



11333 N. Cedarburg Road
Mequon, WI 53092
Phone: 262-236-8145
Fax: 262-242-9655

www.ci.mequon.wi.us

Public Works Department

PUBLIC WORKS COMMITTEE

Tuesday, May 9, 2023

7:15 PM

South Conference Room

Agenda

1) Call to Order, Roll Call

2) Election of Chair

3) Approval of Minutes

a. April 11, 2023 Minutes

4) Resolutions

Action requested: review and recommend approval

a. **RESOLUTION 4050** A Resolution Authorizing Execution of a Right-of-Way Agreement with MT Trails Foundation, Inc. for Construction of a Bike Path on Highland Road, from the Ozaukee Interurban Trail to Rotary Park

b. **RESOLUTION 4051** A Resolution Authorizing Staff to Exceed \$25,000 for the Purchase of Culverts from Western Culvert of Oconomowoc, Wisconsin and Lannon Stone Products of Sussex, Wisconsin, to Complete Projects as Needed During the Remainder of Fiscal Year 2023

5) Discussion Items

a. Public Works Work Plan (5.9.23)

6) Adjourn

Dated: May 9, 2023

/s/ Jeffrey Hansher, 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 Department at 262-236-2913, Monday through Friday, 7:00 AM – 3:30 PM.



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Public Works Department

PUBLIC WORKS COMMITTEE

Tuesday, April 11, 2023

6:00 PM

South Conference Room

Minutes

1) Call to Order, Roll Call

Chair Hansher called the meeting to order at 6:00PM

Present:

Chair Jeffrey Hansher
 Alderman William Gebhardt
 Alderman Dale Mayr

Also present Director of Public Works/City Engineer Lundeen, Assistant City Engineer McCraw, Buildings Superintendent Bodoh, Engineering Technician Dandy and Administrative Assistant Schlereth.

2) Approval of Minutes

a. March 14th, 2023, Minutes

RESULT:	Approved by Voice Acclamation [Unanimous]
MOVED BY:	Alderman Mayr
SECONDED BY:	Alderman Gebhardt

AYES:	Hansher, Gebhardt, Mayr
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3) Resolutions

Action requested: review and recommend approval

- a. **RESOLUTION 4039** A Resolution Supporting the Mequon-Thiensville Bike & Pedestrian Way Master Plan & Mequon Road Bicycle and Pedestrian Facilities and Authorizing Application for a Wisconsin Department of Transportation (WisDOT) Transportation Alternatives Program (TAP) Grant

Attachment: 4-11-23 PW Min (8428 : April 11, 2023 Minutes)

RESULT: Approved by Voice Acclamation [Unanimous]
MOVED BY: Alderman Mayr
SECONDED BY: Alderman Gebhardt

AYES: Hansher, Gebhardt, Mayr

- b. **RESOLUTION 4040** A Resolution Approving Award of the Public Safety Building Boiler Stack Replacement Contract to Dillett Mechanical of Waukesha, Wisconsin in an Amount Not-to-Exceed \$77,000

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

AYES: Hansher, Gebhardt, Mayr

- c. **RESOLUTION 4041** A Resolution Approving Award of the 2023 Buntrock Avenue Sidewalk Extension Project Contract to BMCI Contractors, Inc. of West Bend, Wisconsin, in an Amount Not-to-Exceed \$45,000

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

AYES: Hansher, Gebhardt, Mayr

- d. **RESOLUTION 4042** A Resolution Approving Award of the 2023 GSB-88 Bituminous Seal Contract to Fahrner Asphalt Sealers, of Waukegan, Wisconsin in an Amount Not-to-Exceed \$199,000 and Authorizing a Budget Transfer from the Right-of-Way Assets Capital Account to the Annual Road Maintenance Account in an Amount Not-to-Exceed \$174,425

Clarification was made that the goal and purpose of applying the product is to extend the current condition of the new road.

RESULT: Approved by Voice Acclamation [Unanimous]
MOVED BY: Alderman Gebhardt
SECONDED BY: Alderman Mayr

AYES: Hansher, Gebhardt, Mayr

Attachment: 4-11-23 PW Min (8428 : April 11, 2023 Minutes)

- e. **RESOLUTION 4043** A Resolution Approving Award of the Courtland Drive Drainage Improvements Contract to All-Ways Contractors, Inc. of Elm Grove, Wisconsin, in the Amount of \$106,000

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Gebhardt
SECONDED BY: Alderman Hansher

AYES: Hansher, Gebhardt, Mayr

- f. **RESOLUTION 4044** A Resolution Approving the Award of a Contract for the Fiesta Lane Drainage Study to raSmith of Brookfield, Wisconsin in an Amount Not-to-Exceed \$30,000

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Mayr
SECONDED BY: Alderman Gebhardt

AYES: Hansher, Gebhardt, Mayr

4) Discussion Items

Discussion and Possible Action

- a. Public Works Work Plan (4.11.23)

5) Adjourn

- a. Motion to Adjourn at 6:28PM

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Gebhardt
SECONDED BY: Alderman Mayr

AYES: Hansher, Gebhardt, Mayr

Respectfully Submitted,

Ren Schlereth
 Administrative Assistant

Attachment: 4-11-23 PW Min (8428 : April 11, 2023 Minutes)



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Office of Engineering

TO: Public Works Committee
FROM: Kristen Lundeen, Director of Public Works/City Engineer
DATE: May 9, 2023
SUBJECT: RESOLUTION 4050 A Resolution Authorizing Execution of a Right-of-Way Agreement with MT Trails Foundation, Inc. for Construction of a Bike Path on Highland Road, from the Ozaukee Interurban Trail to Rotary Park

Background

MT Trails Foundation, Inc. is a local non-profit whose mission is to develop and support a system of family friendly bicycling and walking off road trails throughout Mequon and Thiensville. The Common Council previously approved a resolution in support of an application by the MT Trails Foundation, Inc. for a Transportation Alternatives Program (TAP) grant for construction of an off-road bicycle path connecting the Ozaukee Interurban Trail (OIT) to Rotary Park on Highland Road.

MT Trails Foundation, Inc. was awarded the TAP grant and is preparing to move forward with the project. The foundation is in the process of selecting a design consultant and will be required to execute a State/Municipal Agreement (SMA) for the project. WisDOT will allow MT Trails Foundation, Inc. to be the local sponsor for the project. Therefore, the City has no financial participation in the project, and MT Trails Foundation, Inc. will be the executor of all grants and contracts.

As the trail is proposed within the right-of-way - land that is owned and maintained by the City - the City must approve the terms and conditions for the trail. These terms and conditions were previously reviewed at a Committee of the Whole (COTW) meeting in March 2023, and are memorialized in the attached agreement.

Analysis

Based upon the feedback at the COTW, City staff generated the attached draft agreement. That agreement is a combination of the template for the Parks Dedication Agreement and the City's Right-of-Way waiver template. It includes the following terms and conditions:

- MT Trails Foundation's commitment to being the long-term financial support for the operation and maintenance of the path.
- Reiteration of the requirement that the proposed improvements meet the City's Standard Specifications for Land Development.
- Specification of no financial commitment from the City for design, construction, operation and maintenance, or future replacement.
- Requirement that if a signalized beacon is approved for a crossing along Highland Road,

that it be installed to be self-sustaining, including the energy source (i.e., solar powered) and that MT Trails Foundation, Inc. is financially responsible for repair and replacement of the beacon, consistent with other requirements for private infrastructure within the right-of-way.

- Clarification of which operations and maintenance are authorized through the agreement, and which require further permitting or approval by the City.
- A right-of-way waiver, indemnifying the City for any damage to the path and requiring that MT Trails Foundation, Inc. be responsible for any repair or replacement costs. This is consistent with requirements for other private infrastructure within the right-of-way, such as subdivision monument signs, irrigation systems, dog fencing, etc.
- That MT Trails Foundation, Inc. does not enter into construction contracts or execute the State/Municipal Agreement until the agreement with the City is approved.

Staff recommends that the Public Works Committee favorably endorse and the Common Council approve the agreement.

Please note that the MT Trails Foundation, Inc. subsequently requested consideration of an amendment to Section 2.4(4) to allow for signage and a sponsor for naming rights. City staff and the City Attorney will continue to work with the foundation on the request, and bring forth any amendments requiring Common Council approval.

Fiscal Impact

In accordance with the City's financial policies, the attached agreement addresses the fact that the infrastructure will be located within the City's right-of-way, and therefore place a potential financial burden on the City. The agreement further defines that MT Trails Foundation, Inc. will be financially responsible for the design, construction, operation and maintenance of the path. Should the foundation fail to perform in accordance with the agreement, the City retains the rights to all decision making for the path.

Recommendation

Both the Joint Mequon-Thiensville Bike and Pedestrian Way Commission and the Park and Open Space Board unanimously recommended approval of the agreement. A further recommendation is forthcoming by the Public Works Committee on May 9, 2023.

Attachments:

ROW Agreement (M-T Trails) (PDF)

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 4050

A Resolution Authorizing Execution of a Right-of-Way Agreement with MT Trails Foundation, Inc. for Construction of a Bike Path on Highland Road, from the Ozaukee Interurban Trail to Rotary Park

RECITALS

A. MT Trails Foundation, Inc. received a Wisconsin Department of Transportation (WisDOT) Transportation Alternatives Program (TAP) Project grant (Grant) for the construction of an off-road path on the north side of Highland Road between the Ozaukee Interurban Trail and Rotary Park.

B. The Common Council passed Resolution 3926 in support of the TAP Grant conditioned upon entering into an agreement with the City to address the terms and conditions for constructing the path within the right-of-way and for long-term maintenance thereof.

C. The proposed path must adhere to the Standard Specifications for Land Development, current edition and meet ADA requirements.

D. The MT Trails Foundation, Inc. is responsible for the operation and maintenance of the path, including snow removal and future replacement as defined in the attached agreement.

E. The City has no financial responsibility for the project.

F. The attached agreement defines the rights and responsibilities of MT Trails, Foundation, Inc. as it relates to the off-road path on Highland Road.

G. The Public Works Committee recommended approval at its meeting on May 9, 2023.

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

1. The Right-of-Way Agreement for the Highland Road off road path 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: May 9, 2023

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on May 9, 2023.

Caroline Fochs, City Clerk

RIGHT-OF-WAY AGREEMENT FOR HIGHLAND ROAD BIKE/PEDESTRIAN SPUR FROM THE OZAUKEE INTERURBAN TRAIL TO ROTARY PARK

THIS RIGHT-OF-WAY AGREEMENT ("Agreement"), made as of the day of MONTH, YEAR, by and between MT Trails Foundation, Inc. ("MT Trails") and the City of Mequon, Wisconsin ("CITY") (referred to individually, each of the foregoing is a "Party" and collectively, the "Parties") for the Highland Road Bike Spur (the "Project").

RECITALS

WHEREAS, Rotary Park and a portion of the Ozaukee Interurban Trail (OIT) are part of the CITY's park system and are under the jurisdiction of the CITY and the Mequon Park and Open Space Board; and

WHEREAS, the CITY's Comprehensive Park, Recreation & Open Space Plan ("Park Plan") identifies recreational facilities and active and passive parks as critical components enhancing the quality of life within the City of Mequon; and

WHEREAS, a connection between the OIT and Rotary Park are not included as high priority projects within the Park Plan; and

WHEREAS, MT Trails applied for and received a Transportation Alternatives Program (TAP) grant through the Wisconsin Department of Transportation; and

WHEREAS, MT Trails proposes to install a 10' paved path with gravel shoulders from the OIT to Rotary Park at its sole cost of design, construction, operation and maintenance; and

WHEREAS, adding infrastructure to a public park facility results in maintenance costs to the CITY upon construction of said infrastructure; and

WHEREAS, without the MT Trails Project, the City would not incur these maintenance costs; and

WHEREAS, MT Trails has agreed to donate the infrastructure to the City and accept ongoing operation and maintenance responsibilities and cost; and

WHEREAS, MT Trails has raised funds sufficient to pay for the design, construction and ongoing operation and maintenance of the Project that it intends to construct on CITY property; and

WHEREAS, the Project is subject to CITY review and approval of the plans and renderings for the Project and agrees that the Project would be an asset to the CITY and the residents of the CITY, but needs to make sure that the Project will be completed in a timely and workmanlike manner without the expenditure of any CITY money;

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I OBLIGATIONS OF THE PARTIES

Section 1.1 MT Trails. MT Trails shall construct, at its sole cost and expense, the Project between the OIT and Rotary Park in accordance with the Approved Plans for the Project. Plans must be submitted to the CITY, and will be reviewed for approval against the following terms:

(1) The design of the proposed improvements shall adhere to the Standard Specifications for Land Development, current edition.

(2) Any improvements shall be located within the Highland Road right-of-way or within a public pedestrian easement dedicated solely to the CITY. The CITY will not be responsible for the negotiation of required easements. If easements on private property are required, the CITY shall provide the easement language, subject to review and approval by the City Attorney. MT Trails shall provide the legal description and easements for the document prior to recording. The final easement is subject to Common Council approval prior to recording.

(3) The grant application implies the installation of a “signal beacon” at River Road and Highland Road. Prior to including the “signal beacon” on the plans submitted to the CITY for approval, MT Trails shall submit a traffic impact analysis (TIA) of the intersection, with a recommendation by a traffic engineer as to whether a “signal beacon” is warranted. Including the “signal beacon” on the plans is subject to Common Council approval. If the TIA conclusively determines that a “signal beacon” is warranted, the selection of the equipment is at the sole discretion of the CITY. The energy source for the “signal beacon” shall be solar power, so the CITY does not incur ongoing energy costs for the infrastructure.

Section 1.2 Ozaukee Interurban Trail Advisory Committee. After receiving Approved Plans from CITY, MT Trails shall also gain approval from the Ozaukee Interurban Trail Advisory Committee prior to bidding. If the Ozaukee Interurban Trail Advisory Committee requires any modifications to the Approved Plans, the plans shall be resubmitted to the CITY for approval prior to bidding.

Section 1.3 Modifications. Any changes or deviations to the Project must be approved in writing by the CITY.

Section 1.4 Project Management. The Project will be managed by MT Trails under the oversight of the CITY. MT Trails is required to hire a construction inspection firm that will submit daily inspection reports to the CITY on a weekly basis. At the conclusion of the Project, MT Trails must submit a certification to the CITY that the project was constructed per the Approved Plans. Prior to acceptance of the Project, the CITY shall complete a final inspection. Approval is subject to completion of all punchlist items.

Section 1.5 Lien Waivers. After the Project is fully completed (as determined by the CITY), MT Trails will provide lien waivers from contractors.

Section 1.6 Condition. MT Trails shall maintain the Project in good condition. Should the Project deteriorate, need repair, or create a hazard, MT Trails agrees, at MT Trails' sole expense, to remedy said condition(s) to the satisfaction of the CITY, or remove the Project and restore the area to match the surrounding area.

Section 1.7 Operation and Maintenance. MT Trails shall operate and maintain, at its sole cost and expense, the Project between the OIT and Rotary Park. Operation and maintenance are subject to the following terms:

(1) Any endowment from MT Trails shall be placed into a segregated, non-lapsing fund utilized for the operation, maintenance, rehabilitation, repair and/or replacement of this Project only. Should the endowment be insufficient to cover the ongoing life cycle costs for the Project, the CITY reserves the right to make long-term decisions up to and including removal of the Project. The minimum operation and maintenance costs, which the endowment must fund, includes, but is not limited to:

- (a) Annual inspection of the bicycle path and shouldering for required maintenance and repair.
- (b) Maintenance of the path and shoulders free from debris and garbage.
- (c) Maintenance of gravel shoulders in compliance with the Standard Specifications for Land Development which may include, but is not limited to, regrading of the existing material and/or addition of new material.
- (d) Maintenance of the asphalt in compliance with the Standard Specifications for Land Development which may include, but is not limited to, filling cracks with bicycle safe materials, sealing the asphalt to slow pavement deterioration, removal and replacement of sections of the asphalt, mill and overlay, and/or pulverize and repave.
- (e) Reimbursement to the CITY for annual inspection and any reasonably required maintenance or repairs of the "signal beacon".
- (f) Response to CITY notification of reasonable issues or concerns.

(2) The CITY currently does not remove snow from locally owned off road paths and cannot due to equipment and staffing constraints. MT Trails may contract a private snow removal firm if snow removal is desired or required. Prior to entering into the contract, MT Trails shall provide a copy of the contractor's liability insurance, naming the City as an additional insured, and submit to the CITY so the CITY is aware of the contractor's equipment and labor capabilities. No right-of-way permit shall be required for snow removal.

(3) If a "signal beacon" is installed, the CITY reserves the right to review the life cycle costs and the cost/benefit ratio of maintaining the infrastructure in perpetuity, and retains the right to make all decisions regarding operation, maintenance, repair and replacement.

Section 1.8 Access. CITY will provide reasonable public access to MT Trails within the right-of-way between the Ozaukee Interurban Trail and Rotary Park for the construction, operation and maintenance of the Project. Permits to work within the right-of-way shall not be required for snow removal, debris and garbage removal and operation or maintenance activities which do not permanently alter the right-of-way. Permits will be required for those activities outlined in Section 5.a.(3) and (4), as well as any construction, operation or maintenance activities which permanently alter the right-of-way.

Section 1.9 Diggers Hotline. MT Trails acknowledges that it will contact Diggers Hotline prior to the installation of the Project and will coordinate as needed with the CITY to ensure that CITY and other public utilities in said public right-of-way are not damaged as part of said installation.

Section 1.10 Drainage. MT Trails acknowledges that the installation, operation and maintenance of the Project may not block or dam existing surface drainage patterns through the area.

Section 1.11 Permits. Recommendation by the Park and Open Space Board, Finance-Personnel Committee and approval of the Common Council does not constitute the right to construct. Proper permits must be obtained through the City Engineering Division.

Section 1.12 Easement. Any easement that may be required for the installation of private utilities shall be approved by the Common Council.

Section 1.13 Fees. MT Trails shall not charge any fee for the use of the property without the express written consent of CITY, which consent can be withheld in its sole and absolute discretion.

Section 1.14 Impact. Should CITY resurface, reconstruct, improve, or otherwise modify the right-of-way between the OIT and Rotary Park, MT Trails is not owed repayment or damages for donated infrastructure if the CITY's work impacts the IMPROVEMENTS.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Purpose. The purpose of this Agreement is to:

(1) Memorialize the understanding of the CITY and MT Trails regarding public access to the Project.

Section 2.2 Representations and Warranties of CITY. The CITY makes the following representations and warranties:

(1) CITY is a municipal corporation of the State of Wisconsin and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) CITY makes no representation or warranty, either express or implied, as to the Property, or its condition or the soil conditions thereon, or that the Property shall be suitable for MT Trails' purposes or needs.

(3) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in the breach of, the terms, conditions or provision of any law, ordinance, charter, contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the CITY is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(4) The private development of the Project is consistent with the public purposes, plans and objectives of the CITY.

(5) If MT Trails requests inclusion in the issuance of standard CITY contracts (i.e. cracksealing, GSB-88 or Road Improvements), notice shall be provided to the CITY no later than January 15 on the year the contract is requested. Separate bid items will be provided for the Project and reimbursement will be equal to actual costs. MT Trails will be provided with the cost of the bid items prior to contract award. Upon receipt of the cost of the bid items, MT Trails must notify City Staff within five (5) business days that sufficient funds have been allocated for MT Trails to reimburse the City and that reimbursement will be provided within thirty (30) days of invoicing or that MT Trails will not participate and the bid items should not be awarded.

Section 2.3 Grant Funding. The Grant will pay for up to \$988,000 of the cost of the Project not to exceed the Grant award as defined in the Grant contract. The local match requirement is all remaining Project costs. MT Trails will provide all required project sponsor match funds and any additional project costs not covered under the Grant agreement.

Section 2.4 Representations and Warranties of MT Trails. MT Trails makes the following representations and warranties:

(1) MT Trails shall not have or obtain any legal rights to said public right-of-way by virtue of such construction, installation, maintenance, expenditure of money or usage. CITY may at any time proceed or permit grading, utility installation, repair, maintenance, plowing, reconstruction, and/or similar activities in said public right-of-way without being obligated to MT Trails in any way and without any compensation to MT Trails for the Project.

(2) MT Trails is a Wisconsin Non-Stock/Non-Profit Corporation and has the power to enter into this Agreement and to perform its obligations hereunder and is in good standing under the laws of the State of Wisconsin.

(3) MT Trails will cause the Project to be constructed in accordance with the terms of this Agreement, the Plans and Specifications and all local, state and federal laws, ordinances, approvals, licenses, and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws, ordinances and regulations), except for minor changes to

the Plans and Specifications approved in writing by City staff which will not have a material adverse effect on the Project.

(4) MT Trails will not erect any signs, plaques or sell any naming rights for infrastructure within the public right-of-way or located on public property, including within Rotary Park.

(5) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in the breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which MT Trails is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(6) Insurance. MT Trails or its contractors shall maintain, until CITY's acceptance of the dedication of the Project, Commercial general liability insurance covered under a comprehensive general liability policy including contractual liability issued by insurers licensed in the State of Wisconsin, with Best's A ratings and in the financial size category as insurers of similar projects, with such policies (the "Insurance Policies") in amounts maintained by developers of similar projects, and insuring against bodily injury, including personal injury, death, property damage and other risks and casualties. Each Insurance Policy shall require the insurer to provide at least thirty (30) days prior written notice to the CITY of any material change or cancellation of such policy. The CITY shall be named as an additional insured/loss payee on all policies of insurance except worker's compensation insurance. MT Trails further understands and agrees that any builders risk coverage is its responsibility.

(7) Indemnification.

- (a) Except as caused, in whole or in part, by negligence or wrongful act or omission of the CITY, if the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the negligence or wrongful act or omission of MT Trails or its contractors, subcontractors or materialmen in their performance of this Agreement or from MT Trails' failure to comply with any of the provisions of this Agreement or of law, MT Trail shall indemnify and hold the CITY harmless from any and all claims and judgments for damages, and from costs and expenses to which the CITY may be subjected or which it may suffer or incur by reason thereof, provided; however, that the CITY shall provide to MT Trails promptly, in writing, notice of the alleged loss, damage or injury.
- (b) In conjunction with the construction, installation and maintenance of the Project by MT Trails within said public right-of-way, MT Trails will assume all liability for any damage to CITY facilities or other public utilities located in said public right-of-way. MT Trails will indemnify and hold the CITY or other public utilities harmless from any claims for personal injuries or property damage caused by MT Trails arising out of the construction, installation or maintenance by MT Trails of the Project within said public right-of-way.

(8) The Project shall at all times be subject to CITY inspection and approval, and the CITY shall not be required to accept conveyance of the Project unless it has been constructed in a good workmanlike manner, in accordance with the approved plans. Following approval by the CITY of the completed Project, the Project shall be dedicated and conveyed to the CITY, at no cost or expense to the CITY. The MT Trails shall provide to the CITY, from the general contractor constructing the Project, a one-year warranty against defects in construction, materials and workmanship, from the date of conveyance to the CITY, in a customary form reasonably acceptable to the CITY.

(9) MT Trails acknowledges and agrees that it is not entitled to any just compensation for the donation of the improvements to CITY and that this donation is a material inducement for CITY to permit the construction of such improvements upon CITY-owned real property.

(10) MT Trails acknowledges and agrees that CITY will ultimately retain jurisdiction over the improvements associated with the Project and has the right to provide use of the improvements to other entities, subject to CITY approval.

ARTICLE III DEFAULT AND REMEDIES

Section 3.1 Default. The occurrence of any one or more of the following events shall constitute a default ("Default") hereunder.

(1) Any representation or warranty made by MT Trails or the CITY in this Agreement, or any document or financial statement delivered by MT Trails pursuant to this Agreement, shall prove to have been false in any material respect as of the time when made or given; or

(2) Except as provided for in (a), MT Trails or the CITY shall breach or fail to perform timely any of its covenants or obligations under this Agreement, and such failure shall continue for thirty (30) days following written notice thereof from the other party; however, if the breach or failure was not the result of an intentionally wrongful act or omission of the breaching party and the breach or failure cannot be cured using commercially reasonable and diligent efforts within such 30-day period but could, with additional time, be cured using commercially reasonable and diligent efforts, such 30-day cure period shall be extended for the period reasonably necessary to cure if (and for such period as) (i) the breaching party uses commercially reasonable and diligent efforts during such 30-day period; (ii) the breaching party continues to use all commercially reasonable and diligent efforts to cure after such 30-day period; and (iii) such efforts are adequate to ensure a cure; or

(3) Construction of the Project shall be abandoned (no material work having been completed) for more than ninety (90) consecutive days after commencement, or if the Project is not completed on or before the deadlines set forth in this Agreement, or if any portion of the Project shall be damaged by fire or other casualty and not be repaired, rebuilt or replaced; or

(4) If MT Trails shall cease to exist; or

Except as otherwise set forth in this Agreement, upon the occurrence of any Default,

without further notice, demand or action of any kind by the non-defaulting party, the non-defaulting party may, at its option, pursue any or all of the rights and remedies available at law and/or in equity against the defaulting party and/or the Project. The non-defaulting party shall also have the right to suspend performance of any of its obligations or covenants under this Agreement and/or to terminate this Agreement. Except as otherwise set forth herein, no remedy herein conferred upon the non-defaulting party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, and/or now or hereafter existing at law or in equity. No failure or delay on the part of the non-defaulting in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

MT Trails shall pay all costs and expenses, including attorney's fees and costs, associated with the enforcement of the CITY's rights against MT Trails under this Agreement, including without limitation the enforcement of such rights in any bankruptcy, reorganization or insolvency proceeding involving MT Trails. Any and all such fees, costs and expenses incurred by the CITY which are to be paid by MT Trails, shall be paid by MT Trails to the CITY within 90 days following delivery of invoices documenting the costs.

ARTICLE IV MISCELLANEOUS PROVISIONS

Section 4.1 Execution in Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 4.2 Construction. The Parties acknowledge and represent that this Agreement has been the subject of negotiation by all Parties and that all Parties together shall be construed to be the drafter hereof and this Agreement shall not be construed against any Party individually as drafter.

Section 4.3 Legal Relationship. Nothing in this Agreement shall be construed to create an employer/employee relationship, joint employer, joint venture or partnership relationship, or a principal/agent relationship.

Section 4.4 Survival. All agreements, representations, covenants and warranties made herein shall survive the execution of this Agreement and the making of the grants hereunder. This Agreement shall be binding upon the Parties, their respective successors and assigns.

Section 4.5 No Waiver. The failure of any Party to require strict performance of any provision of this Agreement will not constitute a waiver of the provision or of any other of that Party's rights under this Agreement. Rights and obligations under this Agreement may only be waived or modified in writing. A writing waiving a right must be signed by the Party waiving the right. If an obligation of a Party is being waived or released, the writing must be signed by the affected Parties. Waiver of one right, or release of one obligation, will not constitute a waiver or release of any other right or obligation of any Party. Waivers and releases shall affect only the specific right or obligation waived or released and will not affect the rights or obligations of any other Party that did not sign the waiver or release.

Section 4.6 Severability of Provisions. If any provision of this Agreement shall be held or declared to be invalid, illegal or unenforceable by reason of its being contrary to any applicable law, such provision shall be deemed to be deleted from this Agreement without impairing or prejudicing the validity, legality or enforceability of the remaining provisions.

Section 4.7 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Wisconsin. Except as otherwise specifically and expressly set forth in this Agreement, the venue for any disputes arising under this Agreement shall be the Circuit Court for Ozaukee County.

Section 4.8 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any Party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (a) in the case of MT Trails is addressed to or delivered personally to:

Ms. Lori Lorenz, Board Member
MT Trails Foundation Inc.
9801 N Hilltop Lane
Mequon, WI 53092

- (b) in the case of CITY is addressed to or delivered personally to:

Mr. William H. Jones, Jr., City Administrator
City of Mequon
11333 N. Cedarburg Rd.
Mequon, WI 53092

With a Copy to:

Mr. Brian C. Sajdak, City Attorney
Wesolowski, Reidenbach & Sajdak, S.C.
11402 W. Church St.
Franklin, WI 53132

or at such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 4.9 Force Majeure. As used herein, the term "Force Majeure" shall mean any accident, breakage, war, insurrection, civil commotion, riot, act of terror, act of God or the elements, governmental action (except for governmental action by CITY with respect to obligations of CITY under this Agreement), alteration, strike or lockout, picketing (whether legal or illegal), inability of a Party or its agents or contractors, as applicable, to obtain fuel or supplies, unusual weather conditions, or any other cause or causes beyond the reasonable control of such Party or its agents or contractors, as applicable. No Party to this Agreement shall be in default hereunder for so long as such Party or its agents and contractors, if applicable,

are prevented from performing any of its obligations hereunder due to a Force Majeure occurrence.

Section 4.10 Compliance. Nothing contained in this Agreement is intended to or has the effect of releasing MT Trails, its successors and/or assigns, from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

Section 4.11 Amendment. This Agreement may be rescinded, modified or amended, in whole or in part, by mutual agreement of the Parties hereto, their successors and/or assigns, in writing signed by all Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date indicated.

M-T Trails Foundation, Inc.

CITY

BY: _____

BY: _____
Andrew Nerbun, Mayor

ATTEST:

BY: _____
Caroline Fochs, Clerk

Dated: _____

Dated: _____

Approved by: _____
Brian C. Sajdak, City Attorney

Attachment: ROW Agreement (M-T Trails) (RESOLUTION 4050 : MT Trails ROW Agreement)



11333 N. Cedarburg Road
 Mequon, WI 53092
 Phone: 262-236-2913
 Fax: 262-242-9655

www.ci.mequon.wi.us

Office of Engineering

TO: Public Works Committee
FROM: Jeremy Dandy, Engineering Technician
DATE: May 9, 2023
SUBJECT: RESOLUTION 4051 A Resolution Authorizing Staff to Exceed \$25,000 for the Purchase of Culverts from Western Culvert of Oconomowoc, Wisconsin and Lannon Stone Products of Sussex, Wisconsin, to Complete Projects as Needed During the Remainder of Fiscal Year 2023

Background

The Public Works Highway Division purchases and installs drainage culverts under local roadways and driveways within the road right-of-way. Culvert installations can be routine road maintenance operations, part of a larger road project, or by request of a private property owner for a driveway fronting on a public road. Typically, the Highway Division checks prices from available vendors each year and purchases from the vendor with the lowest price. Culvert installation requires both installation of the culvert pipe itself and bedding the pipe and filling the trench with aggregate.

The City's Financial Policies requires Common Council authorization of expenditures in excess of \$25,000 with an individual vendor. As culvert pipe and aggregate is acquired by multiple Divisions and Departments, staff is requesting authorization to exceed the \$25,000 threshold with Western Culvert and Lannon Stone.

Analysis

During spring of each year, demand for pipes throughout the state is high. As such, vendor pricing and available stock changes weekly. ETNA Supply currently does not have culverts in stock. They would need to be specially ordered, if available. Western Culvert carries the largest selection of various size culverts and has also been the best stocked supplier with adequate delivery time as they are the closest to the City of Mequon. A sample price comparison from various culvert vendors is shown below:

15" & 18" Diameter Corrugated Metal Culvert Pipe Arch (CMPA)

Western Culvert - \$20.50/foot and \$27.30/foot

ETNA Supply - Currently not in stock

Capital City Culvert - \$30.00/ft and \$35.00/ft.

Part of the installation process for culverts, regardless of location and project, is the need for bedding and fill aggregate material to properly install culverts. Lannon Stone has been a reliable source based on location and pricing. Not only does the Road Program and DPW require this material, but the Water Utility also utilizes Lannon Stone as their source for bedding and fill. Lannon Stone has acquired most of the gravel pits in the area and has become the single source

for this material and is the closest supplier to the City of Mequon.

Fiscal Impact

The request to exceed \$25,000 with each vendor does not impact authorized funding. The Road Program is in Year 2 of a three-year borrowing and there are sufficient funds to purchase the culverts and aggregate required for the projects. The Highway and Parks Divisions and Water Utility all have authorization for the culvert and/or aggregate purchases authorized through their respective FY2023 budgets.

By ordinance, the Department of Public Works installs all driveway culverts. A driveway culvert installation, including materials and labor, is then invoiced to the property owner based on the approved 2023 fee schedule. Accordingly, while the Highway Division's culvert expenses are projected to go over budget, these expenses are offset by associated permit fee revenue.

Recommendation

A recommendation is forthcoming from the Public Works Committee on May 9, 2023.

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 4051

A Resolution Authorizing Staff to Exceed \$25,000 for the Purchase of Culverts from Western Culvert of Oconomowoc, Wisconsin and Lannon Stone Products of Sussex, Wisconsin, to Complete Projects as Needed During the Remainder of Fiscal Year 2023

RECITALS

A. The Department of Public Works' Highway Division purchases and installs drainage culverts under local roadways and driveways within the road right-of-way at the request of property owners under Sec. 10-59 of the Municipal Code.

B. Culvert installations for driveways and crossroad installations for the annual Road Program are paid for by the City or residents based on homeowner selection.

C. Culvert installations for driveways are reimbursed by property owners through the sale of supplies according to the City's approved 2023 fee schedule.

D. It is anticipated that expenditures to Western Culvert and Lannon Stone Products will exceed \$25,000 during FY2023, which requires Common Council approval.

BASED UPON THE FOREGOING RECITALS, IT IS RESOLVED by the Common Council of the City of Mequon, Wisconsin that City staff is authorized to purchase the necessary culverts and stone for requested driveway culvert and crossroad installations in 2023 from whichever vendor has available stock. If that vendor is Western Culvert of Oconomowoc, Wisconsin for culverts, and Lannon Stone Products for stone, staff is authorized to exceed \$25,000 for each vendor in expenditures during the remainder of Fiscal Year 2023, in order to complete scheduled and/or requested culvert replacements/installations.

Approved by: Andrew Nerbun, Mayor

Date Approved: May 9, 2023

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on May 9, 2023.

Caroline Fochs, City Clerk



11333 N. Cedarburg Road
Mequon, WI 53092-1930
Phone: 262-236-2913
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of Engineering

TO: Public Works Committee
FROM: Kristen Lundeen, Director of Public Works/City Engineer
DATE: May 9, 2023
SUBJECT: Public Works Work Plan (5.9.23)

Attached for the Board's review is a copy of the proposed work plan for 2023.

Attachments:
2023 Work Plan (5.9.23) (PDF)

Month	Agenda Topics
May	• Resolution: Dedication Agreement for M-T Trails path Highland Road • Resolution: Authorization to exceed \$25k for Lannon and Western Culvert
June	• <i>Tentative:</i> Fiesta Lane Drainage Analysis and Identification of Type of Solution • <i>Tentative:</i> State/Municipal Maintenance Agreement (SMMA) for Mequon Road Sidewalk (Wauwatosa Road west to Swan Road)
August	• <i>Tentative:</i> Fiesta Lane Drainage Solution Consideration
November	• <i>Tentative:</i> Road Program Recap

Future Agenda Topics

- Drainage CIP Prioritization
- Policy language for structures (i.e. Little Free Library) within the building setback
- Discussion regarding path/sidewalk on Range Line Road south of Mequon Road – incorporated into RFP by the Bikeway Commission

2023 Completed Items:

• 2022 Road Program Summary • 2023 Road Program Overview • Resolution: Highland Road Widening • Resolution: Update to Template MOU • Resolution: Bid Rejection for City Hall Roof Project • Contract Award: Construction Inspection • Contract Award: City Hall Roof Replacement • Contract Award: Field Management • Contract Award: Crack Filling • Contract Award: Road Improvements • Authorization Fiesta Lane Drainage CIP RFP Scope of Services • Resolution: Fee Schedule Amendment: Pool and Parks (Field Management) Fees • Resolution: State/Municipal Finance Agreement (SMFA) for Mequon Road Sidewalk (Wauwatosa Road west to Swan Road) • Resolution: TAP Grant Support (Bike Master Plan, Multimodal on Mequon Road, east of I-43) • Contract Award: Boiler Stack Replacement • Contract Award: Buntrock Sidewalk Extension • Contract Award: GSB-88 • Contract Award: Courtland Drainage Improvements • Contract Award: Fiesta Lane Drainage Study	
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