



11333 N. Cedarburg Road
Mequon, WI 53092
Phone: 262-236-2914
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of the City Clerk
Taped and Televised

**COMMON COUNCIL
Special Meeting
Thursday, October 27, 2022 - 7:30 PM
or Immediately Following the
Sewer Utility District Commission Meeting
Christine Nuernberg Hall**

Agenda

- 1) Call to Order**
- 2) Pledge of Allegiance**
- 3) Roll Call**
- 4) Consent Agenda**
 - a) **RESOLUTION 3986** - A Resolution Authorizing Execution of a Sanitary Service Deferral Agreement for the Property Located at 13120 North West Shoreland Drive; **Recommendation Forthcoming by Sewer Utility District Commission October 27, 2022.**
 - b) **RESOLUTION 3987** - A Resolution Authorizing Execution of a Sanitary Service Deferral Agreement for the Property Located at 8813 West Mequon Road; **Recommendation Forthcoming by Sewer Utility District Commission October 27, 2022.**
- 5) Committee of the Whole**
 - a) Discussion of **RESOLUTION 3989** - A Resolution Disallowing the Claim of Nicholas J. DeStefanis Dated September 6, 2022 Related to Alleged Violations of 42 U.S.C § 1983.
 - b) Discussion of **RESOLUTION 3990** - A Resolution Approving an Agreement for the Transfer of Public Safety Answering Service Between Ozaukee County, the City of Mequon, and the Southern Ozaukee Fire and Emergency Medical Services Department.
 - c) Reconvene as the Common Council
- 6) Resolutions:**
 - a) **RESOLUTION 3988** - A Resolution Ordering a Special Election to Fill the District 8 Aldermanic Vacancy; **Recommended by Committee of the Whole June 14, 2022.**
 - b) **RESOLUTION 3989** - A Resolution Disallowing the Claim of Nicholas J. DeStefanis Dated September 6, 2022 Related to Alleged Violations of 42 U.S.C § 1983; **Recommendation Forthcoming by Committee of the Whole October 27, 2022.**

- c) **RESOLUTION 3990** - A Resolution Approving an Agreement for the Transfer of Public Safety Answering Services Between Ozaukee County, the City of Mequon and the Southern Ozaukee Fire & Emergency Medical Services Department. **Recommendation Forthcoming by Committee of the Whole October 27, 2022.**

7) **Adjourn**

Dated: October 20, 2022

/s/ Andrew Nerbun, Mayor

.....

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 City Clerk's Office at 262-236-2914, Monday through Friday, 8:00 AM – 4:30 PM.



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

www.ci.mequon.wi.us

Office of Sewer Utility District Commission

TO: Common Council
FROM: Kevin Driscoll, Deputy Director of Utilities
DATE: October 27, 2022
SUBJECT: RESOLUTION 3986 A Resolution Authorizing Execution of a Sanitary Service Deferral Agreement for the Property Located at 13120 North West Shoreland Drive

Background

The property owner, Greg Devorkin, is requesting a deferral to the City's sanitary connection requirement, in order to install a holding tank system at 13120 North West Shoreland Drive. For a map, see Exhibit A. This parcel is in the sanitary sewer service area, and sanitary sewer is available in the right-of-way within 200 feet. However the available sanitary sewer is up the hill approximately 140 feet from the southwest corner of the subject lot. Therefore, a gravity fed sanitary lateral is not a viable option.

The City of Mequon Code of Ordinance requires a connection to available sanitary sewer, if legally possible and practicable.

Analysis

The City of Mequon Code of Ordinance Section 58-600 part (e) reads:

(e) Construction of residential or business structures on a lot located within 200 feet of a city sewer line requires connection to the sewer line if legally possible and practicable.

On October 13, 2022, the property owner sent a letter that gravity sewer extension is not practical to extend from the existing dead end sanitary manhole due to elevation change at the bottom of the hill. The installation of a grinder pump and private forcemain is an option, and has been implemented in other locations in Mequon. A private forcemain could be installed by directional drilling, and staff inquired with the property owner if they received any quotes to complete that work to make a connection. The property owner responded that they had not, but the holding tank would not disrupt the public right-of-way. See Exhibit B.

Fiscal Impact

This parcel is in the sanitary sewer service area, and the deferral agreement requires the property owner to pay sanitary tax for capital charges. MMSD capital charges apply to properties within the sewer service area regardless of connection status. If the property owner does not pay the capital charges, the other properties within the utility would need to supplement the capital charges from MMSD. For deferral agreement terms, see Exhibit C.

Recommendation

The Sewer Utility District Commission may grant the deferral of a sanitary sewer lateral connection based upon the following:

- A conditional building permit
- Approval and recorded Deferral Agreement prior to occupancy

Attachments:

Exhibit A - Map (PDF)

Exhibit B - Request for Sanitary Service Deferral (13120 N. West Shoreland) (PDF)

Exhibit C - Sanitary Service Deferral Agreement_Template (PDF)

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 3986

A Resolution Authorizing Execution of a Sanitary Service Deferral Agreement for the Property
Located at 13120 North West Shoreland Drive

RECITALS

A. The City of Mequon Code of Ordinances Section 58-600 establishes that construction of residential or business structures on a lot located within 200 feet of a city sewer line requires connection to the sewer line if legally possible and practicable.

B. On October 13, 2022, the property manager of 13120 North West Shoreland, requested a deferral from connection to sanitary sewer, and staff reviewed the request.

C. This location 13120 North West Shoreland Drive is in the sanitary sewer service area, and the City of Mequon incurs capital charges from MMSD for this location.

D. Staff reviewed this request and connection is legally possible to a dead-end sanitary manhole, however that structure is located 140 feet up the hill and a gravity sewer cannot be installed.

E. Staff recommends that the City enter into a deferral agreement such that the property owner pay capital charges passed through from MMSD and install a privately owned wastewater treatment system.

F. The Sanitary Utility District Commission at its meeting on October 27, 2022, endorsed staff's recommendation.

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

1. The attached Sanitary Service Deferral Agreement between the City of Mequon and the property owner of 13120 North West Shoreland Drive, 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.

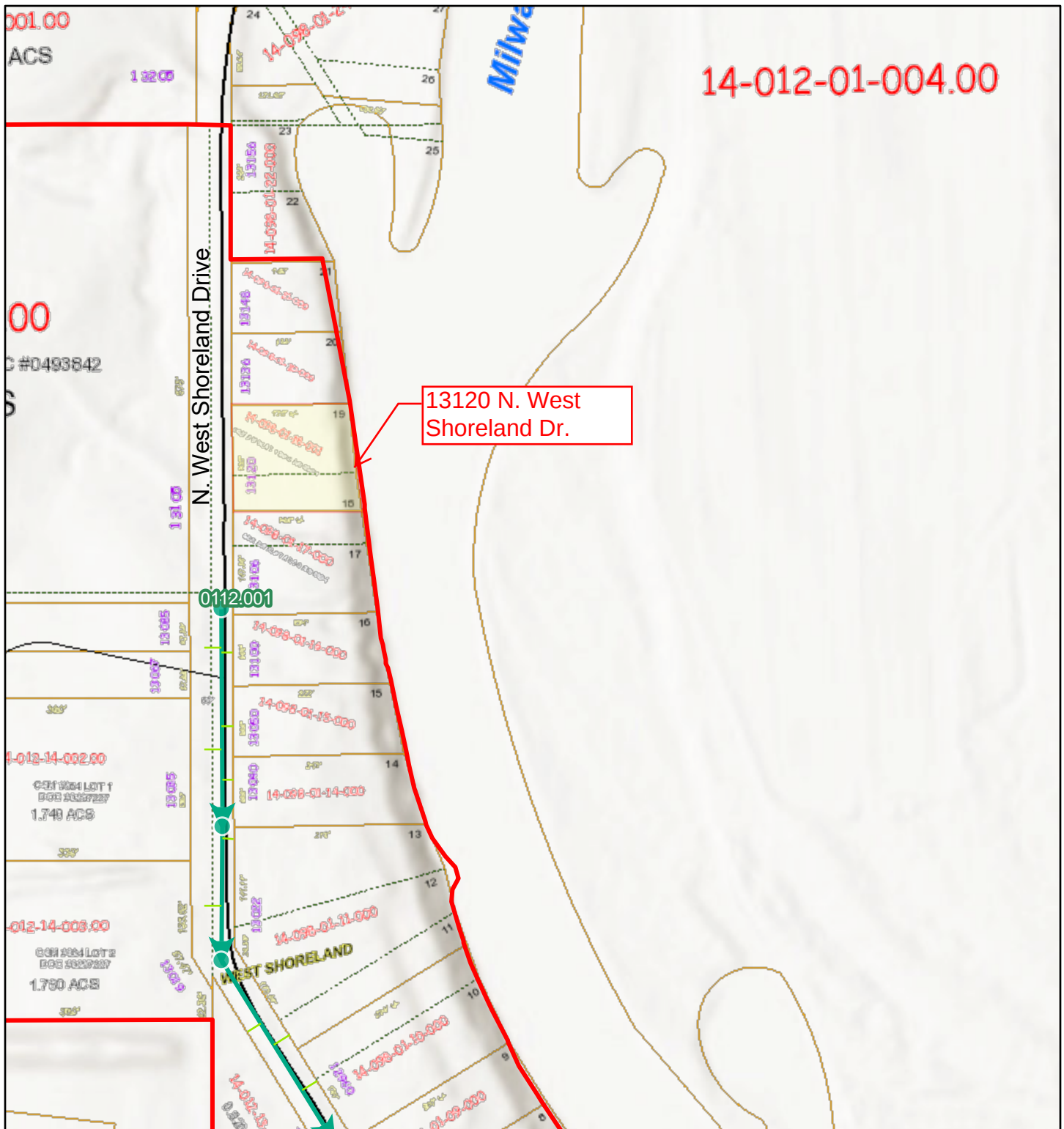
Approved by: Andrew Nerbun, Mayor

Date Approved: October 27, 2022

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on October 27, 2022.

Caroline Fochs, City Clerk

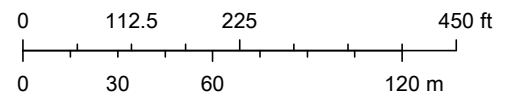
City of Mequon



10/17/2022, 3:21:56 PM

1:3,280

Sanitary Structures	Parcels	Historical Parcel Lines
● Manhole	□ Road Reservation	Local Roads
Sanitary Pipes	□ Road Right-of-Way	Private Road
— Lateral	□ Condominium	Town/Public Road
➔ Main	▨ Gap	Highways
□ Sewer Service Areas	▨ Overlap	— US Highway
	□ Tax Parcel	— State Highway



Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA,

Greg Devorkin
13106 N. West Shoreland Drive
Mequon WI, 53092

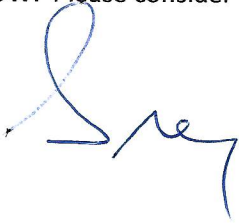
Thursday, October 13, 2022

Kevin Driscoll, P.E.
Deputy Director of Utilities
City of Mequon
11333 N. Cedarburg Rd. | Mequon, WI 53092

Dear Kevin,

I am writing a letter of "Request for Deferral ". I Request a deferral to the connection requirement, due to lack of practicable access and request permission to proceed with installing a private system (HOLDING TANK). The property address is 13120 N. West Shoreland and is very close to the limits but within the sanitary sewer service area and also within 200 feet of available sewer that is in the right-of-way. The Main stops South of the property but is 15'+/- higher at its end location than the elevation of my property. I request the deferral to connect based on the fact that I cannot install a traditional gravity lateral system. The additional cost to install a lift station is extremely expensive and has not been required for any other properties North of mine. I feel the install of a Holding Tank is a much more practical solution. This will keep construction for the sewer work on my property and not disrupt the public ROW. Please consider my request.

Thanks,
Greg



Document Number	SANITARY SERVICE DEFERRAL AGREEMENT Document Name	
This Sanitary Services Deferral Agreement (the "Agreement") is made by and between the City of Mequon (d/b/a the "City") and _____ (the "Developer") (collectively, the "Parties," individually, a "Party"). WHEREAS, the Developer is proposing a commercial building (the "Development") at _____ (Tax ID _____) within the City's Sanitary Utility District; and WHEREAS, the Parties agree that at this time, it is in the best interests of the Parties that the Development not be connected to the City of Mequon Sanitary Utility District; and WHEREAS, the City reserves the right to require a connection to the sanitary system with a change in use or extension of adjacent service. NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:		Recording Data Name and Return Address City Engineer 11333 N Cedarburg Road Mequon, WI 53092 Parcel Identification Number

1. The Parties expressly agree that the Developer is obligated to connect to the City of Mequon Sanitary Utility District pursuant to the existing ordinance requirements; however, the City grants the Developer and future owners of the Development a deferral on the terms set forth in this Agreement..
 - 1.1 Developer, its successors and assigns, agrees not to seek a waiver from its obligation under the ordinances from the City during the term of this Agreement.
 - 1.2 Developer expressly agrees that the Development shall be constructed and used in compliance with the use and building site plan approval granted by the City Planning Commission on _____. Should the use change result in a condition such that continuous use of a private onsite wastewater treatment system ("POWTS") will negatively impact adjacent properties, or the POWTS fails and alternate service is required, this Agreement shall be null and void and the Developer shall connect the Development to the City of Mequon Sanitary Utility District as soon as is practicable, unless agreed upon by the Parties.
2. The Parties expressly agree that in the event the Developer is required, pursuant to Section 1.2, to connect to the City of Mequon Sanitary Utility District, the cost to install the service lateral is the sole responsibility of the Developer or, if the Developer has sold the Development, to its successor in title.
 - 2.1 The City of Mequon shall provide notice to the title holder of the Development pursuant to Section 6 of this Agreement if a service connection is required for the development (the "Connection Notice"). Developer shall have six (6) months from the date of the Connection Notice to connect to the City of Mequon sanitary system.
 - 2.1.1 The Connection Notice may be extended by mutual written agreement of the Parties.
 - 2.2 The Developer is required to pay the annual MMSD sanitary sewer capital charge.

3. The Parties expressly agree that this document shall be binding upon any successors, assigns and heirs of the Parties. It is the intention of the Parties that this document be recorded with the Ozaukee County Register of Deeds and that the obligations set forth in this document run with the specific properties within the Development.
4. This Agreement shall remain in full force and effect unless terminated by mutual agreement of the Parties in writing.
5. Any notice sent in relation to this Agreement shall not be considered to be effective unless sent by Certified United States mail to the following addresses:

5.1 To the City of Mequon:

Director of Public Works/City Engineer
City of Mequon
11333 N. Cedarburg Road 60W
Mequon, WI 53092-1930

5.2 To Developer:

Either Party may change its address for notice by providing notice of said change to the other Party.

6. This Agreement shall be governed by and construed under the internal laws of the State of Wisconsin.
7. This Agreement represents the complete understanding between the Parties and any amendment to this Agreement must be agreed to in writing by the Parties.

CITY OF MEQUON

By: _____
Signature

Name: _____
Type or Print

Date: _____

DEVELOPER

By: _____
Signature

Name: _____
Type or Print

Date: _____

Approved by: _____
Brian C. Sajdak, City Attorney



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

www.ci.mequon.wi.us

Office of Sewer Utility District Commission

TO: Common Council
FROM: Kevin Driscoll, Deputy Director of Utilities
DATE: October 27, 2022
SUBJECT: RESOLUTION 3987 A Resolution Authorizing Execution of a Sanitary Service Deferral Agreement for the Property Located at 8813 West Mequon Road

Background

The property owners, Victoria Hanneman and Tolu Aldini, are requesting a deferral to the City's sanitary connection requirement, in order to install a mound system at 8813 West Mequon Road. For a map see Exhibit A. The existing lot is unimproved on the south side of Mequon Road. This parcel is in the sanitary sewer service area. Sanitary sewer is available within 200 feet, however the sanitary sewer is on the north side of Mequon Road, approximately 20 feet north of the curb.

The City of Mequon Code of Ordinances require a connection to available sanitary sewer, if legally possible and practicable.

Analysis

The City of Mequon Code of Ordinance Section 58-600 part (e) reads:

(e) Construction of residential or business structures on a lot located within 200 feet of a city sewer line requires connection to the sewer line if legally possible and practicable.

On October 13, 2022, the property owners transmitted a letter that explained how connection was not practicable. The letter stated concerns that connection was unreasonable due to the significant work on Mequon Road that would result in traffic impacts and the contractor's doubting their ability to accurately estimate the cost to successfully complete the work. See Exhibit B.

Open cut and directional drilling are options, and staff inquired with the property owner if they received any quotes to complete that work to make a connection. The property owner responded that they would be charged \$600 for a quote and that the cost of the work would be at least \$100,000 because the state highway would have to be temporarily shutdown with traffic control and the other costs associated with the necessary restoration of the road and surrounding areas.

The Sewer Utility has not included construction of a lateral in the annual budget to coincide with the WisDOT Mequon Road project, anticipated for 2026, and the property owner argues that it is not practicable that individual property owners would be expected to install both the private and public side sanitary lateral connections across a four-lane state highway. If in the future the

Sewer Utility extends the public lateral to the property line, the home would be required to connect to the utility, when their privately owned wastewater treatment system fails and if there is a sewer lateral available for connection. Therefore, staff is in favor of a deferral to the connection requirement.

Fiscal Impact

This parcel is in the sanitary sewer service area, and the deferral agreement requires the property owner to pay sanitary tax for capital charges. MMSD capital charges apply to properties within the sewer service area regardless of connection status. If the property owners do not pay the capital charges, the other properties within the utility would need to supplement the capital charges from MMSD. See deferral agreement terms in Exhibit C.

Recommendation

The Sewer Utility District Commission may grant the deferral of a sanitary sewer lateral connection conditioned upon the following:

- A conditional building permit
- Approval and recorded Deferral Agreement prior to occupancy

Attachments:

Exhibit A - Map (PDF)

Exhibit B - Deferral Request 8813 Mequon Rd (PDF)

Exhibit C - Sanitary Service Deferral Agreement_Template (PDF)

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 3987

A Resolution Authorizing Execution of a Sanitary Service Deferral Agreement for the Property
Located at 8813 West Mequon Road

RECITALS

A. The City of Mequon Code of Ordinances Section 58-600 establishes that construction of residential or business structures on a lot located within 200 feet of a city sewer line requires connection to the sewer line if legally possible and practicable.

B. On October 13, 2022, the property owner of 8813 West Mequon Road, requested a deferral from connection to sanitary sewer, and staff reviewed the request.

C. This location 8813 West Mequon Road is in the sanitary sewer service area, and the City of Mequon incurs capital charges from MMSD for this location.

D. Staff reviewed this request and connection is legally possible however not practicable due to the lack of a public lateral extending to the property line and the requirement to cross four lanes of a state highway, Mequon Road.

E. Staff recommends that the City enter into a deferral agreement such that the property owner continue payment of capital charges passed through from MMSD and install a privately owned wastewater treatment system.

F. The Sanitary Utility District Commission at its meeting on October 27, 2022, endorsed staff's recommendation.

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

1. The attached Sanitary Service Deferral Agreement between the City of Mequon and Tolulope Oladini, owner of 8813 West Mequon Road, 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: October 27, 2022

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on October 27, 2022.

Caroline Fochs, City Clerk



1:3,280

-

Packet Pg. 15

Victoria Hanneman and Tolu Oladini

6834 Obikoba circle Mequon, WI 53092

Tolu.oladini@gmail.com, 7083631283

10/12/2022

Kevin Driscoll

City of Mequon

11333 N Cedarburg Rd, Mequon, WI 53092

(262) 236-2937

kdriscoll@ci.mequon.wi.us

Dear Kevin,

We are writing to you to formally request a sanitary deferral from the City of Mequon for the property located at 8813 W Mequon Rd, Mequon, WI 53092. The property has sewer access across the street on the north side and the sewer is not more than 200 ft from the property but it is unreasonable to attempt a connection because of the costs for the quote, contractors doubting their ability to accurately estimate the cost, and the overall nuisance to the neighbors, city and surrounding areas.

We deem this poses a significant issue for all parties since the road is a state highway. The linear footage from the connection point to home location is 190ft (due to set back ordinance for the state Hwy). This poses a significant increase in linear footage and therefore cost of the sewer line. In addition to this, the sewer must run under the roadway which will require significant work on Mequon Rd and make the cost to install the lateral unreasonable.

The road will be redone in 2026 and it makes much more sense for all parties affected to extend a lateral at that point when the roadway is already opened up. We are aware of the bacteriological concerns of a septic system vs a sewer and have attached the agreement. All parties prefer a sewer system but the site constraints make it impractical and cost prohibitive to attempt access at this time. We are requesting the deferral and to be allowed to put in a POWTS mound system at the future home. Attached are soil and percolation tests for the septic system.

Sincerely,

Victoria Hanneman and Tolu Oladini

Document Number	SANITARY SERVICE DEFERRAL AGREEMENT Document Name	
This Sanitary Services Deferral Agreement (the "Agreement") is made by and between the City of Mequon (d/b/a the "City") and _____ (the "Developer") (collectively, the "Parties," individually, a "Party"). WHEREAS, the Developer is proposing a commercial building (the "Development") at _____ (Tax ID _____) within the City's Sanitary Utility District; and WHEREAS, the Parties agree that at this time, it is in the best interests of the Parties that the Development not be connected to the City of Mequon Sanitary Utility District; and WHEREAS, the City reserves the right to require a connection to the sanitary system with a change in use or extension of adjacent service. NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:		Recording Data Name and Return Address City Engineer 11333 N Cedarburg Road Mequon, WI 53092 Parcel Identification Number

1. The Parties expressly agree that the Developer is obligated to connect to the City of Mequon Sanitary Utility District pursuant to the existing ordinance requirements; however, the City grants the Developer and future owners of the Development a deferral on the terms set forth in this Agreement..
 - 1.1 Developer, its successors and assigns, agrees not to seek a waiver from its obligation under the ordinances from the City during the term of this Agreement.
 - 1.2 Developer expressly agrees that the Development shall be constructed and used in compliance with the use and building site plan approval granted by the City Planning Commission on _____. Should the use change result in a condition such that continuous use of a private onsite wastewater treatment system ("POWTS") will negatively impact adjacent properties, or the POWTS fails and alternate service is required, this Agreement shall be null and void and the Developer shall connect the Development to the City of Mequon Sanitary Utility District as soon as is practicable, unless agreed upon by the Parties.
2. The Parties expressly agree that in the event the Developer is required, pursuant to Section 1.2, to connect to the City of Mequon Sanitary Utility District, the cost to install the service lateral is the sole responsibility of the Developer or, if the Developer has sold the Development, to its successor in title.
 - 2.1 The City of Mequon shall provide notice to the title holder of the Development pursuant to Section 6 of this Agreement if a service connection is required for the development (the "Connection Notice"). Developer shall have six (6) months from the date of the Connection Notice to connect to the City of Mequon sanitary system.
 - 2.1.1 The Connection Notice may be extended by mutual written agreement of the Parties.
 - 2.2 The Developer is required to pay the annual MMSD sanitary sewer capital charge.

3. The Parties expressly agree that this document shall be binding upon any successors, assigns and heirs of the Parties. It is the intention of the Parties that this document be recorded with the Ozaukee County Register of Deeds and that the obligations set forth in this document run with the specific properties within the Development.
4. This Agreement shall remain in full force and effect unless terminated by mutual agreement of the Parties in writing.
5. Any notice sent in relation to this Agreement shall not be considered to be effective unless sent by Certified United States mail to the following addresses:

5.1 To the City of Mequon:

Director of Public Works/City Engineer
City of Mequon
11333 N. Cedarburg Road 60W
Mequon, WI 53092-1930

5.2 To Developer:

Either Party may change its address for notice by providing notice of said change to the other Party.

6. This Agreement shall be governed by and construed under the internal laws of the State of Wisconsin.
7. This Agreement represents the complete understanding between the Parties and any amendment to this Agreement must be agreed to in writing by the Parties.

CITY OF MEQUON

By: _____
Signature

Name: _____
Type or Print

Date: _____

DEVELOPER

By: _____
Signature

Name: _____
Type or Print

Date: _____

Approved by: _____
Brian C. Sajdak, City Attorney



11333 N. Cedarburg Road
 Mequon, WI 53092
 Phone: 262-242-3100
 Fax: 262-242-9655

www.ci.mequon.wi.us

Office of City Attorney

TO: Common Council
FROM: Brian Sajdak, City Attorney
DATE: October 19, 2022
SUBJECT: RESOLUTION 3988 A Resolution Ordering a Special Election to Fill the District 8 Aldermanic Vacancy

Background

In June, the Committee of the Whole interviewed two potential candidates for the vacancy created in the District 8 Aldermanic seat that resulted from the election of Andrew Nerbun to Mayor. After deadlocking on the appointment, the Committee decided to fill the vacancy by special election. Under Wis. Stat. § 8.50, “[n]o special election may be held after . . . August 1 preceding the general election unless it is held on the same day as the general election, until the day after that election.” Given the statutory timelines, the City had missed the deadline to order a special election that would have been held concurrently with the November General Election. The Committee subsequently met and determined that the Special Election should be held on January 10, 2023.

Discussion

Based upon the selection of January 10, 2023, for the Special Election, the following schedule would apply to the Election:

Date	Event
October 27, 2022	Common Council announces the Special Election (Tonight)
October 28, 2022	Candidates can begin obtaining nomination signatures
November 15, 2022	Completed nomination papers due to the City Clerk by 5:00 p.m.
December 13, 2022	Special Primary Election (if 3 or more candidates submit completed campaign materials). Top 2 vote-getters advance to Special Election
January 10, 2023	Special Election
January 16, 2023	Elected Alderman to take oath of office. At this time, they are the official Alderman to District 8
February 14, 2023	Newly elected Alderman takes a ceremonial oath at the Common Council meeting and seated as District 8 Alderman

The Resolution on this evening’s agenda officially kicks off the process to hold the Special Election.

Recommendation

Recommended by Committee of the Whole on June 14, 2022.

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 3988

A Resolution Ordering a Special Election to Fill the District 8 Aldermanic Vacancy

RECITALS

A. A vacancy was created in the office of District 8 Alderman by the election of Andrew Nerbun to Mayor in April 2022.

B. The Common Council elects, pursuant to Wis. Stat. § 17.23(1)(am) to fill the vacancy by special election.

BASED UPON THE FOREGOING RECITALS, IT IS RESOLVED by the Common Council of the City of Mequon, Wisconsin, that it is ordered that the District 8 Aldermanic Vacancy shall be filled by special election as follows:

1. There exists a vacancy in the office of District 8 Alderman, which was created when the incumbent, Andrew Nerbun, was elected and sworn in as the Mayor of the City of Mequon in April 2022.

2. The District 8 Aldermanic vacancy shall be filled by a special election to be held on January 10, 2023.

3. The winning candidate shall hold office from January 16, 2023, until 11:59 p.m. on April 15, 2024, which is the end of the residue of the current term of office for the District 8 Aldermanic seat.

4. The earliest date nomination papers may be circulated is October 28, 2022.

5. Nominations papers are due to the Office of the Mequon City Clerk not later than 5:00 p.m. on November 15, 2022.

6. Should a primary election be necessary, such primary election shall be held on December 13, 2022.

7. The City Clerk is authorized and directed to hold such elections and shall prepare and publish all notices required by law.

Approved by: Andrew Nerbun, Mayor

Date Approved: October 27, 2022

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on October 27, 2022.

Caroline Fochs, City Clerk



11333 N. Cedarburg Road
Mequon, WI 53092
Phone: 262-242-3100
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of City Attorney

TO: Common Council
FROM: Brian Sajdak, City Attorney
DATE: October 19, 2022
SUBJECT: RESOLUTION 3989 A Resolution Disallowing the Claim of Nicholas J. DeStefanis Dated September 6, 2022 Related to Alleged Violations of 42 U.S.C § 1983

Background

On June 22, 2022, Nicholas J. DeStefanis provided what he called a “Notice of Claim” to the City alleging certain violations of 42 U.S.C. § 1983 (civil rights violations) by members of the City’s Police Department. Mr. DeStefanis subsequently provided a Claim on September 6, 2022, seeking damages in the amount of \$50,000 for said violations. Following receipt of the June 22 Notice, the City engaged the services of outside counsel to conduct a review of the allegations.

Discussion

Section 893.80 of the Wisconsin Statutes provides for the process by which the Common Council shall consider, and handle claims made against the Council, the City and its officers, agents and employees. In short, it provides a period of 120 days from the filing of a claim within which the Council may choose to act to allow or disallow (deny) the claim. By acting to disallow within that time frame, the statute of limitations to bring a lawsuit based upon that claim is shortened to 6 months from that disallowance. Failure to act results in the application of the standard statute of limitations for the claims raised, which can be up to 6 years depending on the type of claim. (Note, however, that there is some legal authority suggesting that a claimant seeking damages for violations under 42 U.S.C. § 1983 need not follow the procedures identified in § 893.80.)

Given the confidential nature of the allegations, the original Notice of Claim, the Claim filed on September 6 and the Independent Counsel’s Report remain on file in the City Attorney’s Office.

Recommendation

For the reasons provided confidentially to you previously, the City Attorney recommends disallowing the claim.

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 3989

A Resolution Disallowing the Claim of Nicholas J. DeStefanis Dated September 6, 2022 Related
to Alleged Violations of 42 U.S.C § 1983

RECITALS

A. Nicholas J. DeStefanis provided a Notice of Circumstances to the City on June 22, 2022, alleging certain violations of 42 U.S.C. § 1983 by the City's Police Department.

B. Mr. DeStefanis subsequently provided a Claim on September 6, 2022, seeking damages in the amount of \$50,000 for said violations.

C. Wisconsin Statute § 893.80 provides for the process by which the Common Council shall consider, and handle claims made against the Council, the City and its officers, agents and employees.

D. The City Attorney and independent counsel for the City have reviewed the facts and circumstances relating to the claim and recommended that the Common Council disallow the claim.

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

1. The claim of Nicholas J. DeStefanis dated September 6, 2022, relating to alleged violations of 42 U.S.C. § 1983 is disallowed.

2. The City Clerk is directed, pursuant Wis. Stat. § 893.80(1g), to provide the claimant with written notice of disallowance.

Approved by: Andrew Nerbun, Mayor

Date Approved: October 27, 2022

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on October 27, 2022.

Caroline Fochs, City Clerk



11333 N. Cedarburg Road
 Mequon, WI 53092
 Phone: 262-242-3599
 Fax: 262-242-7650

www.ci.mequon.wi.us

Office of Police and Fire Departments

TO: Common Council
FROM: Patrick Pryor, Chief of Police
DATE: October 20, 2022
SUBJECT: RESOLUTION 3990 A Resolution Approving an Agreement for the Transfer of Public Safety Answering Services Between Ozaukee County, the City of Mequon and the Southern Ozaukee Fire & Emergency Medical Services Department

Background

This resolution includes the formal written agreement between Ozaukee County, the City of Mequon and the Southern Ozaukee Fire & Emergency Medical Services Department.

The City of Mequon, like all dispatch centers across the country, is experiencing a staffing shortage. The City has worked to increase pay and enhance technology but staffing still continues to be a challenge. More recently, the City has had to call for emergency assistance from Ozaukee County on its overnight shift due to the lack of dispatch staffing. All other municipalities in Ozaukee County, except for the City of Cedarburg, have already consolidated their dispatch centers with Ozaukee County. Cedarburg has transferred its overnight shift to Ozaukee County, but still staffs a first and second shift.

With the consolidation of the Mequon and Thiensville Fire Departments into the Southern Ozaukee Fire & Emergency Medical Services Department, maintaining an individual dispatch center has become more complicated. The consolidation of communications services with Ozaukee County would provide a single answering point for the public to call in an emergency.

Over the last few years, the Ozaukee County Communications Center has expanded significantly. The center has increased its workstations, upgraded technology, and become accredited with Emergency Medical Dispatch operations. As it stands today, Ozaukee County is already the first answering point for all cellular phone calls dialing 911 in Ozaukee County.

Analysis

The consolidation of communications services beginning in 2023 will provide a single answering point for the public to call during an emergency. This will streamline call times and reduce the transferring of emergency 911 calls. Consolidation of services will also eliminate the competition between the City and the County for qualified applicants. In addition, consolidation will reduce technology costs related to the 911 Public Safety Answering Point System currently in place in the City, as the equipment for Next Generation 911 and upcoming Text to 911 starts to be required by the State of Wisconsin.

Following the transfer of all emergency dispatching services from the City to Ozaukee County

beginning on January 1, 2023, the Mequon Public Safety Building will still maintain lobby service seven days a week during daytime hours. The lobby will always remain open, even during overnight hours, and a phone directly connected with an Emergency Dispatcher will be in place to aid when no one is in the office to personally answer the lobby window. The City has also created an emergency locking safe room in the event someone needs a secure area to protect themselves from harm during an emergency. The building's entrance area has also been outfitted with an emergency defibrillator and camera that directly links to the Ozaukee County Communications Center.

The attached agreement was authored by City Attorney Sajdak. Input was obtained from the Ozaukee County Sheriff, the Ozaukee County Administrator and the County Attorney. This agreement provides for the full transfer of dispatching services from the City to the County, including all services required by the SOFD. The agreement provides for the obligations required of each of the three entities and protections for the City as well as the County, if at some point in the future significant changes were to come in dispatching services.

The agreement also provides that the service from Ozaukee County is at no charge to the City. The financial impacts associated with this consolidation are being addressed through both a tax levy reduction being taken by the City of Mequon, as well as an anticipated tax levy increase initiated by Ozaukee County. A time analysis provided by the City to the Wisconsin Department of Revenue showed that currently, Mequon dispatchers spend one third of their time actually dispatching, and that the remaining two-thirds is spent performing other Police Department administrative tasks. The Department of Revenue agreed with the information provided in this time analysis and allowed for a tax levy reduction by the City of Mequon equivalent to one-third of the previous amount allocated for the City's Communications Center.

Moving forward, the Police Department will continue to work with the Ozaukee Sheriff's Department to allow for a smooth transition. The SOFD is also scheduled to meet with the Sheriff as well to discuss operational impacts moving into 2023.

Fiscal Impact

There is no fee for the consolidation of services to Ozaukee County. As indicated, the City's tax levy will be reduced by \$197,197 for tax year 2022, which is collectible in 2023.

Recommendation

A recommendation is forthcoming from the Committee of the Whole on October 27, 2022.

Attachments:

Ozaukee-Mequon Dispatch Agreement (DOCX)

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 3990

A Resolution Approving an Agreement for the Transfer of Public Safety Answering Services
Between Ozaukee County, the City of Mequon and the Southern Ozaukee Fire & Emergency
Medical Services Department

RECITALS

A. The City of Mequon has historically maintained its own Communications Center for the dispatching of Police, Fire and Emergency Medical Services.

B. Under the combined Southern Ozaukee Fire & Emergency Medical Services Department, Ozaukee County is set to provide dispatch services for Fire & Emergency Medical Services to Mequon and Thiensville.

C. Ozaukee County is also the first answering point for all cellular 911 calls made across Ozaukee County, including those originating from within the City of Mequon.

D. Based upon these factors and the increasing difficulty of finding qualified dispatchers to staff the City's Communications Center, consolidating all emergency dispatch services for the City of Mequon with Ozaukee County will lead to improved service for the City's emergency services personnel, as well as residents and visitors to the City.

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

1. The Agreement for the Transfer of Public Safety Answering Services Between Ozaukee County, the City of Mequon and the Southern Ozaukee Fire & Emergency Medical Services Department, in the form as attached, 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: October 27, 2022

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on October 27, 2022.

Caroline Fochs, City Clerk

**AGREEMENT FOR THE TRANSFER OF PUBLIC SAFETY ANSWERING SERVICES
BETWEEN OZAUKEE COUNTY, THE CITY OF MEQUON AND THE
SOUTHERN OZAUKEE FIRE & EMERGENCY MEDICAL SERVICES
DEPARTMENT**

RECITALS

I. Ozaukee County (the “County”) has operated a public safety answering point (“PSAP”) and dispatch center for the Sheriff’s Office and other public safety agencies within Ozaukee County.

II. The City of Mequon (the “City”) has operated a PSAP and dispatch center for the City’s fire and police departments.

III. The City and the Village of Thiensville have merged their respective fire departments into the new joint Southern Ozaukee Fire & Emergency Medical Services Department (“SOFD”).

IV. Under SOFD, the County will undertake PSAP and dispatch services for fire and emergency medical calls within the City and the Village of Thiensville.

V. The City, County and SOFD find that the consolidation to a single PSAP and one dispatch center will provide numerous benefits to all Parties including provision of consistent and high-quality emergency services call handling which benefits the residents.

VI. The Parties are authorized under Wis. Stat. § 66.0301(2) to contract with each other for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law and under Wis. Stat. § 256.35(2)(d) to combine to establish a basic or sophisticated system.

In consideration of these Recitals, the mutual agreements, benefits and responsibilities outlined herein, and other good and valuable consideration, receipt or sufficiency of which is hereby acknowledged, the parties agree:

A. Establishment of PSAP. As of the Effective Date of this Agreement, the County shall be the PSAP for all emergency services calls within the City of Mequon.

B. Dispatch Services. The County shall provide law enforcement, fire, and emergency medical services dispatch and enhanced 911 services (hereinafter “Dispatch Service”) to the City and SOFD. The Dispatch Service provided by the County shall be the same or better service as the County provides to all other residents within the County for which it provides Dispatch Service, in all respects, including with regard to customer service, receipt of calls, and prompt response. The Dispatch Service provided by the County shall include but not be limited to the following:

1. Answer incoming calls on telephone lines designated by the City and SOFD.

2. Receive and record information pertaining to requests for emergency services.
3. Alert the City's Police Department and/or SOFD, as may be appropriate, and broadcast emergency information promptly.
4. Receive acknowledgment of alert and emergency information.
5. Refer non-emergency calls to a designated non-emergency telephone number.
6. Provide teletype service to City police officers while they are on duty.
7. Provide quality customer service to all callers.
8. Provide the foregoing services twenty-four hours per day, seven days per week, while this Agreement is in effect.

C. Equipment. The County shall provide at its sole cost and expense all Dispatch Services from a location that is owned and maintained by the County, on equipment that is owned and maintained by the County.

D. Personnel. The County shall at its sole cost and expense employ sufficient staff to perform the Dispatch Services required by this Agreement. All such staff shall be the sole responsibility of the County. No employment relationship shall exist between the City/SOFD and said personnel.

E. City Obligations.

1. City shall, at City's sole cost and expense, provide and maintain non-emergency police department telephone lines.
2. City shall furnish County with any special instructions or other information required to effectively provide the Dispatch Services.
3. City shall return two of the County's radio dispatch consoles to the County. City will retain the third console as a backup within its Police Department.

F. SOFD Obligations.

1. SOFD shall, at SOFD's sole cost and expense, provide and maintain non-emergency fire department telephone lines.
2. SOFD shall furnish County with any special instructions or other information required to effectively provide the Dispatch Services.

G. Effective Date and Term. The Effective Date of this Agreement shall be January 1, 2023 and shall run for an indefinite term.

H. Termination. In recognition of the difficulty of adjusting the tax levy to reflect staffing changes necessitated by a termination, termination of this Agreement shall be as follows:

1. For Breach. Either party may terminate this agreement upon the breach of the other provided that the non-breaching party provides a notice of the breach and at least 30 days to cure the breach. If the breach 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 be cured with additional time, 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. In the event of a termination for breach by the County or the City, the breaching party shall pay, as liquidated damages, the actual and reasonable dispatch personnel costs incurred by the non-breaching party. With respect to a breach by the County, the costs shall be the City's additional dispatch personnel costs until the City's next budget cycle so that the City is able to adjust its tax levy to pay for the same, and with respect to a breach by the City, reimbursement of the County's unemployment payments for personnel laid off due to reduced staffing needs.

2. For convenience. Either party may terminate this Agreement for convenience upon two year's written notice.

I. Levy Limit Adjustments. Notwithstanding the reference to Wis. Stat. § 66.0301 above, it is intended by the Parties that their respective levy limits for 2023 will be adjusted utilizing Lines J and K of Section D on the annual Municipal Levy Limit Worksheet. No adjustment should be made on Line H of the Worksheet without an amendment to this Agreement that redistributes costs between the Parties.

J. Notices. Notices required or deemed advisable under this Agreement shall be made in writing and delivered personally or by registered or certified mail upon the County at:

County Administrator
Ozaukee County
121 W. Main St.
Port Washington, WI 53074

and upon the City to:

City Administrator
City of Mequon
11333 N. Cedarburg Road
Mequon, WI 53092

and upon SOFD to:

Fire Chief
Southern Ozaukee Fire & Emergency Medical Services Department
11300 N. Buntrock Avenue
Mequon, WI 53092

K. Third-Party Liability. It is expressly understood by and between the parties that each party shall be responsible, in the event of a claim, or judgment by a court of competent jurisdiction, for liability to a third party, to the extent liability shall be found against that party. Nothing in this Agreement shall be construed to limit the right of any party to seek contribution against another in the event of liability to a third party. This Agreement is intended to be solely between the Parties hereto and no part shall be construed to add, supplement, or grant any rights, benefits or privileges of any kind whatsoever to any third party or parties. 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.

L. Joint Powers Agreement. Pursuant to Section 256.35(9) of the Wisconsin Statutes, the Parties shall annually enter into a Joint Powers Agreement, which shall be applicable on a daily basis and which shall provide that if an emergency services vehicle is dispatched in response to a request through the County's emergency dispatch system, such vehicle shall render its services to the persons needing the services, regardless of whether the vehicle is operating outside the vehicle's normal jurisdictional boundaries. This Agreement shall constitute the required Joint Powers Agreement.

M. Dispute Resolution. The Parties agree that in the event of any dispute over the terms, performance, or administration of this Agreement they will submit first to mediation by a single mediator. In any litigation thereafter between the Parties, no costs shall be awarded to the prevailing party unless it shall appear to the court that the other party acted with gross negligence or in bad faith, or with malice, concerning the matter(s) that are the subject of such litigation.

N. Entire Agreement. The entire agreement of the parties is contained herein, except for the standard operating procedures which will be hereafter agreed to by the parties, and this Agreement supersedes all previous agreements, whether written or oral and all negotiations as well as any previous agreements presently in effect between the Parties relating to the subject matter.

O. Amendments. Any amendments to this Agreement shall be made in writing and be approved by the governing Board or Council of all of the Parties.

P. No Waiver. No waiver of any breaches of this Agreement shall be held to be a waiver of any other or any subsequent breaches. All remedies afforded in this Agreement shall be considered to be cumulative and in addition to any other remedies provided by law.

Q. Severability. In the event any provisions of this contract shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties.

OZAUKEE COUNTY

CITY OF MEQUON

Lee Schlenvogt, County Board Chairman

Andrew Nerbun, Mayor

Julianne B. Winkelhorst, County Clerk

Caroline Fochs, City Clerk

Approved as to Form:

Approved as to Form:

Rhonda Gorden
Ozaukee County Corporation Counsel

Brian C. Sajdak
Mequon City Attorney

**SOUTHERN OZAUKEE FIRE &
EMERGENCY MEDICAL SERVICES DEPARTMENT**

Van A. Mobley, President

Andrew Nerbun, Vice President