



11333 N. Cedarburg Road
Mequon, WI 53092
Phone: 262-236-2913
Fax: 262-242-1580

www.ci.mequon.wi.us

Water Utility

MEQUON MUNICIPAL WATER UTILITY COMMISSION
Regular Meeting
Tuesday, February 14, 2023
7:15 PM or immediately following the Comm of the Whole
Christine Nuernberg Hall

Agenda

- 1) Call to Order, Roll Call
- 2) Approval of Meeting Minutes
Action requested: review and approve
 - a. December 13, 2022 Minutes
- 3) Discussion and Possible Action
 - a. Water Utility Commission Consideration of the Village of River Hills' Request for Municipal Water Service
 - b. A Resolution Authorizing Execution of an Intergovernmental Agreement with the Village of River Hills for Municipal Water Service
 - c. Approval of a Water Services Agreement with the Village of River Hills for the River Hills Tax Increment District (TID) Infrastructure Project
 - d. Approval of a Water Services Agreement and Water Utility Easement with The Grove at River Hills, LLC for the Grove at River Hills
 - e. Approval of a Water Services Agreement with Bayside Development Partners II, LLC for the One North Project in the Village of Bayside
- 4) Adjourn

Dated: February 14, 2023

/s/ Andrew Nerbun, Chair

Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the Public Works Office at 262-236-2913, Monday through Friday, 7:00 AM - 3:30 PM.



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MEQUON MUNICIPAL WATER UTILITY COMMISSION

Regular Meeting

Tuesday, December 13, 2022

7:15 PM

Christine Nuernberg Hall

Minutes

1) Call to Order, Roll Call

Commissioner Nerbun called the meeting to order at 7:28 PM.

Present:

Commissioner Andrew Nerbun
 Commissioner Glenn Bushee
 Commissioner Mark Gierl
 Commissioner Jeffrey Hansher
 Commissioner Dale Mayr
 Commissioner Brian Parrish
 Commissioner Kathleen Schneider
 Commissioner Robert Strzelczyk
 Vacant Seat -- **Excused**

2) Approval of Meeting Minutes

a. October 27, 2022, Minutes

RESULT: Approved by Voice Acclamation [Unanimous]

MOVED BY: Commissioner Mayr

SECONDED BY: Commissioner Strzelczyk

AYES: Nerbun, Bushee, Gierl, Hansher, Mayr, Parrish, Schneider, Strzelczyk

NOT PRESENT: Seat

3) Discussion Items

Attachment: 12-13-22 (8149 : December 13, 2022 Minutes)

- a. Motion to approve RESOLUTION 3999: Resolution for 2nd MWW Connection

RESULT: Approved by Voice Acclamation [Unanimous]
MOVED BY: Commissioner Mayr
SECONDED BY: Commissioner Gierl

AYES: Nerbun, Bushee, Gierl, Hansher, Mayr, Parrish, Schneider, Strzelczyk
NOT PRESENT: Seat

- b. Motion to approve Water Services Agreement for Thiensville Crossing Water Main Extension in Thiensville

RESULT: Approved by Voice Acclamation [Unanimous]
MOVED BY: Commissioner Mayr
SECONDED BY: Commissioner Hansher

AYES: Nerbun, Bushee, Gierl, Hansher, Mayr, Parrish, Schneider, Strzelczyk
NOT PRESENT: Seat

- c. Motion to approve River Hills IGA

Discussion ensued clarifying that both the Village of River Hills and the University School of Milwaukee are interested in pursuing an extension.
 Staff also clarified that due to the location of the connection they are not concerned about straining water capacity.

RESULT: Approved by Voice Acclamation [Unanimous]
MOVED BY: Commissioner Strzelczyk
SECONDED BY: Commissioner Schneider

AYES: Nerbun, Bushee, Gierl, Hansher, Mayr, Parrish, Schneider, Strzelczyk
NOT PRESENT: Seat

- d. Update Regarding Milwaukee Water Works 2022 Rate Case

4) Adjourn

- a. Motion to Adjourn at 7:41 PM

RESULT: Approved by Voice Acclamation [Unanimous]
MOVED BY: Commissioner Hansher
SECONDED BY: Commissioner Schneider

Attachment: 12-13-22 (8149 : December 13, 2022 Minutes)

AYES: Nerbun, Bushee, Gierl, Hansher, Mayr, Parrish, Schneider, Strzelczyk
NOT PRESENT: Seat

Respectfully Submitted,

Ren Schlereth
Administrative Secretary

Attachment: 12-13-22 (8149 : December 13, 2022 Minutes)



11333 N. Cedarburg Road
 Mequon, WI 53092-1930
 Phone: 262-236-8150
 Fax: 262-242-9655

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Office of Mequon Municipal Water Utility Commission

TO: Mequon Municipal Water Utility Commission
FROM: Kristen Lundeen, Director of Public Works/City Engineer
DATE: February 14, 2023
SUBJECT: Water Utility Commission Consideration of the Village of River Hills' Request for Municipal Water Service

Background

In December 2021, the Village of River Hills (River Hills) submitted a request for municipal water service from the Mequon Water Utility. After more than a year of analysis, review, education and negotiation, the item is before the Mequon Municipal Water Utility Commission (WUC) for consideration and action.

For ease of decision making, this item will address only the approval of the request for municipal water service, conditioned upon the approval and execution of an Intergovernmental Agreement (IGA) with River Hills. The IGA is listed as a separate item for consideration, should the WUC determine that the terms and conditions should be amended. If approved, the IGA will be forwarded to the Common Council for consideration and approval.

If the request for municipal water service and the IGA are authorized, the WUC will subsequently consider two Water Services Agreements (WSA). The first is for the main River Hills TIF project, which will make the connections to the Mequon Water Utility and fulfill the requirements of the IGA. The second is for the residential development within River Hills that will ultimately be served by the TIF infrastructure. Both are structured as the standard build-and-contribute documents and follow the City's standard template agreement.

If the request for municipal water service is granted, Mequon Water Utility staff will forward the request to the Wisconsin Public Service Commission (PSC) to serve River Hills, subject to the terms and conditions identified within the proposed IGA.

Analysis

Mequon Water Utility staff completed its due diligence to ensure that approving the request for municipal water service met the terms outlined by the WUC. The terms and conditions for service are outlined in the subsequent memos, but ensure that there is no capacity or rate impact to existing customers and that all infrastructure required for the project will be installed by River Hills.

Fiscal Impact

The agreements have been drafted so that there is no initial cost to the Mequon Water Utility. The Mequon Water Utility will receive revenue from new customers once they are connected to the system. New customers help spread the utility's fixed costs over more customers, which is a

benefit to both the utility and its ratepayers.

Recommendation

Staff recommends that the WUC take final action on the request for municipal water service to River Hills, conditioned upon the approval of the terms and conditions outlined in the Intergovernmental Agreement and Public Service Commission approval of the same.



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Office of Mequon Municipal Water Utility Commission

TO: Mequon Municipal Water Utility Commission
FROM: Kristen Lundeen, Director of Public Works/City Engineer
DATE: February 14, 2023
SUBJECT: RESOLUTION 4021 A Resolution Authorizing Execution of an Intergovernmental Agreement with the Village of River Hills for Municipal Water Service

Background

The consideration of an Intergovernmental Agreement (IGA) follows action on the request to provide municipal water service to the Village of River Hills. If the request for municipal water service is tabled or denied, action on this IGA should also be delayed. The IGA addresses the terms for municipal water service. A subsequent item on the agenda requests approval of a Water Services Agreement (WSA), which is a project level approval.

Proposed terms were presented to the Water Utility Commission (WUC) in December 2022, which included language within draft documents to affirm that:

- The connection does not impact existing utility customers with respect to rates and capacity.
- The project will be self-sustaining, in that revenues will cover future replacement costs.
- The infrastructure must be designed to meet the demands of all properties within the user service area, not just the residential development alone.

With WUC approval of the draft documents, the documents were transmitted to the River Hills for consideration. River Hills requested only minor, clerical modifications to the documents.

If the request for municipal water service is granted, Mequon Water Utility staff will forward the request to the Wisconsin Public Service Commission (PSC) to serve River Hills, subject to the terms and conditions identified within the proposed IGA. As the WUC does not have the authority to execute the IGA, pending an affirmative recommendation, that document will be forwarded to the Common Council for consideration.

Analysis

Mequon Water Utility staff completed its due diligence to ensure that approving the request for municipal water service met initial terms outlined by the WUC. The agreements have been drafted to ensure that there is no negative impact to existing utility customers with respect to rates and capacity. Adding this new, additional customer base will assist in spreading fixed costs across more customers.

A provision has been added to the IGA to track the revenues from River Hills customers, so that at the time of future replacement, a fiscal review can determine whether revenues sufficiently

cover the replacement cost. Any deficit must be paid by the Village of River Hills.

Technical requirements including both the connection at County Line Road and an additional connection under I-43 to public water infrastructure serving the Village of Bayside assures redundant service to River Hills. It provides the same benefit to other Mequon Water Utility rate payers. Design of the system itself will provide the potential to ultimately serve all of the properties within the user service area in River Hills.

Fiscal Impact

The agreements were also drafted so that there is no initial cost to the Mequon Water Utility. The IGA requires that revenues exceed expenses for the River Hills Water User Service Area. The WSA requires the City's standard "build-and-contribute" methodology for the necessary infrastructure. The Mequon Water Utility will receive revenue from new customers once they are connected to the system. New customers help spread the utility's fixed costs over more customers, which is a benefit to both the utility and its ratepayers.

River Hills is required to pay all fees associated with the project, including any PSC fees for the request for municipal water service, City Water review, administration and inspection fees, installation and construction costs, as well as any applicable connection fees.

Recommendation

It is recommended that the Water Utility Commission make a recommendation to the Common Council regarding approval of the proposed Intergovernmental Agreement, a copy of which is attached. As also indicated previously, all recommendations are conditioned upon the Public Service Commission approval of the same.

Attachments:

Intergovernmental Agreement-Mequon and River Hills (PDF)

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 4021

A Resolution Authorizing Execution of an Intergovernmental Agreement with the Village of
River Hills for Municipal Water Service

RECITALS

A. Villages and cities are authorized under Wis. Stat. § 66.0301 to enter into an intergovernmental agreement for the joint exercise of any power or duty required or authorized by statute.

B. A city or village may contract for the furnishing of public utility service, including water service, within the village or city under Wis. Stat. § 66.0815(2)(a).

C. Mequon owns and operates the Mequon Water Utility (the “Utility”) which provides water service to customers within its service area.

D. The Village of River Hills has requested that the City and the Utility extend water service to provide service to serve certain properties in River Hills.

E. The City and the Village have negotiated an Intergovernmental Agreement ("IGA") to outline the terms and conditions upon which the City would provide service to the requested portion of River Hills.

F. The City and the Utility are willing to provide service to the requested portion of River Hills pursuant to the terms of the IGA.

BASED UPON THE FOREGOING RECITALS, IT IS RESOLVED by the Common Council of the City of Mequon, Wisconsin that:

1. The Intergovernmental Agreement with the Village of River Hills in the form attached hereto is approved subject to any clerical, technical and/or legal changes deemed necessary and appropriate by the City Attorney.

2. The Mayor and the City Clerk are authorized and directed to execute and deliver the same.

Approved by: Andrew Nerbun Mayor

Date Approved: February 14, 2023

I certify that the foregoing Water Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on February 14, 2023.

Caroline Fochs, City Clerk

**INTERGOVERNMENTAL AGREEMENT TO PROVIDE WATER UTILITY SERVICE
BETWEEN THE CITY OF MEQUON
AND
THE VILLAGE OF RIVER HILLS**

THIS AGREEMENT (“Agreement”) is entered into this _____ day of January, 2023, by and between the City of Mequon, a municipal corporation, located in Ozaukee County, Wisconsin (“Mequon”), and the Village of River Hills, a municipal corporation located in Milwaukee County, Wisconsin (“River Hills”), (collectively the “Parties”).

RECITALS

WHEREAS, Section 66.0301, Wis. Stats., authorizes villages and cities to contract for the joint exercise of any power or duty required or authorized by statute; and

WHEREAS, Wis. Stat. § 66.0815(2)(a) provides that a city or village may contract for the furnishing of public utility service, including water service, within the village or city; and

WHEREAS, Mequon owns and operates the Mequon Water Utility (the “Utility”) which provides water service to customers within its service area; and

WHEREAS, Mequon and the Utility have been requested by River Hills to serve certain properties in River Hills; and

WHEREAS, the Parties have each taken all the necessary actions to authorize the execution of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Agreement to Provide Service.

- 1.1 River Hills authorizes the Utility to operate, construct, and maintain a system to sell and supply water to residents and property owners of certain parcels in River Hills, which is hereby identified in map form as Exhibit A (the “River Hills Water User Service Area”) and identified by Tax Parcel ID Numbers as listed in Exhibit B attached hereto. Service to properties outside of the River Hills Water User Service Area will require an approved amendment to this Agreement by both Parties.
- 1.2 The Utility shall use its best efforts to, within one (1) year of a written petition from River Hills for expansion of the Utility’s current Water User Service Area (one hundred eighty (180) days in the case of existing water supply failures in River Hills which threaten human health, safety, or the environment), to provide service outside its existing service area. The Utility shall provide River Hills all data necessary to comply with § 66.0703 Wis. Stats. et.

seq. to allow River Hills to provide for full payment for facilities as mutually agreed upon by River Hills and Mequon.

- 1.3 The Utility shall at all times use its best efforts to secure sources of water supply sufficient to serve the needs of River Hills as required under this Agreement.

Section 2. Terms.

- 2.1 Any and all operations costs for the River Hills Water User Service Area must be funded from revenues derived from the River Hills Water User Service Area. Annually, in the second quarter of the year, following bill collection from the four quarterly billing periods from the previous calendar year, the Utility will produce a ledger of the revenue from the River Hills Water User Service Area. The revenue shall be tracked cumulatively from the first date of service.
- 2.2 If at any time the revenue from the River Hills Water User Service Area does not exceed the operations costs of the River Hills Water User Service Area, River Hills shall pay the Utility for the net difference in cost. This payment shall be due within 90 days of notice, unless otherwise approved by the Utility Commission. Any payment made to the Utility for operations costs by River Hills, under this paragraph, shall be reimbursed to River Hills by the Utility, if and when revenues derived from the River Hills Water User Service Area exceed operations costs for the previous calendar year.
- 2.3 River Hills agrees to collect any delinquent Mequon Water Utility bills of the customers within the River Hills Water User Service Area through its statutory tax collection procedure whereby such delinquencies are collected including as a special tax against the property benefitted.
- 2.4 It is expressly agreed that the furnishing of service to the aforesaid River Hills Water User Service Area does not and shall not constitute a commitment by the Utility to provide water service to River Hills itself or to any other person, firm, or corporation residing or located in River Hills, nor does it grant any right to the Utility to provide water service to River Hills itself, or to any other person, firm, or corporation residing or located in River Hills. River Hills is not committed to acceptance of additional water service.

Section 3. Permitting and Approvals.

- 3.1 This Agreement is indeterminate as to term under Wis. Stat. §§ 66.0815(2) and 196.54.
- 3.2 In furtherance of this Agreement or any right or option exercised under it, the Utility shall be responsible for obtaining and maintaining in force all permits and approvals (including but not limited to licenses, certifications, approvals, and tariffs) required by local, state, and federal authorities for the public water infrastructure. River Hills shall use its best efforts to expedite the processing of any such permits and approvals.

- 3.3 The Utility will provide service in compliance with generally accepted industry practices and all applicable regulatory standards.
- 3.4 The Utility will retain and maintain all appropriate records of operations and maintenance regarding service to River Hills customers. River Hills will have the right to inspect such records during normal business hours.
- 3.5 The Utility shall restore all River Hills rights of way to their original condition after work in the right of way by the Utility or its agents, and shall indemnify River Hills for bodily injury or property damage from work in or use of River Hills rights of way subject to the provisions of Section 5 below. Any work in an easement is subject to the terms and conditions of that easement.
- 3.6 Mequon staff will apply to the Public Service Commission (PSC) for all necessary approvals to effectuate this Agreement. River Hills shall reimburse Mequon for all Utility staff time directly associated with the application process and all applicable charges from the PSC.
- 3.7 River Hills will administer any applicable plumbing permits associated with private infrastructure on individual parcels. Prior to issuing a plumbing permit, River Hills will confirm that the applicant has submitted a Water Services Application and associated fee to River Hills.

Section 4. Rates and Connection.

Unless otherwise set forth in this Agreement, the Utility will charge reasonable nondiscriminatory rates (as between Mequon, other municipalities, and River Hills residents) and shall not require connection by property owners or assess any property owner for fire protection without River Hills's prior written consent.

Section 5. Indemnity.

Mequon shall indemnify, defend and hold River Hills, its officers, employees and agents harmless from any and all claims or liability of any kind whatsoever, arising out of operation and/or interruption of service, to the extent such claim or liability is proximately caused by the acts or omissions of the Utility, its agents and contractors. This language notwithstanding, nothing contained within this Agreement is intended to be a waiver or estoppel of Mequon or its insurers to rely upon the limitations, defenses, and immunities contained within Wisconsin Statutes Sections 893.80, 895.52, and 345.05 or common law, and Mequon or its insurers shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability under Wisconsin law.

Section 6. Integrated Agreement.

This document, together with all documents incorporated by reference, sets forth the entire understanding of the Parties and supersedes any and all prior agreements, written or oral, relating to the subject matter of this Agreement.

Section 7. Modifications.

This Agreement can only be amended in writing signed by both parties.

Section 8. Applicable Law: Construction.

- 8.1 This Agreement shall be interpreted in accordance with the laws of the State of Wisconsin.
- 8.2 Captions of any section or paragraph of this Agreement are for convenience or reference only and shall not define or limit the scope of any provisions contained herein. The Recitals in this Agreement are incorporated in and made a part of this Agreement.
- 8.3 The provisions of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. If any provision is found to be invalid or unenforceable under applicable law: (1) the same shall not affect the validity or enforceability of such provision under any other circumstances or of the remaining provisions of this Agreement; and (2) such provision shall be deemed automatically amended with the least changes necessary so as to be valid and enforceable.
- 8.4 Performance of this Agreement shall not give rise to any actual or implied relationship between the Parties (such as an agency, joint venture or partnership), except as otherwise expressly stated in this Agreement.
- 8.5 This Agreement is the result of negotiations between the Parties and review by their respective counsel. Neither party shall claim or enjoy any presumption as to the interpretation of its terms based on draftsmanship.
- 8.6 Individual projects completed under the terms of this Agreement are subject to the Utility Water Connection Policy, and are required to obtain a Water Services Agreement.
- 8.7 The initial project serving any property within the River Hills Water User Service Area, subject to a subsequent Water Services Agreement as outlined in Section 8.6, must include the following:
 - 8.7.1 Transmission main sizing sufficient for service and fire flow to all properties within the River Hills Water User Service Area and meet static pressure requirements of NR811.
 - 8.7.2 Installation of water main from the initial point of service back to County Line Road with a boundary valve.
 - 8.7.3 Installation of water main from the initial point of service to the Village of Bayside

connection under I-43. Casing is required for the water infrastructure under the interstate crossing.

- 8.7.4 Mequon Water Utility approval of the design, technical specifications and construction plans prior to bidding.
- 8.7.5 Extended warranty requirements with a duration to be defined in the Water Services Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY OF MEQUON

Andrew Nerbun, Mayor

Caroline Fochs, City Clerk

STATE OF WISCONSIN)
) ss.
OZAUKEE COUNTY)

Personally came before me this _____ day of January, 2023, the above-named Andrew Nerbun, Mayor and Caroline Fochs, City Clerk of the City of Mequon, to me known to be the persons who executed the foregoing document, and acknowledged the same.

Notary Public, State of Wisconsin
My Commission:_____

Approved as to Form:

Brian Sajdak
Mequon City Attorney

VILLAGE OF RIVER HILLS

Christopher B. Noyes, Village President

Tammy LaBorde, Village Manager

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of January, 2023 the above-named Christopher B. Noyes, Village President and Tammy LaBorde, Village Manager of the Village of River Hills, to me known to be the persons who executed the foregoing document, and acknowledged the same.

Notary Public, State of Wisconsin
My Commission:_____

Approved as to Form:

William Dineen
Village Attorney

Attachment: Intergovernmental Agreement-Mequon and River Hills (RESOLUTION 4021 : River Hills - Request, IGA and WSA)

Exhibit A

Map of Water User Service Area

DRAFT

Attachment: Intergovernmental Agreement-Mequon and River Hills (RESOLUTION 4021 : River Hills - Request, IGA and WSA)

RIVER HILLS WATER USER SERVICE AREA

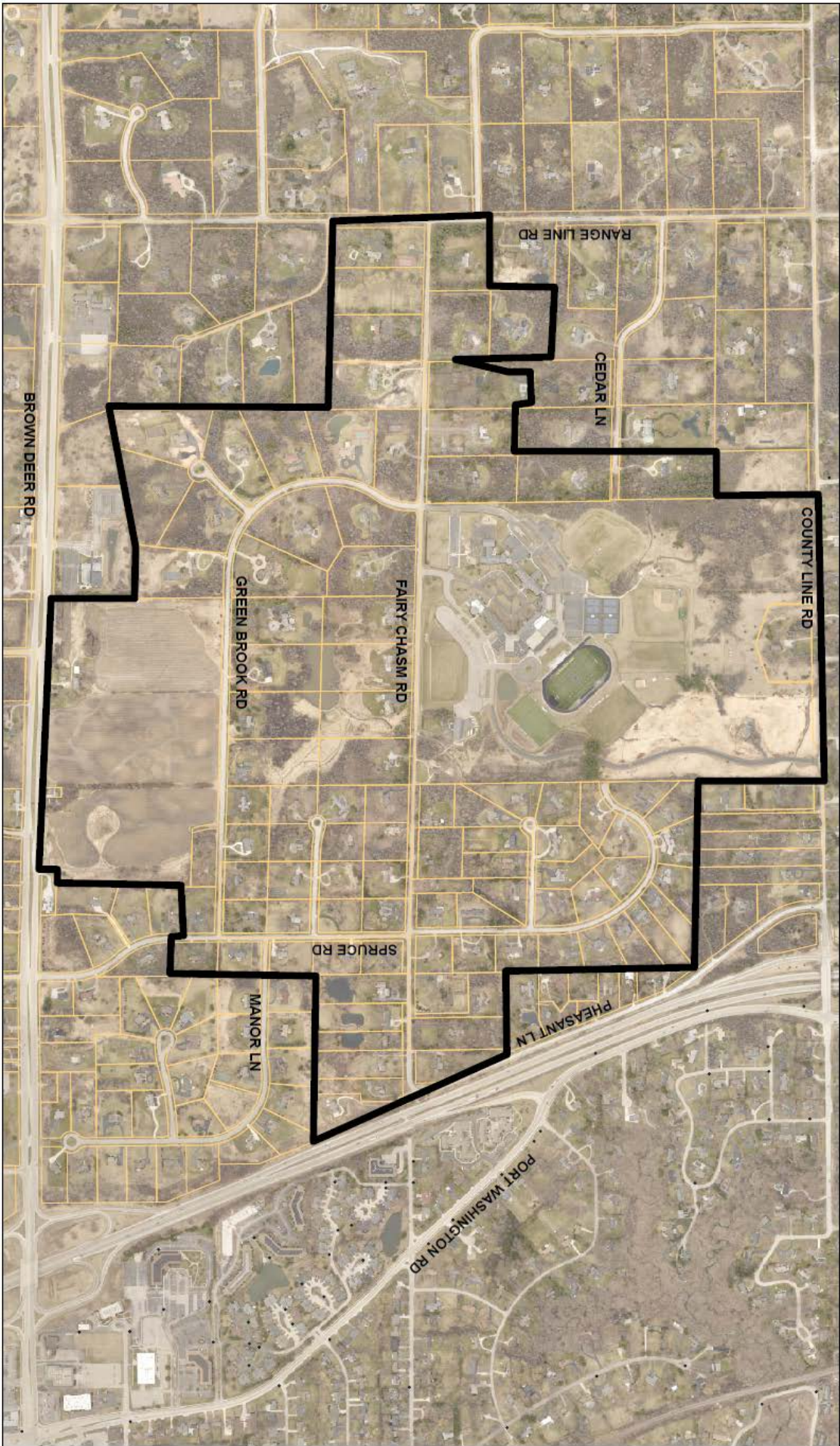


Exhibit B

List of parcels within the Water User Service Area

COUNT	TAX KEY	PARCEL KEY	ADDRESS
1	0238999002	023-8999-002	1065 W FAIRY CHASM RD
2	0158990000	015-8990	1100 W FAIRY CHASM RD
3	0238999001	023-8999-001	1125 W FAIRY CHASM RD
4	0158991000	015-8991	1130 W FAIRY CHASM RD
5	0158992002	015-8992-002	1150 W FAIRY CHASM RD
6	0238998000	023-8998	1155 W FAIRY CHASM RD
7	0238996000	023-8996	1165 W FAIRY CHASM RD
8	0238997000	023-8997	1175 W FAIRY CHASM RD
9	0238995000	023-8995	1215 W FAIRY CHASM RD
10	0158992001	015-8992-001	1220 W FAIRY CHASM RD
11	0249999002	024-9999-002	1355 W FAIRY CHASM RD
12	0140008000	014-0008	1400 W SPRUCE CT
13	0249998001	024-9998-001	1407 W FAIRY CHASM RD
14	0140001000	014-0001	1421 W SPRUCE CT
15	0149983000	014-9983	1430 W FAIRY CHASM RD
16	0249997001	024-9997-001	1447 W FAIRY CHASM RD
17	0249997003	024-9997-003	1447 W MANOR LN
18	0140010002	014-0010-002	1450 W SPRUCE CT
19	0149984004	014-9984-004	1455 W SPRUCE CT
20	0149984003	014-9984-003	1500 W FAIRY CHASM RD
21	0249997004	024-9997-004	1500 W GREEN BROOK RD
22	0249997002	024-9997-002	1500 W MANOR LN
23	0249996002	024-9996-002	1505 W FAIRY CHASM RD
24	0249992009	024-9992-009	1515 W GREEN BROOK RD
25	0240011000	024-0011	1520 W GREEN BROOK RD
26	0240007000	024-0007	1520 W MANOR LN
27	0240010000	024-0010	1525 W MANOR LN
28	0140013000	014-0013	1530 W CEDAR LN
29	0140010001	014-0010-001	1530 W SPRUCE CT
30	0149984002	014-9984-002	1535 W SPRUCE CT
31	0140005000	014-0005	1545 W CEDAR LN
32	0149985004	014-9985-004	1545 W SPRUCE CT
33	0140012000	014-0012	1550 W CEDAR LN
34	0149985006	014-9985-006	1555 W SPRUCE CT
35	0149985005	014-9985-005	1560 W SPRUCE CT
36	0140011000	014-0011	1600 W CEDAR LN
37	0149985001	014-9985-001	1600 W FAIRY CHASM RD
38	0140004000	014-0004	1615 W CEDAR LN
39	0241002000	024-1002	1620 W BROWN DEER RD
40	0240012000	024-0012	1630 W GREEN BROOK RD
41	0240008000	024-0008	1630 W MANOR LN
42	0240009000	024-0009	1635 W MANOR LN
43	0249996001	024-9996-001	1655 W FAIRY CHASM RD
44	0149989001	014-9989-001	1725 W COUNTY LINE RD

COUNT	TAX KEY	PARCEL KEY	ADDRESS
45	0249995003	024-9995-003	1725 W FAIRY CHASM RD
46	0249995004	024-9995-004	1740 W GREEN BROOK RD
47	0149989002	014-9989-002	1775 W COUNTY LINE RD
48	0241001000	024-1001	1820 W BROWN DEER RD
49	0149988002	014-9988-002	1900 W FAIRY CHASM RD
50	0240006000	024-0006	1900 W GREEN BROOK RD
51	0149988004	014-9988-004	1901 W COUNTY LINE RD
52	0240003000	024-0003	1901 W FAIRY CHASM RD
53	0149988003	014-9988-003	1907 W COUNTY LINE RD
54	0240002000	024-0002	1965 W FAIRY CHASM RD
55	0240005000	024-0005	1970 W GREEN BROOK RD
56	0240004000	024-0004	2000 W GREEN BROOK RD
57	0240001000	024-0001	2005 W FAIRY CHASM RD
58	0250001000	025-0001	2015 W FAIRY CHASM RD
59	0139980000	013-9980	2100 W FAIRY CHASM RD
60	0139999000	013-9999	2101 W COUNTY LINE RD
61	0139981002	013-9981-002	2200 W FAIRY CHASM RD
62	0139998000	013-9998	2210 W CEDAR LN
63	0250003000	025-0003	2245 W FAIRY CHASM RD
64	0139981005	013-9981-005	2277 W CEDAR LN
65	0139981003	013-9981-003	2300 W FAIRY CHASM RD
66	0139984000	013-9984	2400 W FAIRY CHASM RD
67	0259999005	025-9999-005	2405 W FAIRY CHASM RD
68	0259999006	025-9999-006	2485 W FAIRY CHASM RD
69	0139985000	013-9985	2500 W FAIRY CHASM RD
70	0259999003	025-9999-003	2515 W FAIRY CHASM RD
71	0139988000	013-9988	2640 W FAIRY CHASM RD
72	0139986000	013-9986	2650 W FAIRY CHASM RD
73	0250012000	025-0012	8975 N GREENBROOK RD
74	0250004000	025-0004	8980 N GREENBROOK RD
75	0249992013	024-9992-013	8980 N SPRUCE RD
76	0249992005	024-9992-005	8985 N SPRUCE RD
77	0249999001	024-9999-001	9020 N SPRUCE RD
78	0249998004	024-9998-004	9035 N SPRUCE RD
79	0249998003	024-9998-003	9075 N SPRUCE RD
80	0250010000	025-0010	9077 N GREENBROOK CT
81	0250011000	025-0011	9080 N GREENBROOK CT
82	0249999004	024-9999-004	9080 N SPRUCE RD
83	0250009000	025-0009	9081 N GREENBROOK CT
84	0250008000	025-0008	9085 N GREENBROOK CT
85	0250005000	025-0005	9090 N GREENBROOK RD
86	0250007000	025-0007	9117 N GREENBROOK RD
87	0249999003	024-9999-003	9130 N SPRUCE RD
88	0249998002	024-9998-002	9155 N SPRUCE RD
89	0250006000	025-0006	9167 N GREENBROOK RD
90	0259999002	025-9999-002	9170 N RANGE LINE RD
91	0250002000	025-0002	9190 N GREENBROOK RD
92	0140022000	014-0022	9220 N SPRUCE RD

COUNT	TAX KEY	PARCEL KEY	ADDRESS
93	0140003000	014-0003	9225 N SPRUCE RD
94	0140021000	014-0021	9250 N SPRUCE RD
95	0140002000	014-0002	9265 N SPRUCE RD
96	0140020000	014-0020	9310 N SPRUCE RD
97	0140019000	014-0019	9340 N SPRUCE RD
98	0140018000	014-0018	9360 N SPRUCE RD
99	0140007000	014-0007	9375 N SPRUCE RD
100	0140017000	014-0017	9400 N SPRUCE RD
101	0140016000	014-0016	9420 N SPRUCE RD
102	0140015000	014-0015	9440 N SPRUCE RD
103	0140006000	014-0006	9445 N SPRUCE RD
104	0140014000	014-0014	9460 N SPRUCE RD



11333 N. Cedarburg Road
 Mequon, WI 53092-1930
 Phone: 262-236-8150
 Fax: 262-242-9655

www.ci.mequon.wi.us

Office of Mequon Municipal Water Utility Commission

TO: Mequon Municipal Water Utility Commission
FROM: Kristen Lundeen, Director of Public Works/City Engineer
DATE: February 14, 2023
SUBJECT: Approval of a Water Services Agreement with the Village of River Hills for the River Hills Tax Increment District (TID) Infrastructure Project

Background

If the request for municipal water service and the Intergovernmental Agreement (IGA) with the Village of River Hills are approved, the next level of approval is the Water Services Agreement (WSA). The WSA outlines the requirements at the project level and follows the template document contained within the City's Water Connection Policy.

Analysis

Typically, Water Services Agreements are administered through the Development Agreement process. As this development is in River Hills, the City of Mequon does not have an agreement with the developer.

The plan for this water main extension follows the Mequon Water Utility build-and-contribute policy, where the water main will be built by the developer and contributed to Utility once the project is complete. Mequon Water Utility staff will review the plans and any required easements for the water main to verify adherence with the Mequon Water Utility's standard specifications.

Fiscal Impact

Staff time for plan review and inspection services will be billed back to the developer as specified in the agreement. No other staff costs are anticipated at this time. However, in the future, operation and maintenance of the water main facilities, including the main and water service laterals (up to the curb stops) will be required by the Mequon Water Utility. That future cost is unknown but anticipated to be offset by the rates paid and accrued for providing this utility service. Furthermore, there is a clause in the River Hills IGA that requires the Village to compensate the water utility for any shortfall in the cost of capital to replace River Hills' water mains.

Recommendation

Staff recommends that the Mequon Water Utility Commission approve entering into a Water Services Agreement with the Village of River Hills for the River Hills TID Infrastructure Project, subject to any clerical, technical and/or legal changes deemed necessary and appropriate by the City Attorney.

Additionally, this recommendation is conditioned upon the Wisconsin Public Service

Commission's approval of the same.

Attachments:

Water Services Agreement - Mequon and River Hills (PDF)

AGREEMENT

This Agreement (the “Agreement”) is made by and between the City of Mequon Utility (“Utility”) and the Village of River Hills (“Village”) (collectively, the “Parties,” individually, a “Party”).

WHEREAS, the Village wishes to obtain Mequon water utility service for a service area described in Exhibit A to this Agreement in the Village of River Hills, Wisconsin (the “River Hills Water User Service Area”); and

WHEREAS, the Village wishes to design, construct mains, valves, fittings and any and all other facilities necessary to deliver water (the “Water Service Facilities”) to the River Hills Water User Service Area; and

WHEREAS, the Village wishes to convey to the Utility and the Utility wishes to receive from the Village, title to the Water Service Facilities at the time of the connection of the Water Service Facilities to the Water Utility system.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Utility Obligations. The Utility shall have the following obligations under this Agreement with relation to the Water Service Facilities.
 - 1.1 To provide and maintain meter(s) for building(s) in the River Hills Water User Service Area.
 - 1.2 To provide water service to the River Hills Water User Service Area under rates, rules, regulations and conditions of service on file with the Public Service Commission of Wisconsin (“PSCW”) or any successor regulatory agency.
 - 1.3 To maintain the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations and ordinances.
 - 1.4 To take title to the Water Service Facilities after a final inspection by Water Utility reveals that, the Water Service Facilities meet the Standards as defined in Section 2.1 of this Agreement.
 - 1.5 Village shall have at least five (5) business days prior written notice of Utility’s intent to take title to the Water Service Facilities. Said notice shall be provided pursuant to Section 10 of this Agreement.
 - 1.6 Prior to processing a Mequon Water Utility Water Services Application, Water Utility staff will confirm that the Village has processed a plumbing permit for the relevant property.

2. Obligations of Village. The obligations of Village under this Agreement are as follows:

- 2.1 To construct, or cause the construction of, the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations, ordinances, the Intergovernmental Agreement with the City of Mequon and complying with the Mequon Water Standards which have been provided to Village. The Village shall supply copies of lien waivers from all contractors and/or material suppliers performing work or supplying materials on this project before final acceptance of the Water Service Facilities.
- 2.2 To transfer by bill of sale or instrument of dedication title to the Water Services Facilities to the Utility upon written request by the Utility.
- 2.3 The Village will pay for all reasonable and documented costs incurred by the Utility, or its consultant in the review of the engineering plans, inspection of the construction and/or installation of the Improvements, review of record drawings for City files, and any other reasonable and documented costs that may be incurred by the City for this Project. The Village will pay the costs above enumerated and described within thirty (30) days after being billed by the Utility.

3. Design of Water Service Facilities. Village shall be responsible for any and all design work associated with the Water Service Facilities and shall obtain design plan approvals from the Utility and any and all necessary federal, state or local regulatory agencies or governmental authorities.

- 3.1 Design requirements include those outlined in the Mequon Water Utility Water Connection Policy in addition to all regulatory standards.
- 3.2 Upon the Utility approval of the design of the Water Service Facilities, the Utility will provide a so-called "Owner Letter" as required by the Wisconsin Department of Natural Resources

4. Construction of Water Service Facilities. Upon completion of construction, the Utility shall have the right to take title to the Water Service Facilities, subject to the requirements of sections 1, 2, 4 and 5 herein, including provisions for inspection and testing to verify that the Water Service Facilities meet applicable Standards as expressed herein.

- 4.1 Inspection during construction and upon the completion of the construction of the Water Service Facilities will be conducted by the Village. The Village inspectors shall notify Village contractor of materials or workmanship which are not in compliance with the Standards and require correction prior to connection to Mequon water utility system or any transfer of title to the Water

Service Facilities to the Utility. All other aspects of construction are the sole and complete responsibility of Village, including but not limited to, coordination, construction staking, restoration, erosion control, and processing contractor payment requests.

- 4.1.1 The Parties expressly agree that the Utility's review of the design plans for the Water Service Facilities and inspection of the construction of the Water Service Facilities shall be done solely for the purpose of determining whether or not the Water Service Facilities meet, or will meet, the applicable Standards as expressed herein. The Parties expressly agree the Utility shall not be liable for any costs whatsoever associated with or relating to errors in the design or construction of the Water Service Facilities.
- 4.2 Any deviation from the design plans during construction of the Water Service Facilities shall be approved by the Utility before the changes are implemented.
- 4.3 Before the Utility accepts transfer of the title for the Water Services Facilities, Village shall pressure test and bacteriologically sample the Water Service Facilities under the direction of the Utility. The Water Service Facilities must pass all testing required by the PSCW, the WDNR, or any other applicable federal, state or local governmental agency testing before the Utility accepts transfer of the title for the Water Services Facilities.
5. Future Connections. Village expressly acknowledges future service connections to the water mains from this Agreement are subject to the Mequon Water Utility Connection Policy and fees established within the City of Mequon Fee Schedule.
 - 5.1. Connections where the public portion of a service lateral was installed with the initial project, the connection is subject to a Water Services Application and the Village connection fee less the Standard Revenue Credit.
 - 5.2. Where no public service lateral was installed with the initial project, and a connection is proposed for any property, the connection is subject to all application requirements then in effect and payment of all costs and the Village connection fee.
6. Right of Further Extension. The Utility reserves the right to further extend its water mains from and beyond the water main extension contemplated by this Agreement. Such extension shall be done without cost to Village, unless such extension is constructed at the request of Village. Such extension shall remain inside the River Hills Water User Service Area as defined in the Intergovernmental Agreement and Exhibit A.
7. Contingencies. This Agreement shall be contingent upon the Parties obtaining any and all approvals from appropriate federal, state and local governments and agencies

relating to this project. This includes approval for the Utility to provide water service in the Village of River Hills by the Public Service Commission of Wisconsin.

8. Successors and Assigns. This Agreement shall be binding upon the respective heirs, successors and assigns of the Parties.
9. Force Majeure. Neither Party shall be liable to the other for failure, default or delay in performing any of the obligations set forth in this Agreement reasonably attributable to any cause not within the control of the Party affected in which, by the exercise of due diligence, such Party is unable to prevent or overcome. Should any of the foregoing occur, the Parties agree to proceed with diligence to enable each Party to perform its obligations under this Agreement.
10. Notice. Notice to either party under this Agreement shall not be effective unless sent via certified United States mail to the following addresses:

10.1 To the Utility:
Kristen Lundeen, P. E.
Director of Public Works
City of Mequon
11333 N. Cedarburg Road 60 W
Mequon, WI 53092-1930

10.2 To Village:
Tammy LaBorde, ICMA-CM/WCMC
Village Manager/Clerk/Treasurer
Village of River Hills
7650 N Pheasant Ln
River Hills, WI 53217

Either party may change the address of notice by providing notice to the other party pursuant to this section of the Agreement.

11. Indemnification. Both Parties shall indemnify, defend and hold the other Party harmless from any damages, claims or judgments reasonably related to any acts or omissions resulting from the gross negligence or willful misconduct of the Party against whom this indemnification provision is being enforced. Nothing contained within this Agreement is intended to be a waiver or estoppel of any Party or their respective insurers to rely upon the limitations, defenses, and immunities contained within Wisconsin Statutes Sections 893.80, 895.52, and 345.05 or common law, and the Parties or their respective insurers shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability under Wisconsin law. This indemnification obligation shall survive the conveyance of the Water Service Facility on the Title Transfer Date.

12. Failure to Enforce. Failure to enforce any provision of this Agreement by either Party shall not be deemed to be a waiver of any other provision of the Agreement.
13. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties. This Agreement may not be modified or altered in any way except by mutual written agreement of the Parties.
14. Governing Law. This Agreement shall be governed and construed under the laws of the State of Wisconsin. The exclusive venue for any cause of action brought in relation to this Agreement shall be Ozaukee County Circuit Court, Port Washington, Wisconsin.
15. Warranty of Authority. By signing this Agreement, each party warrants and represents that it has obtained all approvals necessary to enter into this Agreement and that each party is authorized to execute the Agreement and to make it binding and enforceable against the Parties.

VILLAGE OF RIVER HILLS

MEQUON UTILITY

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Type or Print)

Name: _____
(Type or Print)

Date: _____

Date: _____



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 Mequon, WI 53092-1930
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 Fax: 262-242-9655

www.ci.mequon.wi.us

Office of Mequon Municipal Water Utility Commission

TO: Mequon Municipal Water Utility Commission
FROM: Kevin Driscoll, Deputy Director of Utilities
DATE: February 14, 2023
SUBJECT: Approval of a Water Services Agreement and Water Utility Easement with The Grove at River Hills, LLC for the Grove at River Hills

Background

On January 18th, 2023 staff received a request for the Mequon Water Utility to enter into a Water Services Agreement (WSA) with The Grove at River Hills, LLC (Developer), for a project located north of West Brown Deer Road and west of North Spruce Road in the Village of River Hills. This is the residential development that will be served by the Village of River Hills TID Infrastructure Project.

Analysis

Typically, WSAs are administered through the Development Agreement process. As this development is in River Hills, the City of Mequon does not have an agreement with the developer.

The plan for this water main extension follows the Mequon Water Utility build and contribute policy, where the water main will be built by the developer and contributed to Utility once the project is complete. Mequon Water Utility staff will review the plans and the easement for the water main to verify adherence with the Mequon Water Utility standard specifications.

Furthermore, this is a development in the Village of River Hills. There is a request in front of the Water Commission to enter into an Intergovernmental Agreement, and a WSA, that will ultimately bring water to the boundary of this project. Therefore, the Water Commission will have to first approve the Village of River Hills IGA and WSA, prior to approving this WSA with the developer.

Fiscal Impact

Staff time for plan review and inspection services will be billed back to the developer as written in the agreement. No other staff costs are anticipated at this time. However in the future, operation and maintenance of the water main facilities, including the main and water service laterals (up to the curb stops) will be required by the Mequon Water Utility. That future cost is unknown, but anticipated to be offset by the rates paid and accrued for providing this utility service. Furthermore, there is a clause in the River Hills IGA that requires the Village to compensate the water utility for any shortfall in the cost of capital to replace River Hills water mains.

Recommendation

Staff recommends that the Mequon Water Utility Commission approve entering into a Water Services Agreement (Exhibit A) and record a Water Distribution Easement (Exhibit B) with The Grove at River Hills LLC, for The Grove at River Hills water main extension, subject to any clerical, technical and/or legal changes deemed necessary and appropriate by the City Attorney.

Attachments:

Exhibit A: Water Service Agreement (PDF)

Exhibit B: Water Distribution Easement_The Grove in River Hills (PDF)

AGREEMENT

This Agreement (the "Agreement") is made by and between Mequon Water Utility ("Water Utility") and The Grove at River Hills ("Developer") (collectively, the "Parties," individually, a "Party").

WHEREAS, the Developer wishes to obtain Mequon water utility service for its development at The Grove at River Hills in the Village of River Hills, Wisconsin (the "Development"); and

WHEREAS, the Developer wishes to design, construct mains, valves, fittings and any and all other facilities necessary to deliver water (the "Water Service Facilities") to the Development ; and

WHEREAS, the Developer wishes to convey to the Water Utility and the Water Utility wishes to receive from the Developer, title to the Water Service Facilities at the time of the connection of the Water Service Facilities to the Water Utility system.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Water Utility Obligations. The Water Utility shall have the following obligations under this Agreement with relation to the Water Service Facilities.
 - 1.1 To provide and maintain meter(s) for building(s) in the Development.
 - 1.2 To provide water service to the Development under rates, rules, regulations and conditions of service on file with the Public Service Commission of Wisconsin ("PSCW") or any successor regulatory agency.
 - 1.3 To maintain the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations and ordinances.
 - 1.4 To take title to the Water Service Facilities after a final inspection by Water Utility reveals that, at the reasonable discretion of the Water Utility, the Water Service Facilities meet the Standards as defined in Section 2.1 of this Agreement.
 - 1.5 Water Utility shall provide the Developer with at least five (5) business days prior written notice of Water Utility's intent to take title to the Water Service Facilities. Said notice shall be provided pursuant to Section 11 of this Agreement.

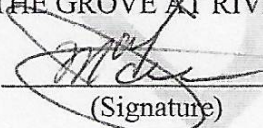
- 1.6 Prior to processing a Mequon Water Utility Water Services Application, Water Utility staff will confirm that the Developer processed a plumbing permit for the property.
2. Obligations of Village. The obligations of the Developer under this Agreement are as follows:
 - 2.1 To construct the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations, ordinances, the Intergovernmental Agreement with the City of Mequon and complying with the Mequon Water Standards which have been provided to the Developer. The Developer shall supply copies of lien waivers from all contractors and/or material suppliers performing work or supplying materials on this project before final acceptance of the Water Service Facilities.
 - 2.2 To transfer by bill of sale or instrument of dedication title to the Water Services Facilities to the Water Utility upon written request by the Water Utility and to maintain the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations or ordinances prior to the transfer contemplated by this Agreement.
 - 2.3 The Developer will pay for all reasonable costs incurred by the Water Utility, or its consultant in the review of the engineering plans, inspection of the construction and/or installation of the Improvements, review of record drawings for City files, and any other costs that may be incurred by the City for this Project. The Developer will pay the costs above enumerated within thirty (30) days after being billed by the Water Utility. Past due amounts on invoices generated by the City may be subject to a one and one-half (1.5) percent per month charge, computed from the date of the original invoice.
3. Rates. The Developer expressly acknowledges that all future customers within this development will pay Mequon Water Utility tariff rates currently in effect. A copy of the current PSC tariff is attached. These rates are subject to change from time to time, pursuant to approval from the PSCW. A copy of the current tariff is available upon request.
4. Design of Water Service Facilities. The Developer shall be responsible for any and all design work associated with the Water Service Facilities and shall obtain design plan approvals from the Water Utility and any and all necessary federal, state or local regulatory agencies or governmental authorities.
 - 4.1 Design requirements include those outlined in the Mequon Water Utility Water Connection Policy and City of Mequon Standard Specifications for Land Development, in addition to all regulatory standards.

- 4.2 Upon the Water Utility approval of the design of the Water Service Facilities, the Water Utility will provide a so-called "Owner Letter" as required by the Wisconsin Department of Natural Resources
5. Construction of Water Service Facilities. Upon completion of construction, the Water Utility shall have the right to take title to the Water Service Facilities, subject to the requirements of sections 1, 2, 4 and 5 herein, including provisions for inspection and testing to verify that the Water Service Facilities meet applicable Standards as expressed herein.
 - 5.1 Inspection during construction and upon the completion of the construction of the Water Service Facilities will be conducted by the Water Utility. The Water Utility inspectors shall notify The Developer's contractor of materials or workmanship which are not in compliance with the Standards and require correction prior to connection to Mequon water utility system or any transfer of title to the Water Service Facilities to the Water Utility. All other aspects of construction are the sole and complete responsibility of the Developer, including but not limited to, safety, coordination, construction staking, restoration, erosion control, and processing contractor payment requests.
 - 5.1.1 The Parties expressly agree that the Water Utility's review of the design plans for the Water Service Facilities and inspection of the construction of the Water Service Facilities shall be done solely for the purpose of determining whether or not the Water Service Facilities meet, or will meet, the applicable Standards as expressed herein. The Parties expressly agree the Water Utility shall not be liable for any costs whatsoever associated with or relating to errors in the design or construction of the Water Service Facilities.
 - 5.2 Any deviation from the design plans during construction of the Water Service Facilities shall be approved by the Water Utility before the facilities are constructed.
 - 5.3 Before the Water Utility accepts transfer of the title for the Water Services Facilities, The Developer shall pressure test and bacteriologically sample the Water Service Facilities under the direction of the Water Utility. The Water Service Facilities must pass all testing required by the PSCW, the WDNR, or any other applicable federal, state or local governmental agency testing before the Water Utility accepts transfer of the title for the Water Services Facilities.
6. Future Connections. The Developer expressly acknowledges future service connections to the water mains from this Agreement are subject to the Mequon Water Utility Connection Policy and fees established within the City of Mequon Fee Schedule.

- 6.1. Connections where the public service lateral was installed with the initial project, the connection is subject to a Water Services Application and fees for the Standard System Costs less the Standard Revenue Credit.
- 6.2. Connections where no public service lateral was installed with the initial project, the connection is subject to a Water Services Application and fees for the Standard Street Lateral Costs and Standard System Costs less the Standard Revenue Credit.
7. Right of Further Extension. The Water Utility reserves the right to further extend its water mains from and beyond the water main extension contemplated by this Agreement. Such extension shall be done without cost to The Developer, unless such extension is constructed at the request of The Developer. Such extension shall remain inside the River Hills Water User Service Area as defined in the Intergovernmental Agreement.
8. Contingencies. This Agreement shall be contingent upon the Parties obtaining any and all approvals from appropriate federal, state and local governments and agencies relating to this project. This includes approval for the Mequon Water Utility to provide water service in the Village of River Hills by the Public Service Commission of Wisconsin.
9. Successors and Assigns. This Agreement shall be binding upon the respective heirs, successors and assigns of the Parties.
10. Force Majeure. Neither Party shall be liable to the other for failure, default or delay in performing any of the obligations set forth in this Agreement reasonably attributable to any cause not within the control of the Party affected in which, by the exercise of due diligence, such Party is unable to prevent or overcome. Should any of the foregoing occur, the Parties agree to proceed with diligence to enable each Party to perform its obligations under this Agreement.
11. Notice. Notice to either party under this Agreement shall not be effective unless sent via certified United States mail to the following addresses:
 - 11.1 To the Water Utility:
Kristen Lundeen, P. E.
Director of Public Works
City of Mequon
11333 N. Cedarburg Road 60 W
Mequon, WI 53092-1930
 - 11.2 THE GROVE IN RIVER HILLS, LLC
N 63 W 23849 MAIN STREET
SUSSEX, WI 53089

Either party may change the address of notice by providing notice to the other party pursuant to this section of the Agreement.

12. Indemnification. Both Parties shall indemnify, defend and hold the other Party harmless from any damages, claims or judgments reasonably related to any acts or omissions resulting from the gross negligence or willful misconduct of the Party against whom this indemnification provision is being enforced. Nothing contained within this Agreement is intended to be a waiver or estoppel of any Party or their respective insurers to rely upon the limitations, defenses, and immunities contained within Wisconsin Statutes Sections 893.80, 895.52, and 345.05 or common law, and the Parties or their respective insurers shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability under Wisconsin law. This indemnification obligation shall survive the conveyance of the Water Service Facility on the Title Transfer Date.
13. Failure to Enforce. Failure to enforce any provision of this Agreement by either Party shall not be deemed to be a waiver of any other provision of the Agreement.
14. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties. This Agreement may not be modified or altered in any way except by mutual written agreement of the Parties.
15. Governing Law. This Agreement shall be governed and construed under the laws of the State of Wisconsin. The exclusive venue for any cause of action brought in relation to this Agreement shall be Ozaukee County Circuit Court, Port Washington, Wisconsin.
16. Warranty of Authority. By signing this Agreement, each party warrants and represents that it has obtained all approvals necessary to enter into this Agreement and that each party is authorized to execute the Agreement and to make it binding and enforceable against the Parties.

IN THE GROVE AT RIVER HILLS	MEQUON WATER UTILITY
By: <u></u> (Signature)	By: _____ (Signature)
Name: <u>John McGeer</u> (Type or Print)	Name: _____ (Type or Print)
Date: <u>1/30/2023</u>	Date: _____

Document Number	WATER DISTRIBUTION EASEMENT Document Name	
This Water Distribution Easement by and between The Grove in River Hills, LLC, (the “Grantor”), and the City of Mequon, (the “Grantee”) is entered into by and between the parties this ____ day of _____, 2023. RECITALS A. Grantor is the owner of certain real property located at _____, in the Village of Bayside, Milwaukee County, Wisconsin, which is more fully described in the attached Exhibit A (the “Property”). B. Grantor desires to grant to Grantee a permanent easement for the provision of water service to the Property pursuant to the terms and conditions of this Easement. BASED UPON THE FOREGOING RECITALS, the mutual agreements within this Easement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee agree as follows: 1. Grant of Easement: Grantor (including heirs, executors, administrators, personal representatives, successors, and assigns) grants to Grantee, and its employees, agents, licenses, and contractors a perpetual easement over and across the land hereinafter specifically described, to install, operate, maintain, supplement, repair, enlarge, reconstruct, relocate, inspect and/or extend underground facilities, pipeline or pipelines with valves, hydrants, tieovers, main laterals and service laterals, together with all necessary and appurtenant underground equipment and including cathodic protection apparatus used for corrosion control, as deemed necessary by grantee, for the transmission and distribution of water. The location of the easement area with respect to the grantor’s land is as shown and described on the attached Exhibit B (the “Easement Area”). 2. Use of Easement: Grantor shall not construct, place, grant, allow, or maintain any structures or impediments of any kind within the Easement Area including, but not limited to, buildings, fences, gardens, and other landscaping that would inhibit Grantee’s access, such that Grantee shall have the full enjoyment and use of the rights herein granted, including but not limited to, the rights to remove and to clear all structures and obstructions which might interfere with the rights herein contained and the free and full right of ingress and egress over and across the Easement Area and other adjacent lands of the grantor to and from said Easement Area and the use of said Easement Area and other adjacent lands of the grantor as necessary or convenient for the full enjoyment and use of the rights herein granted. Trees, bushes, branches and roots may be trimmed or removed so as not to interfere with Grantee’s use of the Easement Area. Subject to the above, Grantor reserves the right to use the Easement Area for purposes that will not interfere with the Grantee’s full enjoyment of the Easement rights granted in this Agreement. 3. Elevation: Grantor agrees that the elevation of the ground surface existing as of the date of the initial installation of Grantee’s facilities, within the Easement Area will not be altered without the written consent of the Grantee. 4. Restoration and Maintenance: Grantee agrees to restore or cause to have restored the Grantor’s land as nearly as is reasonably possible to the condition existing prior to such entry by the Grantee or its agents. This restoration however, does not apply to any trees, bushes, branches or roots which may interfere with Grantee’s use of the Easement Area. Regular maintenance of the surface of the Easement Area shall be the sole responsibility of the Grantor.		Recording Data Name and Return Address City Engineer 11333 N Cedarburg Road Mequon, WI 53092 Parcel Identification Number 0241001000

9. **Covenants Run with Land:** All of the terms and conditions in this Agreement, including the benefits and burden, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Grantor and the Grantee and their respective successors and assigns.

The Grove in River Hills, LLC

By: John McGee

ACKNOWLEDGMENT

[illegible]

Personally, came before me this _____ day of _____, 2023, the above-named, _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, Ozaukee County, Wisconsin
My commission (expires) (is) _____.

CITY OF MEQUON

By: _____
John M. Wirth, Mayor

By: _____
Caroline Fochs, City Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)
OZAUKEE COUNTY)

Personally, came before me this _____ day of _____, 20____, the above-named John Wirth and Caroline Fochs, Mayor and City Clerk of the City of Mequon respectively, to me known to be such officers and acknowledge that they executed the foregoing instrument in such capacity.

Notary Public, Ozaukee County, Wisconsin
My commission (expires) (is) _____.

DRAFTED BY:
Brian C. Sajdak, City Attorney

Approved as to form: _____
Brian C. Sajdak, City Attorney

EXHIBIT “A”

VARIABLE WIDTH PUBLIC SANITARY SEWER AND WATERMAIN EASEMENT

LEGAL DESCRIPTION:

A Variable Width Public Sanitary Sewer and Watermain Easement located on, over and across part of Lot 1 of Certified Survey Map No. 9392, being located in part of the Southwest 1/4 of the Southeast 1/4 of Section 6, Town 8 North, Range 22 East, in the Village of River Hills, Milwaukee County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the South 1/4 Corner of said Section 6; Thence South 88°33'51" East and along the South line of the said Southeast 1/4 Section, 1316.82 feet to a point; Thence North 00°33'27" West and along the East line of said Lot 1 of said Certified Survey Map No. 9392 and the Southerly extension thereof, 1164.90 feet to the Northeast Corner of said Lot 1; Thence North 88°29'04" West and along the North line of said Lot 1, 88.07 feet to the place of beginning of lands hereinafter described;

Thence South 19°44'37" West, 184.22 feet to a point known as **“Point A”**; Thence South 27°00'07" East, 81.68 feet to a point; Thence South 24°07'40" West, 169.35 feet to a point known as **“Point B”**; Thence South 34°35'30" East, 124.45 feet to a point; Thence South 01°57'55" East, 91.28 feet to a point; Thence North 88°02'05" East, 11.57 feet to a point; Thence South 01°57'55" East, 20.00 feet to a point; Thence South 88°02'05" West, 11.57 feet to a point; Thence South 01°57'55" East, 150.55 feet to a point; Thence South 32°06'45" West, 135.84 feet to a point; Thence South 81°13'41" West, 184.95 feet to a point; Thence North 67°01'02" West, 20.80 feet to a point; Thence South 22°58'58" West, 7.71 feet to a point; Thence North 67°01'02" West, 20.00 feet to a point; Thence North 22°58'58" East, 7.71 feet to a point; Thence North 67°01'02" West, 205.98 feet to a point; Thence North 76°17'36" West, 141.28 feet to a point; Thence South 87°32'50" West, 89.50 feet to a point; Thence South 70°01'20" West, 205.64 feet to a point; Thence South 17°53'49" West, 5.22 feet to a point; Thence North 72°06'11" West, 130.54 feet to a point; Thence North 17°52'44" West, 132.69 feet to a point; Thence North 08°01'39" East, 93.91 feet to a point; Thence North 81°58'21" West, 14.84 feet to a point; Thence North 08°01'39" East, 20.00 feet to a point; Thence South 81°58'21" East, 14.84 feet to a point; Thence North 08°01'39" East, 54.88 feet to a point; Thence North 62°22'44" East, 112.09 feet to a point; Thence North 82°08'37" East, 305.89 feet to a point; Thence North 73°08'55" East, 70.30 feet to a point; Thence North 16°51'05" West, 5.95 feet to a point; Thence North 73°08'55" East, 20.00 feet to a point; Thence South 16°51'05" East, 5.95 feet to a point; Thence North 73°08'55" East, 323.74 feet to a point; Thence North 25°50'22" East, 164.77 feet to a point; Thence North 80°07'42" East, 48.30 feet to a point; Thence North 09°52'18" West, 20.84 feet to a point; Thence North 80°07'42" East, 20.00 feet to a point; Thence South 09°52'18" East, 20.84 feet to a point; Thence North 80°07'42" East, 39.46 feet to a point; Thence North 19°44'37" East, 153.07 feet to a point on the said North line of said Lot 1 of said Certified Survey Map No. 9392; Thence South 88°29'04" East and along the said North line of said Lot 1, 31.58 feet to the point of beginning of this description.

Also, commencing at the point known as **“Point A”** as described above; Thence, South 67°35'39" West and along a tie line, 30.10 feet to the place of beginning of lands hereinafter described;

Thence South 27°00'07" East, 82.59 feet to a point; Thence South 24°07'40" West, 135.40 feet to a point; Thence North 60°51'26" West, 139.64 feet to a point; Thence North 25°50'22" East, 140.67 feet to a point; Thence North 88°08'33" East, 78.54 feet to the point of beginning of this description.

Also, commencing at the point known as "**Point B**" as described above; Thence South 82°00'54" West and along a tie line, 33.55 feet to the place of beginning of lands hereinafter described;

Thence South 34°35'30" East, 130.70 feet to a point; Thence South 01°57'55" East, 243.86 feet to a point; Thence South 32°06'45" West, 112.94 feet to a point; Thence South 81°13'41" West, 162.71 feet to a point; Thence North 67°01'02" West, 240.68 feet to a point; Thence North 76°17'36" West, 140.33 feet to a point; Thence South 13°42'24" West, 8.20 feet to a point; Thence South 87°32'50" West, 63.55 feet to a point; Thence North 02°27'10" West, 22.37 feet to a point; Thence South 87°32'50" West, 20.00 feet to a point; Thence South 02°27'10" East, 22.37 feet to a point; Thence South 87°32'50" West, 17.56 feet to a point; Thence South 70°05'27" West, 194.83 feet to a point; Thence North 72°06'11" West, 114.46 feet to a point; Thence North 17°52'44" West, 110.43 feet to a point; Thence North 08°01'39" East, 146.49 feet to a point; Thence North 62°22'44" East, 91.46 feet to a point; Thence North 82°08'37" East, 303.02 feet to a point; Thence North 73°08'55" East, 420.06 feet to a point; Thence South 60°51'26" East, 139.08 feet to the point of beginning of this description.

Said Easement contains 99,995 Square Feet (or 2.2956 Acres) of land, more or less.

Date: 1/31/2023



Grady L. Gosser, P.L.S.
Professional Land Surveyor, S-2972
TRIO ENGINEERING, LLC
4100 N. Calhoun Drive, Suite 300
Brookfield, WI 53005
Phone: (262)790-1480 Fax: (262)790-1481

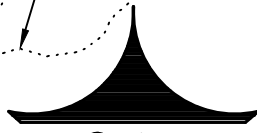
EXHIBIT "B"

VARIABLE WIDTH PUBLIC SANITARY SEWER AND WATERMAIN EASEMENT

W. GREENBROOK ROAD

LOT 12
RIVER HILLS COUNTRY ESTATES ADDITION NO. 1

EXISTING
WETLAND
(TYP.)

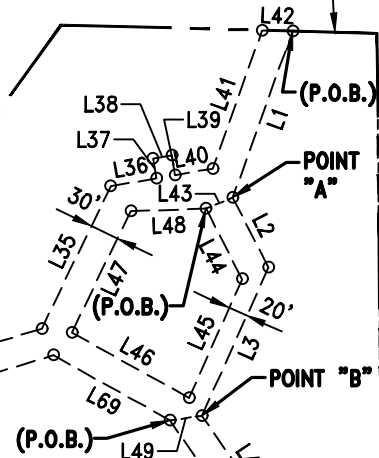


NORTH
SCALE: 1" = 200'

0 100 200

LOT 2
C.S.M. #9392

N88°29'04"W
88.07



VARIABLE WIDTH PUBLIC
SANITARY SEWER
AND WATERMAIN EASEMENT
99,995 SF
(2.2956 Ac.)

LOT 1
C.S.M. #9392

PARCEL 1
C.S.M. #8082

W. LINE, S.E. 1/4, SEC. 6-8-22
(N00°31'14"W 2667.63)

EXISTING
WETLAND
(TYP.)

(P.O.C.)
S. 1/4 CORNER,
SEC. 6-8-22

W. BROWN

DEER ROAD (S.T.H. "100")

S88°33'51"E

1316.82

S. LINE, S.E. 1/4, SEC. 6-8-22
(N88°33'51"W 2633.64)

N00°33'27"W 1164.90

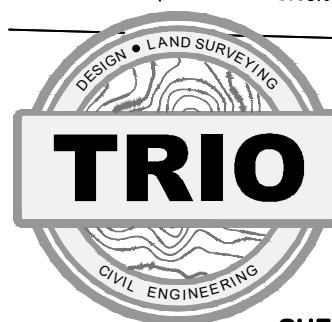
WISCONSIN

GRADY L.
GOSSER
S-2972
MENOMONEE FALLS,
WI

LAND SURVEYOR

All bearings are referenced to Grid North of the Wisconsin State Plane Coordinate System, South Zone (NAD 1927 DATUM), in which the South line of the S.E. 1/4 of Section 6, Town 8 North, Range 22 East, bears North 88°33'51" West.

**4100 N. Calhoun Road
Suite 300
Brookfield, WI 53005
Phone: (262) 790-1480
Fax: (262) 790-1481**



THIS EXHIBIT WAS PREPARED BY GRADY L. GOSSER, P.L.S. (S-2972)

SHEET: 1 OF 2
DATE: 1/31/23

EXHIBIT "B"

VARIABLE WIDTH PUBLIC SANITARY SEWER AND WATERMAIN EASEMENT

EASEMENT LINE TABLE:

Line #	BEARING	LENGTH
L1	S19°44'37"W	184.22'
L2	S27°00'07"E	81.68'
L3	S24°07'40"W	169.35'
L4	S34°35'30"E	124.45'
L5	S1°57'55"E	91.28'
L6	N88°02'05"E	11.57'
L7	S1°57'55"E	20.00'
L8	S88°02'05"W	11.57'
L9	S1°57'55"E	150.55'
L10	S32°06'45"W	135.84'
L11	S81°13'41"W	184.95'
L12	N67°01'02"W	20.80'
L13	S22°58'58"W	7.71'
L14	N67°01'02"W	20.00'
L15	N22°58'58"E	7.71'
L16	N67°01'02"W	205.98'
L17	N76°17'36"W	141.28'
L18	S87°32'50"W	89.50'
L19	S70°01'20"W	205.64'
L20	S17°53'49"W	5.22'

EASEMENT LINE TABLE:

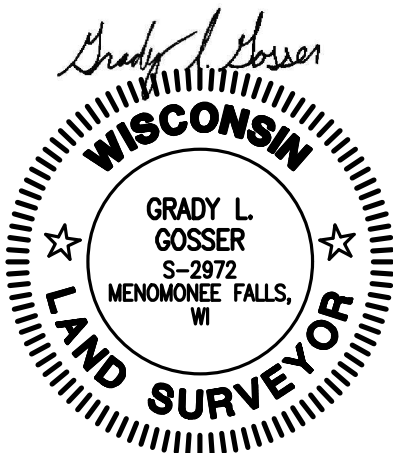
Line #	BEARING	LENGTH
L21	N72°06'11"W	130.54'
L22	N17°52'44"W	132.69'
L23	N8°01'39"E	93.91'
L24	N81°58'21"W	14.84'
L25	N8°01'39"E	20.00'
L26	S81°58'21"E	14.84'
L27	N8°01'39"E	54.88'
L28	N62°22'44"E	112.09'
L29	N82°08'37"E	305.89'
L30	N73°08'55"E	70.30'
L31	N16°51'05"W	5.95'
L32	N73°08'55"E	20.00'
L33	S16°51'05"E	5.95'
L34	N73°08'55"E	323.74'
L35	N25°50'22"E	164.77'
L36	N80°07'42"E	48.30'
L37	N9°52'18"W	20.84'
L38	N80°07'42"E	20.00'
L39	S9°52'18"E	20.84'
L40	N80°07'42"E	39.46'

EASEMENT LINE TABLE:

Line #	BEARING	LENGTH
L41	N19°44'37"E	153.07'
L42	S88°29'04"E	31.58'
L43	S67°35'39"W	30.10'
L44	S27°00'07"E	82.59'
L45	S24°07'40"W	135.40'
L46	N60°51'26"W	139.64'
L47	N25°50'22"E	140.67'
L48	N88°08'33"E	78.54'
L49	S82°00'54"W	33.55'
L50	S34°35'30"E	130.70'
L51	S1°57'55"E	243.86'
L52	S32°06'45"W	112.94'
L53	S81°13'41"W	162.71'
L54	N67°01'02"W	240.68'
L55	N76°17'36"W	140.33'
L56	S13°42'24"W	8.20'
L57	S87°32'50"W	63.55'
L58	N2°27'10"W	22.37'
L59	S87°32'50"W	20.00'
L60	S2°27'10"E	22.37'

EASEMENT LINE TABLE:

Line #	BEARING	LENGTH
L61	S87°32'50"W	17.56'
L62	S70°05'27"W	194.83'
L63	N72°06'11"W	114.46'
L64	N17°52'44"W	110.43'
L65	N8°01'39"E	146.49'
L66	N62°22'44"E	91.46'
L67	N82°08'37"E	303.02'
L68	N73°08'55"E	420.06'
L69	S60°51'26"E	139.08'



**4100 N. Calhoun Road
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Fax: (262) 790-1481**

THIS EXHIBIT WAS PREPARED BY GRADY L. GOSSER, P.L.S. (S-2972)

SHEET: 2 OF 2
DATE: 1/31/23



11333 N. Cedarburg Road
 Mequon, WI 53092-1930
 Phone: 262-236-8150
 Fax: 262-242-9655

www.ci.mequon.wi.us

Office of Mequon Municipal Water Utility Commission

TO: Mequon Municipal Water Utility Commission
FROM: Jim Voigt, Director of Operations
DATE: February 14, 2023
SUBJECT: Approval of a Water Services Agreement with Bayside Development Partners II, LLC for the One North Project in the Village of Bayside

Background

On November 11th, 2022 staff received a request for the Mequon Water Utility to enter into a Water Services Agreement with Bayside Development Partners II, LLC (Developer), for a project located around the intersection of West Brown Deer Road and North Port Washington Road in the Village of Bayside.

Analysis

Typically, Water Services Agreements are administered through the Development Agreement process. As this development is in Bayside, the City of Mequon does not have an agreement with the developer.

The plan for this water main extension follows the Mequon Water Utility build and contribute policy, where the water main will be built by the developer and contributed to Utility once the project is complete. Mequon Water Utility staff will review the plans and the easement for the water main to verify adherence with the Mequon Water Utility standard specifications.

Fiscal Impact

Staff time for plan review and inspection services will be billed back to the developer as written in the agreement. No other staff costs are anticipated at this time. However in the future, operation and maintenance of the water main facilities, including the main and water service laterals (up to the curb stops) will be required by the Mequon Water Utility. That future cost is unknown, but anticipated to be offset by the rates paid and accrued for providing this utility service.

Recommendation

Staff recommends that the Mequon Water Utility Commission approve entering into a Water Services Agreement (Exhibit A) with Bayside Development Partners II, LLC, for the One North water main extension, located in the Village of Bayside, subject to any clerical, technical and/or legal changes deemed necessary and appropriate by the City Attorney.

Attachments:

Exhibit A: Water Service Agreement (PDF)

WATER SERVICES AGREEMENT

This Agreement (the "Agreement") is made by and between Mequon Water Utility ("Water Utility") and Bayside Development Partners II, LLC ("Developer") (collectively, the "Parties," individually, a "Party").

WHEREAS, the Developer wishes to obtain Mequon Water Utility service for their commercial building (____) at _____ in the Village of Bayside, Wisconsin (the "Development"); and

WHEREAS, the Developer wishes to design, construct mains, valves, fittings and any and all other facilities necessary to deliver water (the "Water Service Facilities") to the curb stop box of the new fire line to the building; and

WHEREAS, the Developer wishes to convey to the Water Utility and the Water Utility wishes to receive from the Developer, title to the Water Service Facilities at the time of the connection of the Water Service Facilities to the Water Utility system.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Water Utility Obligations. The Water Utility shall have the following obligations under this Agreement with relation to the Water Service Facilities.

1.1. To provide and maintain meter(s) for installation in the Development.

1.2. To provide water service to the Development under rates, rules, regulations and conditions of service on file with the Public Service Commission of Wisconsin ("PSCW") or any successor regulatory agency.

1.3. To maintain the Water Service Facilities in a manner consistent with any and all applicable federal, state, and local statutes, regulations and ordinances.

1.4 To take title to the Water Service Facilities within fifteen (15) days of Water Utility's final inspection confirming that, at the sole discretion of the Water Utility, the Water Service Facilities meet the Standards as defined in Section 2.1 of this Agreement.

1.4.1 Water Utility shall provide the Developer with at least five (5) days prior written notice of Water Utility's intent to take title to the Water Service Facilities. Said notice shall be provided pursuant to Section 10 of this Agreement.

2. Obligations of Developer. The obligations of Developer under this Agreement are as follows:

2.1 To construct the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations and ordinances and complying with the current Mequon Water Standards which have been provided to Developer.

The Developer shall supply copies of lien waivers from all contractors and/or material suppliers performing work or supplying materials on this project before final acceptance of the Water Service Facilities.

2.2 To transfer title to the Water Services Facilities to the Water Utility upon written request by the Water Utility and to maintain the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations or ordinances prior to the transfer contemplated by this Agreement.

- 2.3 The Developer will pay for all reasonable costs incurred by the Water Utility, or its consultant in the review of the engineering plans, inspection of the construction and/or installation of the Improvements, review of record drawings for Utility files, and any other costs that may be incurred by the Water Utility for this Project. The Developer will pay the costs above enumerated within thirty (30) days after Developer's receipt of the Water Utility's invoice therefor. Past due amounts on invoices generated by the City are subject to a one and one-half (1.5) percent per month charge, computed from the date of the original invoice.
3. Rates. Developer expressly acknowledges that customer(s) will pay Mequon Water Utility tariff rates currently in effect. These rates are subject to change from time to time, pursuant to approval from the PSCW. A copy of the current tariff is available upon request.
4. Design of Water Service Facilities. Developer shall be responsible for any and all design work associated with the Water Service Facilities and shall obtain approval from the Water Utility and any and all necessary federal, state or local regulatory agencies or governmental authorities.
- 4.1. Upon the Water Utility approval of the design of the Water Service Facilities, the Water Utility will provide a so-called "Owner Letter" as required by the Wisconsin Department of Natural Resources.
5. Construction of Water Service Facilities. Upon completion of construction, the Water Utility shall have the right to take title to the Water Service Facilities, pending inspection and testing to verify that the Water Service Facilities meet the Standards.
- 5.1. Inspection during construction and upon the completion of the construction of the Water Service Facilities will be conducted by the Water Utility. The Water Utility inspectors shall notify Developer's contractor of materials or workmanship which are not in compliance with the Standards and require correction prior to connection to Mequon Water Utility system or Developer's transfer to Water Utility of title to the Water Service Facilities to the Water Utility. All other aspects of construction are the sole and complete responsibility of Developer, including but not limited to, safety, coordination, construction staking, restoration, erosion control, and pay quantities.
- 5.1.1 The Parties expressly agree that the Water Utility's review of the design plans for the Water Service Facilities and inspection of the construction of the Water Service Facilities shall be done solely for the purpose of determining whether or not the Water Service Facilities meet, or will meet, the Standards. The Parties expressly agree the Water Utility shall not be liable for any costs whatsoever associated with or relating to errors in the design or construction of the Water Service Facilities.
- 5.2. Any deviation from the design plans during construction of the Water Service Facilities shall be approved by the Water Utility before the facilities are constructed.
- 5.3. Developer shall pressure test and bacteriologically sample the Water Service Facilities under the direction of the Water Utility. The Water Service Facilities must pass all testing required by the PSCW, the Wisconsin Department of Natural Resources, or any other applicable federal, state, or local governmental agency testing before the Water Utility accepts transfer of the title for the Water Services Facilities.
6. Right of Further Extension. The Water Utility reserves the right to further extend its water mains from and beyond the water main extension contemplated by this Agreement. Such extension shall be done without cost to Developer, unless such extension is constructed at the request of Developer.

7. Contingencies. This Agreement shall be contingent upon the Parties obtaining any and all approvals from appropriate federal, state, and local governments and agencies relating to this project.
8. Successors and Assigns. This Agreement shall be binding upon the respective heirs, successors and assigns of the Parties.
9. Force Majeure. Neither Party shall be liable to the other for failure, default or delay in performing any of the obligations set forth in this Agreement reasonably attributable to any cause not within the control of the Party affected in which, by the exercise of due diligence, such Party is unable to prevent or overcome. Should any of the foregoing occur, the Parties agree to proceed with diligence to enable each Party to perform its obligations under this Agreement.
10. Notice. Notice to either party under this Agreement shall not be effective unless sent via by certified United States mail to the following addresses:

- 10.1. To the Water Utility:
Kristen Lundeen, P. E.
Director of Public Works
City of Mequon
11333 N. Cedarburg Road 60 W
Mequon, WI 53092-1930
- 10.2. To Developer:
Bayside Development Partners II, LLC
c/o Cobalt Partners LLC
400 N. Broadway, Suite 100
Milwaukee, WI 53202
Attention: Scott J. Yauck
and
c/o La Macchia Holdings, LLC

8989 N. Port Washington Road
Milwaukee, WI 53217
Attention: William E. La Macchia

Either party may change the address of notice by providing notice to the other party pursuant to this section of the Agreement.

11. Indemnification. Each party shall indemnify, defend, and hold the other Party harmless from any third party damages, claims or judgments directly related to (i) any breach of the terms and conditions of this Agreement against whom this indemnification provision is being enforced (an "Indemnifying Party") or (ii) resulting from the negligence or willful misconduct of the Indemnifying Party in the course of such Indemnifying Party's performance of its obligations hereunder. Nothing contained within this Agreement is intended to be a waiver or estoppel of any Party of their respective insurers to rely upon the limitations, defenses, and immunities contained within Wisconsin Statutes sections 893.80, 895.52, and 345.05 or common law, and the Parties or their respective insurers shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability under Wisconsin law.
12. Failure to Enforce. Failure to enforce any provision of this Agreement by either Party shall not be deemed to be a waiver of any other provision of the Agreement.

13. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties. This Agreement may not be modified or altered in any way except by mutual written agreement of the Parties.

14. Governing Law. This Agreement shall be governed and construed under the laws of the State of Wisconsin. The exclusive venue for any cause of action brought in relation to this Agreement shall be Ozaukee County Circuit Court, Port Washington, Wisconsin.

Approved by: _____
Brian C. Sajdak, City Attorney

BAYSIDE DEVELOPMENT
PARTNERS II, LLC

MEQUON WATER UTILITY

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Type or Print)

Name: _____
(Type or Print)

Date: _____

Date: _____