860	83,586
x Percentage factor	85%	100%	100%
Project Area	446,685	219,860	83,586
Divide by District Density	10,000	4,200	15,000
Max Allowable Units	44.7	52.3	5.6
Total Allowable Units	102.6		

DEVELOPMENT SUMMARY:

- Tax Key No. 16-030-03-004.00
- Subdivision contains approximately 25.00 Acres.
- Subdivision contains 30 Single Family Lots, 1 Single Family Estate Lot, 1 Lot containing Two Family Residences and 2 Outlots.
- All lots to be served by Sanitary Sewer and Watermain.
- Public Roads to have Concrete Curb and Gutter, Asphalt Pavement with Storm Sewer.
- All lots to have Underground Telephone, Electric, and Gas Service.
- Zoning = Single Family (RS-3), Two Family Residence (RS-5), Single Family (Estate) (RS-1)
- Stormwater Management Facilities are located on Lot 31, Outlot 1 and Outlot 2 of this Subdivision. The Owners of the residential Lots within this Subdivision shall each be liable for an equal undivided fractional share of the cost to repair, maintain or restore said Stormwater Management Facilities within this Subdivision. Said repairs, maintenance and restoration shall be performed by the Owners of all Lots within this Subdivision.
- The Owners of all Lots within this Subdivision shall each own an equal undivided fractional interest in Outlots 1 & 2 of this Subdivision. Ozaukee County shall not be liable for fees or special charges in the event they become the owner of any Lot or Outlot in the Subdivision by reason of tax delinquency.



LOCALITY MAP:
N.E. 1/4, SEC. 30, T. 11 N., R. 22 E.
SCALE: 1"=1000'

WETLAND DELINEATION NOTE:

Wetland boundaries shown herein were delineated and field surveyed by R.A. Smith National in June 2017.

HORIZONTAL DATUM PLANE:

All bearings are referenced to Grid North of the Wisconsin State Plane Coordinate System, South Zone (NAD-27), in which the East line of the N.E. 1/4 of Section 30, Town 11 North, Range 22 East, Bears North 01°55'01" West.

VERTICAL DATUM PLANE:

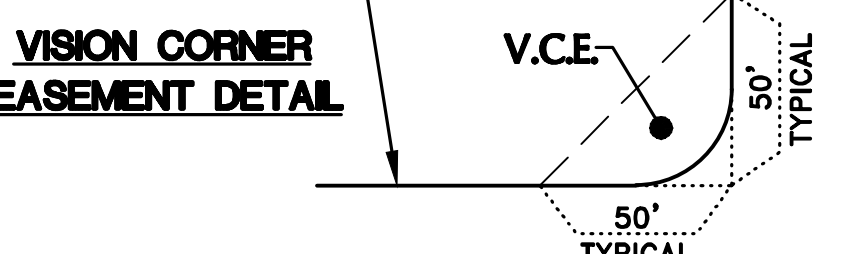
All elevations are referenced to the National Geodetic Vertical Datum of 1929.

AGENCIES HAVING THE AUTHORITY TO OBJECT:

- State of Wisconsin, Department of Administration
- Ozaukee County

APPROVING AUTHORITY:

- City of Port Washington



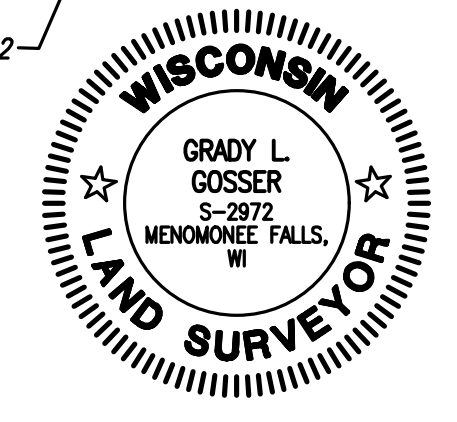
VISION CORNER EASEMENT (V.C.E.)

Corner lots & outlots are herein subject to a Vision Corner Easement in that nothing may be grown, stored or erected to a height more than two feet above ground surface.

SURVEYOR'S CERTIFICATE:

I hereby certify that this preliminary plat is a correct representative of all existing land divisions and features and that I have fully complied with the provisions of the subdivision and platting code of the City of Port Washington.

Date: 01/18/21



Grady L. Gosser, P.L.S.
Surveyor Registration Number S-2826
TRIO ENGINEERING, LLC
4100 N. Calhoun Road, Suite 300
Brookfield, WI 53005
Phone: (262)790-1480 Fax: (262)790-1481

DEVELOPER:
BIELINSKI HOMES
1830 MEADOW LN. SUITE A
PEWAUKEE, WISCONSIN 53072
PHONE: (262) 548-5570

ENGINEER / SURVEYOR:
TRIO ENGINEERING, LLC
4100 N. CALHOUN ROAD, SUITE 300
BROOKFIELD, WISCONSIN 53005
PHONE: (262) 790-1480
FAX: (262) 790-1481

PROJECT:
HIDDEN HILLS NORTH
SINGLE FAMILY RESIDENTIAL SUBDIVISION
CITY OF PORT WASHINGTON, WISCONSIN
BY: BIELINSKI HOMES
1830 MEADOW LN., SUITE A
PEWAUKEE, WI 53072

REVISION HISTORY

DATE	DESCRIPTION

DATE:
JANUARY 18, 2021

JOB NUMBER:
15015-966-02

DESCRIPTION:
PRELIMINARY
PLAT

SHEET

1 OF 1

H:\C9000\966\15015-02\SURVEY\PLATS\15015-02-HIDDEN_HILLS_NORTH-22\X34.DWG

CENTER
SEC. 30-11-22
WIS. STATE PLANE COORD.
SYSTEM - SOUTH ZONE
CONC. MON. W/ BRASS CAP
N 513,678.20
E 2,555,321.29

S. LINE, N.E. 1/4, SEC. 30-11-22
(N87°23'26"E 2656.39)

HIDDEN HILLS SUBDIVISION
ADD. NO. 1

HIDDEN HILLS SUBDIVISION
ADD. NO. 1

EXISTING 50 FT. FUTURE
ROAD RESERVATION

EXISTING 75 FT. FUTURE
ROAD RESERVATION

LOT 1
C.S.M. #3082

LOT 1
C.S.M. #2353

LOT 1
C.S.M. #3059

C.S.M. #2615

LOT 1
C.S.M. #2617

UNPLATTED
LANDS

HIDDEN HILLS CONDOMINIUM

HIDDEN HILLS SUBDIVISION

ASTER STREET

LEDGESTONE SUBDIVISION

LEDGESTONE SUBDIVISION

LEDGESTONE SUBDIVISION

CENTER
SEC. 30-11-22
WIS. STATE PLANE COORD.
SYSTEM - SOUTH ZONE
CONC. MON. W/ BRASS CAP
N 513,678.20
E 2,555,321.29

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: Common Council

FROM: Bob Harris, Director of Planning & Development

DATE: April 3, 2024

SUBJECT: ORDINANCE 2024-3: Creating and/or Amending Zoning Ordinances to Allow and Regulate Accessory Dwelling Units in Certain Residential Zoning Districts and in the CCM Multiple Family (Central City Mixed) Zoning District (Proposed Text Amendment to Zoning Code Section 485-42; City of Port Washington, Applicant) – 1st Reading

ISSUE: The Common Council is being asked to act on Ordinance 2024-3 which will permit the construction and use of accessory dwelling units on single-family properties in the city.

STAFF RECOMMENDATION: No recommendation, this item is a 1st reading with no action.

RECOMMENDED MOTION: N/A

BACKGROUND/DISCUSSION:

In 2022 the City of Port Washington approved a zoning text change to allow for home office and recreational room spaces in the upper / attic portion of residential detached garages – but the use of bathrooms or living quarters were specifically prohibited.

During that discussion related issues arose which staff, the Plan Commission, and Common Council determined should be re-visited at a future date. Specifically, those related issues were consideration of allowing accessory dwelling units in certain residential areas and the question of acceptable garage size and heights for accessory garages given the special exception process.

The Plan Commission discussed this matter during multiple meetings in 2023 and identified issues and standards for consideration which staff presented to the Plan Commission and at its December, 2023 meeting.

At its February 6, 2024 meeting, staff reviewed this matter with the Common Council to seek further direction prior to drafting of an ordinance for final consideration.

ISSUES: The Plan Commission identified key components to any ADU ordinance for the City and the entirety of the proposed standards are contained within Ordinance 2024-3 (attached here).

STRATEGIC PLAN:

1. **Strategic Direction:** SD 4: Expand opportunities for affordable housing

2. **Impact on Strategic Direction:** ADU's are increasingly common in municipal zoning codes and are typically used to offer additional and more affordable housing options for aging parent(s) or other family members.

LEGAL:

1. **City Attorney Review:** Yes

FISCAL IMPACT: N/A

PLAN COMMISSION RECOMMENDATION: At its December 2023 meeting the Plan Commission recommended the Common Council allow for and adopt the standards contained within Ordinance 2024-3.

PUBLIC OUTREACH: This matter was discussed during four regular public meetings of the Plan Commission between July and December of 2023, and following a Class II public notice, a public hearing on this matter is scheduled for April 16, 2024 prior to any action by the Common Council.

IF APPROVED, NEXT STEPS: N/A

ATTACHMENTS:

- 1) Ordinance 2024-3

**CITY OF PORT WASHINGTON, WISCONSIN
ORDINANCE NO. 2024-3**

**Creating and/or Amending Zoning Ordinances to Allow and Regulate
Accessory Dwelling Units in Certain Residential Zoning Districts
and in the CCM Multiple Family (Central City Mixed) Zoning District**

WHEREAS, the Common Council of the City of Port Washington, Ozaukee County, Wisconsin, based upon the recommendation and report of the Plan Commission, has determined that the development of a small, independent residential accessory dwelling unit (ADU) on the same lot as an owner-occupied home in certain zoning districts is a way to increase both the amount and type of available housing within the City; and

WHEREAS, the Common Council desires to establish or amend by ordinance the procedures, regulations, requirements, restrictions and standards for obtaining Plan Commission approval of plans for, the issuance of a building permit to construct, and the use of buildings and land for, accessory dwelling units; and

WHEREAS, all notices of the proposed adoption and/or amendment of portions of the Zoning Ordinance, and a public hearing thereon, have been given as required by the Zoning Ordinance and § 62.23(7)(d), Wis. Stat.; and

WHEREAS, on April 16, 2024, the Common Council held a public hearing regarding the proposed adoption and/or amendment of portions of said Zoning Ordinance to allow accessory dwelling units in certain residential zoning districts and in the CCM Multiple Family (Central City Mixed) Zoning District; and

WHEREAS, the Common Council has determined that the proposed adoption and/or amendment of portions of said Zoning Ordinance will promote the public health, safety, and general welfare of the community,

NOW, THEREFORE, the Common Council of the City of Port Washington, Wisconsin, do ordain as follows:

Section 1. § 485-10 entitled “Definitions” of the Zoning Ordinance of the City of Port Washington, is created to read as follows:

Dwelling Unit, Accessory

An additional dwelling unit contained within or attached to a single-family dwelling, or contained within or attached to a detached building, or constructed as a detached stand-alone building, and located on the same lot as a single-family dwelling. This definition includes an accessory dwelling unit constructed in connection with a private garage or a private garage converted into an accessory dwelling unit.

Section 2. § 485-42 H. of the Zoning Ordinance of the City of Port Washington, relating to accessory dwelling units as a type of other accessory structure, is created to read as follows:

H. Accessory dwelling units.

- (1) No more than one (1) accessory dwelling unit may be located on a lot.
- (2) Accessory dwelling units may be located in any of the following manners:
 - a. In a detached stand-alone building on the same lot as a principal building.
 - b. Within the interior of the principal dwelling on the same lot.
 - c. Attached to the principal dwelling on the same lot.
 - d. Within or attached to an existing or new detached garage on the same lot.
- (3) Accessory dwelling units shall not be constructed or established prior to the principal single-family dwelling existing or being under construction on the lot.
- (4) The principal dwelling must be a single-family detached dwelling.
- (5) Either the principal dwelling or the accessory dwelling unit must be owner-occupied and serve as the lot owner's primary residence.
- (6) The accessory dwelling unit shall be owned by the same owner(s) as the principal single-family dwelling on the same lot, and the accessory dwelling unit shall not be sold or otherwise conveyed separately from said principal dwelling. A separate tax key number shall not be assigned to an accessory dwelling unit.
- (7) The number of occupants of the accessory dwelling unit shall not exceed one (1) family and not more than one (1) other unrelated person, or not more than two (2) unrelated persons.
- (8) The accessory dwelling unit may not be subleased.
- (9) The accessory dwelling unit shall be located on the same lot as the principal single-family dwelling, and shall meet the following locational requirements:
 - a. The accessory dwelling unit, if detached, shall be located on the rear area of the lot only. For corner lots, the accessory dwelling unit shall meet the required side street setbacks.
 - b. The accessory dwelling unit shall meet the minimum offsets required in the underlying zoning district for the principal building, except for units in an Overlay Planned Development zoning district.
 - c. There shall be a minimum separation (setback) of ten (10) feet between all buildings on a lot.
- (10) No additional parking is required for an accessory dwelling unit, provided that all parking arrangements shall be shown on the site plan submitted with the application for approval of an accessory dwelling unit. In no event may

parking for the principal dwelling or the accessory dwelling unit encroach upon or into a public way, such as, but not limited to, streets or alleys.

- (11)** The maximum size of an accessory dwelling unit shall be as follows:

 - a. For an accessory dwelling unit that is attached at the ground floor of the principal dwelling or is a detached, stand-alone building, 600 sq. ft.
 - b. For an accessory dwelling unit within the interior of the principal dwelling or which occupies the upper portion of a detached garage, 768 sq. ft.
 - c. For an accessory dwelling unit at ground level with a detached garage, 960 sq. ft., which shall include the area of the detached garage.
- (12)** Accessory dwelling units may not exceed the height of the principal building on the lot, provided that in no event shall the accessory dwelling unit be greater than one (1) story in height. Height of an accessory dwelling unit shall be measured in the same manner as the height of the principal building. The height limit herein shall not apply to accessory dwelling units located within the interior of the principal dwelling.
- (13)** For accessory dwelling units constructed within the principal building, the appearance or character of the principal building shall not be significantly altered so that its appearance is no longer that of a single-family dwelling. Predominant exterior building materials shall be durable materials that can be economically maintained and are of a high quality that will retain their appearance over time such as, but not limited to, fiber-cement siding, wood lap siding, brick, stone, architectural pre-cast concrete, architectural panelized wall systems, or such other materials as may be approved by the Plan Commission. Aluminum siding and exterior insulation finish systems are prohibited exterior building materials for accessory dwelling units. Building facades facing a public way, such as, but not limited to, streets or alleys, shall contain window openings and/or entryways. Blank facades are prohibited.
- (14)** A new separate water meter and service connection to the public water main is not required for an accessory dwelling unit, unless requested and paid for by the lot owner. In that event, the new separate water meter service shall be connected directly to the public water main.
- (15)** The lot owner shall submit an application for approval of an accessory dwelling unit to the City Planner, along with a building, site and operational plan and any other submittal requirements. The application, plan, and other submittal materials shall be reviewed by the Design Review Board and must be approved by the Plan Commission prior to issuance of a building permit.
- (16)** Prior to issuance of a building permit for an accessory dwelling unit the lot owner shall, at the owner's expense, submit a deed restriction or affidavit in a recordable form and subject to City Attorney approval which: prohibits the sale or other conveyance of the accessory dwelling unit separate from the principal dwelling on the lot; acknowledges that the accessory dwelling unit or the principal dwelling unit must be owner-occupied and serve as the lot

owner's primary residence; and acknowledges that the accessory dwelling unit is subject to the occupancy limitations under this Section.

- (17) Street addresses of all accessory dwelling units shall be reviewed by and are subject to the approval of all City and County authorities having jurisdiction.

Section 3. § 485-43 entitled "Special Exceptions" of the Zoning Ordinance of the City of Port Washington is amended to read as follows:

- A. Upon submittal of a building, site and operational plan, the Plan Commission may grant a special exception to the setback, offset, height, and open space requirements of the zoning district in which an accessory structure is located if the Commission determines that granting such special exception would not have a substantial adverse effect on surrounding properties by reason of noise, dust, odor, appearance or other objectionable factors, nor create a nuisance or substantial adverse effect on the property value or interfere with the reasonable enjoyment of the surrounding properties. This Section shall not apply to accessory dwelling units, and any request for a variance from the foregoing requirements, excluding building height, or for an area variance from the area standards listed in § 485-42 H. for accessory dwelling units shall require approval by the Zoning Board of Appeals pursuant to § 450-38 of this Zoning Ordinance.

Section 4. § 485-153 C. (11) of the Zoning Ordinance of the City of Port Washington, relating to permitted accessory uses in the R-1 Single Family Detached Residence Zoning District, is created to read as follows:

- (11) Accessory dwelling units under § 485-42 H., subject to approval by the Plan Commission of the building, site and operational plans for such units.

Section 5. § 485-164 C. (10) of the Zoning Ordinance of the City of Port Washington, relating to permitted accessory uses in the CCM Multiple Family (Central City Mixed) Zoning District, is created to read as follows:

- (10) Accessory dwelling units under § 485-42 H., subject to approval by the Plan Commission of the building, site and operational plans for such units.

Section 6. This Ordinance shall become effective upon passage and publication.

Passed and approved this _____ day of April, 2024.

ATTEST:

Susan L. Westerbeke, City Clerk

Theodore Neitzke IV, Mayor

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: Common Council

FROM: Bob Harris, Director of Planning & Development

DATE: April 3, 2024

SUBJECT: ORDINANCE 2024-4: Amending and/or Creating Zoning Ordinances to Allow and Regulate Private Ambulance Services as a Conditional Use in the R-1 Single Family Detached Residence District (Proposed Text Amendment to Zoning Code Section 485-153; Harbor Village LLC, Applicant) – 1st Reading

ISSUE: The Common Council is being asked to approve a petition from the applicant to amend the City of Port Washington Zoning Code to add “Private Ambulance Services” as a conditional use in the R-1 Single Family Detached Residence district.

STAFF RECOMMENDATION: No recommendation, this item is a 1st reading with no action.

RECOMMENDED MOTION: N/A

BACKGROUND/DISCUSSION:

- Capri Harbor Campus is proposing to use an existing ambulance bay at its campus to house a private ambulance service.
- To do so will require amending the City’s zoning code to add Private Ambulance Services (including crew quarters space) as a conditional use in the residential districts.
- The use is not intended as standalone use but only when operating within a senior care or senior residence facility to limit such uses within residential neighborhoods.
- There are no objections from the Port Washington Fire Dept.

ISSUES:

- Harbor Campus is currently zoned, RM-4 Multi Family
- The proposed use would be classified as Conditional under R-1 single family residential because the current City zoning code refers to allowable uses in preceding districts; in this case R-1 is a “root” district from which allowable conditional uses in the remaining residential zoning districts are referred to. (i.e. for RM-4 conditional uses, refer to R-1 conditional uses)
- As a new listed use, the parking requirements section of the zoning code (485-94) would also be affected due to assigning a parking standard to the use. The suggested minimum off-street parking requirement is 1 space for each ambulance crew member with a maximum of two required spaces.
- If approved, Capri would come back to the Plan Commission and Common Council seeking a Conditional Use Grant for the specific location and regulation of the operational details.

STRATEGIC PLAN:

1. **Strategic Direction:** SD 4: Catalyzing Development to Generate Revenue
2. **Impact on Strategic Direction:** An approved rezoning will potentially allow for increased land use maximization for the Harbor Village

LEGAL:

1. **City Attorney Review:** Yes

FISCAL IMPACT: N/A

PLAN COMMISSION RECOMMENDATION: At its March 20, 2023 meeting, the Plan Commission unanimously recommended the Common Council approve the zoning text amendment request.

PUBLIC OUTREACH: This matter was first heard before a regular public meeting of the Plan Commission on March 20, 2024 and following publication of a Class II notice a public hearing on this matter is scheduled for April 16, 2024.

IF APPROVED, NEXT STEPS: If adopted there are no further steps in this matter.

ATTACHMENTS:

- 1) Proposed Ordinance 2024-4

**CITY OF PORT WASHINGTON, WISCONSIN
ORDINANCE NO. 2024-4**

**Amending and/or Creating Zoning Ordinances to
Allow and Regulate Private Ambulance Services as a
Conditional Use in the R-1 Single Family Detached Residence District**

WHEREAS, Harbor Village LLC, a Wisconsin limited liability company, the owner of property located at 425 W. Walters Street (Tax Parcel No. 16-114-0003.018) in the City of Port Washington, Ozaukee County, Wisconsin, has applied for an amendment to the Zoning Ordinance of the City of Port Washington to allow private ambulance services as a conditional use in the R-1 Single Family Detached Residence zoning district; and

WHEREAS, all notices of said proposed amendment and public hearing thereon have been given as required by said Zoning Ordinance and § 62.23(7)(d), Wis. Stat.; and

WHEREAS, on April 16, 2024, the Common Council held a public hearing regarding the proposed amendment of said Zoning Ordinance to allow private ambulance services as a conditional use in the R-1 Single Family Detached Residence zoning district; and

WHEREAS, the Common Council has determined that the proposed amendment of said Zoning Ordinance will promote the public health, safety, and general welfare of the community, and has directed that the Zoning Ordinance of the City of Port Washington be amended accordingly,

NOW, THEREFORE, the Common Council of the City of Port Washington, Wisconsin, do ordain as follows:

Section 1. The title to, and first paragraph of, § 485-94 of the Zoning Ordinance of the City of Port Washington, are amended to read as follows:

§ 485-94 Business, industrial, institutional, multiple-family, and certain single-family detached residence zoning districts.

The following requirements shall apply to all property within the business, industrial, institutional, and RM-2, RM-3 and RM-4 Multiple Family Zoning Districts, and to certain property within the R-1 Single Family Detached Residence District for which a conditional use permit has been granted:

Section 2. The table included in § 485-94 D. of the Zoning Ordinance of the City of Port Washington, listing parking space requirements, is amended to add the following Use and Parking Space Requirement:

Use	Parking Space Requirement
Private ambulance svc (as cond. use in R-1 single-family res. zoning dist.)	1 space for each private ambulance crew member, with a max. of 2 required spaces per ambulance

Section 3. § 485-153 D. (9) of the Zoning Ordinance of the City of Port Washington relating to permitted uses by conditional grant in the R-1 Single Family Detached Residence zoning district is created to read as follows:

- (9) Private ambulance services, including crew quarters, if located on the same property as a nursing home or rest home for the aged. As used in this Chapter 485, "private ambulance service" means ambulance transport provided by private companies to persons, primarily in non-emergency cases, using licensed personnel and privately owned vehicles and equipment.

Section 4. This Ordinance shall become effective upon passage and publication.

Passed and approved this 16th day of April, 2024.

ATTEST:

Susan L. Westerbeke, City Clerk

Theodore Neitzke IV, Mayor