CITY OF MENASHA
COMMON COUNCIL
First Floor Conference Room
100 Main Street
Monday, March 19, 2018
Meeting 6:00 PM
or immediately following the Special Board of Public Works Meeting
AGENDA

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL/EXCUSED ABSENCES

D. PUBLIC HEARING
   1. Special Use Permit Application by James Fletcher, Representative, to establish a multi-family use at 336 Chute Street (Parcel No. 2-00121-00) in the C-2 Central Business District

E. PUBLIC COMMENTS ON ANY MATTER OF CONCERN TO THE CITY
   (five (5) minute time limit for each person)

F. REPORT OF DEPARTMENT HEADS/STAFF/CONSULTANTS
   1. Clerk Galeazzi - the following minutes and communications have been received and placed on file:
      Minutes to receive:
      a. Ad-hoc Protocol Committee, 3/12/2018
      b. Board of Health, 2/16/2018
      c. Board of Public Works, 3/5/2018
      d. Committee on Aging, 2/9/2018
      e. Library Board, 2/28/2018
      f. NMFR Joint Finance and Personnel Committee, 3/7/2018
      g. Plan Commission, 3/6/2018
      h. Water & Light Commission, 2/28/2018
      Communications:
      i. Diversity and Inclusion Training Memorandum, 3/5/2018, Mayor Merkes
      j. Cheers Alcohol Compliance Program Memorandum, 3/11/2018, Officer Dan Hoernke
      k. Menasha Police Department Addition Open House Invitation
      l. Winnebago County Overdose Fatality Review Program Memorandum, 3/15/2018, PHD Mckenney and Police Chief Styka

G. CONSENT AGENDA
   (Prior to voting on the Consent Agenda, items on the Consent Agenda may be removed at the request of any Alderman and placed immediately following action on the Consent Agenda. The procedures to follow for the Consent Agenda are: (a) removal of items from Consent Agenda; and (b) motion to approve the items from Consent Agenda.)
   Minutes to approve:
   1. Common Council, 3/5/2018
   Board of Public Works, 3/5/2018, Recommends the Approval of:
   2. Stormwater Action Plan
   3. Payment – Pheifer Bros. Construction Co., Inc.; Contract Unit No. 2017-04; Fox River “Loop the Lake” Bridge Crossings; $154,257.00 (Payment No. 4)
4. Recommendation to Award – Contract Unit No. 2018-03; Architecture and Construction Management of Phase I of the New Public Works Facility; Gries Architecture and Miron Construction; $236,000.00

5. City crews demolishing building and restore the site at 133 Water Street

NMFR Joint Finance and Personnel Committee, 3/7/2018, Recommends the Approval of:

6. Authorize hiring one firefighter after April 6, 2018 and subject to Jim Peglow not returning to his line staff position.

Plan Commission, 3/6/2018, Recommends the Approval of:

7. Certified Survey Map, 670 Lake Park Road—Community First Credit Union, as presented for the lot consolidation and reconfiguration of parcel numbers 7-01700-07, 7-01700-08, and 7-01700-09

8. Certified Survey Map, 1737 Racine Road—Sunshine Real Estate, LLP, as presented allowing the lot combination of parcels 4-00762-02, 4-00762-03, and 4-00762-05

9. Downtown Vision Plan as an advisory plan for future development with the following changes:
   a. Remove the designated future land uses of Sonoco and Coveris from the future land use map
   b. The addition of a preface to the plan and modifying two of the Land Use Policies as outlined in the consultant memorandum dated February 5, 2018
   c. Changing the word “policy” to “guideline” within the Land Use Principles

10. Special Use Permit as presented to allow for a 7-unit multi-family development at 336 Chute Street, with the following conditions:
    a. Prior to the issuance of building permits, a site improvement agreement but be recorded
    b. Should parking issues arise, the property owner shall work with the Community Development Department to secure one additional off-site parking stall.

Special Administration Committee, 3/19/2018

11. 2018 CIP Budget Adjustment—Loop the Little Lake Project

Special Board of Public Works, 3/19/2018

12. Change Order No. 4 for the Canopy Addition to the Loop the Lake Bridge Crossings

H. ITEMS REMOVED FROM THE CONSENT AGENDA

I. ACTION ITEMS

1. Accounts payable and payroll for the term of 3/7/2018—3/15/2018 in the amount of $6,956,846.72


3. Contract to Administer the Retail Food and Recreational Programs for the Wisconsin Department of Agriculture, Trade, and Consumer Protection between the Wisconsin Department of Agriculture, Trade, and Consumer Protection and The Bridges of Fox River Consortium (Cities of Menasha and De Pere), April 1, 2018 to June 30, 2019.

4. Motion to reconsider (Ald. Sevenich) R-4-18 A Resolution Authorizing the Execution and Delivery of Documents Relating to the Fox Cities Exhibition Center Project

5. Offer to Purchase 87 Racine Street

6. Recommendation that the 2018/2019 Common Council consider the Rules of the Common Council and Mayor as drafted by the Ad-hoc Protocol Committee as its rules of order for the session

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."
J. HELD OVER BUSINESS
   1. Owner Request City Purchase of 995 Brighton Drive, Menasha

K. ORDINANCES AND RESOLUTIONS
   1. R-06-18 Memorandum of Agreement for Stormwater Detention Pond Construction and Maintenance between Village of Fox Crossing, City of Menasha, Winnebago County and Wisconsin DOT (Racine Pond) (Introduced by Ald. Taylor; Recommended by Board of Public Works)
   2. R-07-18 Memorandum of Agreement for Stormwater Detention Pond Construction and Maintenance between Village of Fox Crossing, City of Menasha, Winnebago County and Wisconsin DOT (Midway Pond) (Introduced by Ald. Taylor; Recommended by Board of Public Works)
   3. R-08-18 Preliminary Resolution Declaring Intent to Exercise Special Assessment Powers Under Section 66.0703, Wisconsin Statutes (The Ponds of Menasha and The Cottages at Lake Park Condominiums) (Introduced and Recommended by Board of Public Works)
   4. R-09-19 A Resolution to Authorize the Application for a Cost-Share Grant from Bay Lake Regional Planning Commission (Introduced by Mayor Merkes)

L. APPOINTMENTS

M. CLAIMS AGAINST THE CITY

N. PUBLIC COMMENTS ON ANY MATTER LISTED ON THE AGENDA
   (five (5) minute time limit for each person)

O. ADJOURNMENT

MEETING NOTICE
Monday, April 2, 2018
Common Council Meeting – 6:00 p.m.
Committee Meetings to Follow
NOTICE IS HEREBY GIVEN that public hearings will be held by the Menasha Plan Commission and Common Council on an application for a Special Use Permit by James Fletcher, Representative, to establish a multi-family use on a parcel in the C-2 Central Business District, as required by Sec. 13-1-30(c)(5) of the City of Menasha Municipal Code. The proposed use is to take place on a parcel located at 336 Chute Street (Parcel Number 2-00121-00), City of Menasha, Winnebago County, Wisconsin. The Plan Commission will hold its informal public hearing on Tuesday, March 6, 2018 at 3:30 PM, or shortly thereafter, at the Menasha City Center located at 100 Main Street, Menasha, WI 54952. The Common Council will hold its formal public hearing on this matter at 6:00 PM, or shortly thereafter, on Monday, March 19, 2018 at the same location. All persons interested in commenting on the application for this Special Use Permit are invited to attend.

Deborah A. Galeazzi, WCMC
City Clerk

Run: March 2 and 12, 2018
A. CALL TO ORDER
   The meeting was called to order at 4:58PM

B. ROLL CALL/EXCUSED ABSENCES
   Present: Mayor Donald Merkes, Ald Stan Sevenich, Ald Alex Zelinski
   Excused: Ald James Taylor, Attorney Pam Captain

C. PUBLIC COMMENTS ON ANY MATTER OF CONCERN ON THE AGENDA
   No one spoke

D. MINUTES
   1. Motion by Ald Zelinski second by Ald Sevenich to approve the minutes of 1/31/2018. Motion carries 3-0

E. COMMUNICATIONS

F. DISCUSSION / ACTION ITEMS

   At the February 5th 2018 Common Council Meeting item # 7 (relating recognition of department heads during meetings) was referred back to committee.

   Motion by Mayor Merkes second by Ald Sevenich to recommend a rule stating: Upon the request of a member of the Common Council for staff to supply the body such information as requested, staff must first be recognized by the presiding officer.

   Example “Mr. Chairman I would like to hear from the director of Community Development regarding this item”

   Motion carries 3-0

   Members discussed Code of Conduct with no action at this time recognizing that the Common Council already has powers to preserve decorum and sanction members as part of Roberts Rules of Order and State Statute.

   Draft Rules of the Common Council and Mayor are complete for the Common Council to review.

G. ADJOURNMENT
   Motion by Ald Zelinski seconded by Ald Sevenich to Adjourn at 5:59 PM
   Motion carried unanimously
A. Meeting called to order at 8:02 AM by Nancy McKenney.

B. Roll Call: Present: Nancy McKenney, Lori Asmus, Theresa Rudolph, Kristene Stacker  
Excused: Candi Rusin  
Staff: Todd Drew, Kortney Dahm, Mary Fritz

C. MINUTES TO APPROVE  
Kristene Stacker moved to approve the November 10, 2017 minutes, seconded by Lori Asmus, motion passed

D. REPORT OF DEPT HEADS/STAFF/CONSULTANTS  
Administrative: Budgets and Contracts: Nancy McKenney noted the Common Council has approved the Intergovernmental Agreement Creating Bridges of Fox River Consortium (Environmental Health) between De Pere and Menasha. To comport with the Agreement, resolution O-1-18 was passed to amend Title 7, Chapter 6 of the Code of Ordinances (Retail Food, Recreational Licensing and Registration). The next step will be to amend plans and procedures and secure a revised Agent contract that recognizes the Consortium with the Wisconsin Department of Agriculture, Trade and Consumer Protection.  
The United Way Dental Program Grant Application (Menasha Healthy Smiles) was submitted. Nancy McKenney and Claire Opsteen were invited to present to the United Way on Monday, March 26 at 8:30 am. Nancy McKenney described the Healthy Smiles for Mom and Baby Grant opportunity to work with health care providers to prevent tooth decay. She noted that tooth decay is a transmissible bacterial infection (primarily transmitted from mother to child). If pregnant woman are tooth decay free by delivery they aren’t as likely to transmit tooth decay-causing bacteria to their child.  
The Menasha Health Department supported an application for the Winnebago County Overdose Fatality Review team and if approved, will be on the interagency panel. The approach is similar to the Child Death Review team which reviews deaths of infants and children, ages 0 to 18, which are reportable to the medical examiner or coroner. This collaborative interagency approach will allow data-driven prevention recommendations.  
The Menasha Health Department will participate in the Fox Valley Healthy Restaurant Children’s Meals project.  
Correspondence/Communication: Nancy McKenney noted the Tri-County health systems (Ascension, Aurora, ThedaCare, Partnership Community Health Center) and the City of Menasha, Appleton and Outagamie, Calumet, and Winnebago Health Departments sent out a press release announcing the launch of a Community Health Survey. Survey results will be available in late summer.  
Nancy McKenney recognized Linda Palmbach, Public Health Nurse, who received recognition from Safe Kids Fox Valley (SKFV). Safe Kids Fox Valley is part of State and National efforts to help reduce childhood death rate from unintentional injury. In 2017 the Safe Kids Fox Valley prevention efforts reached 17,539 adults and 16,824 children with safety messages and car seat checkups. Linda Palmbach is a certified car seat technician.  
Nancy McKenney noted the City is in the process of interviewing for the Public Health Educator position.  
Employee Safety: Todd Drew noted regular Safety Meetings were conducted. City Hall Safety – City Center Security was discussed. Todd Drew noted Respiratory Fit Testing has been done for 43 city employees. Todd Drew was asked to participate in a Webinar with CIVMIC.  
Sealer of Weights and Measures: Scale tests were conducted. Todd Drew report one gas complaint, no skimmer found on follow-up.  
Environmental Health Programs: Todd Drew reported De Pere consortium documentation is almost complete. He submitted FDA grant reimbursement documentation in the amount of $2500.00. Family Dollar on Midway Road was temporarily closed due to a sewage back-up, closure was for 24 hours. One new limited food license for Wilzkes Pub on
Milwaukee Street (Formally Fish Fry Tavern) was issued. Potentially two new establishments will be going into a newly constructed strip mall on Midway Road. Todd Drew attended the Wisconsin Food safety Advisory Committee Meeting. A home on 629 Appleton Street was sold at Sheriffs auction. Community Development will forward all standing orders. Menasha Joint School District will begin hydroponic growing of produce for use in the school district meal program.

**Communicable Disease Reports:** Nancy McKenney reviewed November 2017 – February 2018 Communicable Disease reports with the Board of Health. Kortney Dahm reported on a Salmonella case.

**School Health:** Absences remain low.

**Health Screening 60+ Program:** No Report

**Prevention:** No Report

**Dental Program:** Claire Opsteen reported oral health education/presentations were completed by November 14, 2017. Oral health screenings are scheduled for March 6, 2018. Only two parents opted out the oral health screening. Claire referred one student for dental treatment which was completed by Partnership Community Health Center. Oral health talks were completed for all schools, daycare, Lakeside Commons and the Senior Center. Fluoride varnishes are underway at all schools. To date Claire has completed 209 fluoride applications.

**Dental Sealant Program:** Claire Opsteen reported her sealant program is underway. Sealants were completed at Banta, Jefferson, Nicolet and Maplewood schools. To date, 55 students were seen, 224 teeth were sealed.

**Lead Prevention Program:** Menasha Utilities applied for a grant to assist families in funding the replacement of lead laterals.

**Maternal and Child Health:** No Report

**Immunization:** No report

**Emergency Preparedness:** Claire Opsteen attended Operation Dark Sky sheltering training.

**Twenty Four/Seven:** Phones were ordered for Menasha Health Department staff.

**Senior Center:** Nancy McKenney reported the Committee on Aging members had lunch program at Menasha High School. Members wanted to try Chartwells Catering Service as a possible option for food service events at the Senior Center.

**E. ACTION ITEMS**

**Policy and Procedure Review:** The Board reviewed the *Personal Protective Equipment, Birth Records Utilization, Correction of Errors in Client Records, Emergency Administration of Epinephrine, Missed Appointments and Walk-Ins and Uncontrollable Behavior.*

**F. HELD OVER BUSINESS:** None

**G. ADJOURNMENT:**

Lori Asmus moved to adjourn the meeting, seconded by Kristine Stacker. Motion passed.

The next meeting will be on March 9th, 2018 at 8:00 a.m. Board of Health meetings will now be held every second Friday of the month at 8:00 AM.
A. CALL TO ORDER
Meeting called to order by Chairman Taylor at 8:17pm

B. ROLL CALL / EXCUSED ABSENCES
EXCUSED: None
ALSO PRESENT: Mayor Merkes, CA Captain, DPW Radomski, CDD Schroeder, ASD Jacobs, PRD Tungate, FC Kloehn, Deputy Clerk Cheslock

C. MINUTES TO APPROVE
   1. February 19, 2018
      Moved by Ald. Zelinski seconded by Ald. Krueger to approve minutes
      Motion carried on voice vote.

D. DISCUSSION / ACTION ITEMS
   1. Stormwater Action Plan

      DPW Radomski introduced Nick Vande Hey from McMahon Associates who explained that the City needs to submit a plan to the DNR which will act as a blueprint and assist in projecting costs and settling deadlines.

      Moved by Ald. Benner seconded by Grade to recommend to the Common Council to approve the Stormwater Action Plan

      General discussion ensured on the difference between this process and previous years'.

      Motion carried on roll call 8-0


      General discussion ensued on Council getting all the information regarding bids, this process not being a standard bid but a lump sum estimate, the large difference in the proposal prices, the bidding process as it moves forward, other work Gries has done on similar facilities, and Miron and Gries working together to design the facility

   3. Payment – Pheifer Bros. Construction Co., Inc.; Contract Unit No. 2017-04; Fox River “Loop the Lake” Bridge Crossings; $154,257.00 (Payment No. 4)

      Moved by Ald. Zelinski seconded by Krueger to recommend to the Common Council Payment – Pheifer Bros. Construction Co., Inc.; Contract Unit No. 2017-04; Fox River “Loop the Lake” Bridge Crossings; $154,257.00 (Payment No. 4)
      Motion carried on roll call 8-0

   4. Recommendation to Award – Contract Unit No. 2018-03; Architecture and Construction Management of Phase I of the New Public Works Facility; Gries Architecture and Miron Construction; $236,000.00
Moved by Ald. Benner seconded by Krueger to recommend to the Common Council Recommendation to Award – Contract Unit No. 2018-03; Architecture and Construction Management of Phase I of the New Public Works Facility; Gries Architecture and Miron Construction; $236,000.00

General discussion ensued on the work completed by City Staff on this project and how it was completed.

Motion carried on roll call 7-1; Alderman Zelinski voted no

5. R-06-18 Memorandum of Agreement for Stormwater Detention Pond Construction and Maintenance between Village of Fox Crossing, City of Menasha, Winnebago County and Wisconsin DOT (Racine Pond) (Introduced by Ald. Taylor)

Moved by Ald. Benner seconded by Krueger to recommend to the Common Council R-6-18

Motion carried on roll call 8-0

6. R-07-18 Memorandum of Agreement for Stormwater Detention Pond Construction and Maintenance between Village of Fox Crossing, City of Menasha, Winnebago County and Wisconsin DOT (Midway Pond) (Introduced by Ald. Taylor)

Moved by Ald. Benner seconded by Krueger to recommend to the Common Council R-7-18

Motion carried on roll call 8-0

7. R-08-18 Preliminary Resolution Declaring Intent to Exercise Special Assessment Powers Under Section 66.0703, Wisconsin Statutes (The Ponds of Menasha and The Cottages at Lake Park Condominiums)

Moved by Ald. Benner seconded by Zelinski to recommend to the Common Council R-8-18

General discussion ensued on final pricing. DPW Radomski explained it would be ready before the next Common Council meeting.

Motion carried on roll call 8-0

8. 133 Water Street

Moved by Alderman Taylor seconded by Alderman Zelinski to table
Motion fails on roll call vote 4-4; Aldermen Nichols, Collier, Krueger, & Benner voted no

General discussion ensued on making a decision at this meeting, options of selling, leasing, maintaining, and demolishing the building,

Moved by Ald. Sevenich seconded by Zelinski to do nothing with the building

General discussion ensued on the residents wanting action taken and the motion on the table possibly being a negative motion

Chairman Taylor removed the motion from the table as it was a negative motion.

General discussion ensued on taking action at this meeting to give staff direction, demolishing the building, Water Street Corridor construction beginning in 2020, options for marketing the building.
CDD Schroeder explained the City could upload the building to InWisconsin.com, conduct an RFP, or contract a listing agent.

General discussion ensued on the value of the property, the property being on the waterfront, future development for the property, selling the building as is, the condition of the property and building.

Moved by Ald. Nichols, seconded by Ald. Collier for city crews to demolish the building and restore the site.

General discussion ensued on current state of the building and property, the possible contamination of the property from a fuel tank, asbestos contamination in the building, costs of clean contamination clean up, the possibility of leasing the building as is.

Motion fails on roll call 4-4; Ald. Grade, Taylor, Sevenich, and Zelinski voted no.

Moved by Ald. Nichols, seconded by Ald. Benner that City Staff follows through the RFP.

DPW Radomski explained the previously drafted RFP.

General discussion ensued on spending tax dollars for the benefit of a future developer, developers paying for the cleanup of the property, this year’s budget paying for the cleanup of the property, the lack of outside interest in the property in its current condition, the fact that cleanup would be required before moving forward with an RFP.

Moved by Ald. Taylor, seconded by Ald. Nichols to put 133 Water Street on State Surplus Site.

Ald. Nichols proposed the amendment, seconded by Ald. Collier—to post to the site for 60 days. In the event that there are no takers, we allow city crews to demolish and restore the site.

General discussion ensued on cleaning up the contamination before putting the property on the market. Ald. Nichols withdrew her amendment stating it is not fiscally responsible to clean up the building and then market it for sale.

CA Captain clarified that the Chairman can make a motion.

Motion fails on roll call 2-6; Ald. Taylor and Collier voted yes.

Moved by Ald. Sevenich, seconded by Ald. Krueger to reconsider vote on the motion moved by Ald. Nichols, seconded by Ald. Collier for city crews to demolish the building and restore the site.

Ald. Nichols asked for point of clarification on which motion was being reconsidered.

Motion carries on roll call 6-2; Ald. Taylor and Zelinski voted no.

Moved by Ald. Nichols, seconded by Ald. Collier for city crews to demolish building and restore the site.

Motion carried on roll call 6-2; Ald. Zelinski and Taylor voted no.

E. ADJOURNMENT

Moved by Ald. Taylor, seconded by Ald. Zelinski to adjourn at 9:28 pm.

Motion carried on voice vote.

Stephanie Cheslock, Deputy Clerk
A. Meeting called to order at 1:00 PM.

B. ROLL CALL: Present: Joyce Klundt, Nancy McKenney, Cheryl Richard, Tom Stoffel, Brenda Marks
Excused: Pat Irwin
Guests: Meghan Pauly, Mayor Don Merkes, Deb Grossinger Rhonda Mohr, Brian Adesso, Megan Moede

C. INTRODUCTION OF GUESTS
Rhonda Mohr, Deb Grossinger, and Brian Adesso welcomed the COA to the Menasha High School. Deb Grossinger and Rhonda Mohr explained how Chartwell food services the Menasha Joint School District. Chartwell could offer cantering services to Menasha Senior Center events. Tom Stoffel moved to explore Chartwell food services for the Menasha Senior Center, seconded by Brenda Marks. Motion passed.

D. MINUTES TO BE APPROVED: Brenda Marks moved to approve the January 12, 2018 minutes, seconded by Joyce Klundt. Motion passed.

E. CORRESPONDENCE: None

F. REPORT OF DEPT HEADS/STAFF/CONSULTANTS:
Senior Center: Cheryl Richard stated there were 8,000 people and over 20,000 visits to the Senior Center in 2017. The Spring banquet will be held in May. Cheryl Richards discussed focusing programs on the seven aspects of wellness and the concerted effort to offer new programs (Tai Chi, Strong Bones, Stepping On) and explore new opportunities such as woodworking classes. Cheryl Richard led a discussion about rental agreements. She will share a draft with the COA at a future meeting.

Public Health and Health Screening 60+ Grant: Nancy McKenney noted that Winnebago County contracts (Senior Center and Health Screening 60 Plus) were signed. Meghan Pauly noted that Skin Cancer Screening will be held on April 20, 2018 and Hand-Chair Message will be held on April 26, 2018. Tai Chi (improves balance) will be offered on May 8th at Curtis Reed Square. Meghan Pauly is training to facilitate Living Well with Diabetes classes. Meghan emphasized the valuable education offered by the pharmacist at the Senior Center and encouraged greater use those services offered.

Policies and Procedures Discussion – Brenda Marks moved to approve the Smoking Policy, seconded by Joyce Klundt. Motion passed. Policies will be included in the Chatter and posted. The Animal Policy will be an item on the next meeting agenda.

G. NEW BUSINESS:
Senior Center Survey will be distributed in February and March. This will include questions about a name change for the Senior Center. The Code of Conduct will be reviewed at a future meeting. Parking was discussed.

H. HELD OVER BUSINESS: Mission Vision and Goals: Janet Kazmeirzak from the Northeast Regional Division of Public Health is willing to facilitate the mission, vision and goals. It was recommended the survey be completed first.


I. ADJOURNMENT: Brenda Marks moved to adjourn the meeting. Joyce Klundt seconded the motion. Motion passed.

The next meeting will be held on Friday, March 9, 2018 at 1:00 PM at the Menasha Senior Center on 116 Main Street Menasha, WI.
Minutes of Regular Meeting
ELISHA D. SMITH PUBLIC LIBRARY TRUSTEES
Elisha D. Smith Public Library Gegan Room
February 28, 2018

Called to order at 4:00pm by Vice Chairman Golz
Present: Vice Chairman Golz, Trustee Halverson, Ad Hoc Trustee Hermans, Superintendent of Schools VanderHeyden, Trustee Witt, and Teen Representative Genz
Absent: Chairman Englebert, Trustee Franzoi, Trustee Schwerbel, and Secretary Wicihowski
Also Present: Director Lenz, Support Services Supervisor Brandt, Adult Services Supervisor Bongers, and Administrative Assistant Dreyer

Public Comment/Communication: None

Consent Business
Motion made by VanderHeyden, seconded by Halverson, to approve the Library Board meeting minutes from January 24, 2018 and accept the minutes of the Marketing & Resource Development Committee from February 13, 2018. Motion carried unanimously.

Authorization of Bills
The bill from DEMCO is for labels, and the bill from Minitex is for DVD security cases. Motion made by Witt, seconded by Halverson, to authorize payment of the December(3) 2017 and February 2018 bills as presented from the 2017 and 2018 budgets and endowment fund. Motion carried unanimously.

Director’s Report/Information Items
1. January Statistics. Circulation, assistance with questions, meeting room uses, the door count, and program attendance are all up over last year at this time.
2. Budget Status. Trustees reviewed the 2017 and 2018 budget status. John Jacobs, the city’s Administrative Services Director, will be at our March meeting to discuss the end of the 2017 budget year.
3. Staff Reports.
   • Statistics from the 2017 monthly free legal clinic were distributed – 188 people sought legal help.
   • Children’s Services Supervisor Beson submitted a summary of the Children’s Winter Reading Program – 111 children ages three through grade 5 plus those in the toddler program signed up for the Pete the Cat Reading is Cool Program.
   • The library gave 129 pairs or family passes through the Fox Arts Network (FAN) Pass program in 2017.
   • City Attorney Captain crafted a new library ordinance that was approved by the Administrative Committee of the Common Council on Monday, February 19 and will be on a future Common Council agenda.
   • The 2018 Fox Cities Reads book has been chosen – Salt to the Sea by Ruta Sepetys. She will be making presentations that are open to the public on Thursday, April 12 at 12:45pm at Kaukauna High School, Thursday, April 12 at 6:30pm at Appleton North High School and on Friday, April 13 at 10:00am at the Appleton Public Library. Fox Cities Reads is now part of the Fox Cities Book Festival.
   • The Friends’ Spring Book Sale will be held March 8 through March 12.
   • In December, there was a cable problem with the elevator that was fixed but since then the elevator closes slowly. Adam Alix, Deputy Director of Municipal Operations, is working with KONE on our invoices.
   • Donations to the library’s endowment fund this year were reviewed. The grant from the Smith Family Foundation was used to purchase equipment for the digital conversion area.
   • Staff is working on a collection maintenance and weeding project.
   • The Summer Reading Program theme is “Library’s Rock!”
   • There are many events going on in the library during the month of April: National Library Week; Food for Fines; MoneySmart Week program; Jazz Concert with MJD; poetry workshops; Lights of
the Lakes - A Great Lakes Lighthouse Slideshow by Phillip L. Block; Author and Menasha native David Galassie, *Neenah Menasha: Twin Cities of the Fox Valley*; bilingual story times; and Photographer and Author John Gremmer, *Dam Birds: Big Birds at the Menasha Dam*.

**Discussion/Action Items**

4. **Volunteer of the Year**
   The library is recommending John Hotynski as our Volunteer of the Year. Last year he donated 135 hours of his time preparing for and working during the book sales, and he donated carts and shelving units for the sales, some of which he constructed or refurbished. Our Volunteer of the Year has their name engraved on the plaque mounted on the left pillar as you enter the main doors of the library and is invited to attend the Celebrating Our Volunteers Community Dinner on April 26. Motion made by Witt, seconded by VanderHeyden to approve the recommendation of having John Hotynski as the library's Volunteer of the Year. Motion carried unanimously.

5. **State Annual Report**
   The Wisconsin Public Library Annual Report was distributed. The city's final numbers for 2017 library expenditures are not as available. Motion made by Halverson, seconded by Hermans to approve the annual report with the caveat that the one submitted to the state and city include final numbers when available from the Finance Department. Motion carried unanimously.

Motion made by Witt, seconded by Halverson to approve the library's annual report stating that the library system did provide effective leadership and adequately meet the needs of the library. Motion carried unanimously.

**Adjournment**
Motion to adjourn made at 4:27pm by Halverson, seconded by VanderHeyden. Motion carried unanimously.

Respectfully submitted by Kathy Dreyer, recording Secretary
Present: Ald. Pollnow, Stevenson, Kunz and Nichols

Excused: Ald. Sevenich and Collier

Also Present: Chief Kloehn, Director Jacobs, Director Barber and MA Ellis

Public: No members of the public were present.

Ald. Kunz called the meeting to order at 5:30 p.m.

Minutes: The committee reviewed the meeting minutes from January 23, 2018. MSC Pollnow/Nichols to approve the January 23, 2018 meeting minutes, all voting aye.

Consideration of Authorizing Hiring one Firefighter: The Committee reviewed Chief Kloehn’s memo regarding his request to replace one firefighter. Chief Kloehn explained Jim Peglow’s promotion to Assistant Chief of Training has created a firefighter vacancy within our Department. His vacancy is a budgeted position and filling his position will be needed to maintain our current staffing levels. Per Local 275’s contract, when a line staff member transfers from a union position to a non-union position they have a 30 days to familiarize themselves and transfer back to their union position within 31 days. Therefore, we cannot have a new person start until April 6th. We would like to make an offer to someone, on our hiring list, as soon as both Common Council’s approve replacing this vacancy with the contingency that they cannot begin employment until April 6th and is subject to Jim Peglow not returning to his line staff position. This would allow us to have both new employee begin their recruit training together.

Ald. Nichols asked for an update on the two positions that were approved in January. Chief Kloehn noted both City Councils approved filling the one vacant position that was created by a retirement on February 4th. They approved filling a second position and have them start in April so they are trained by the time our expected retirement happens in June. However, we cannot make an offer to anyone until we receive written notification of the person’s intent to retire in June. At this time, we have not received that. Therefore, if this position is approved we will start two people in April and will have to wait to start a third person until we receive written notice. Depending upon when this notice is received, we may run into overtime issues until this person completes their four weeks of training.

Ald. Kunz expressed concern on the labor agreement language with a 30 day contingency. While he understands the reason it creates staffing shortages for the department. MSC Pollnow/Stevenson recommends the City of Neenah and City of Menasha Common Council’s authorize hiring one firefighter after April 6, 2018 and subject to Jim Peglow not returning to his line staff position, all voting aye.

MSC Pollnow/Stevenson to adjourn at 5:40 p.m., all voting aye.

Respectfully Submitted,

Tara Ellis
Management Assistant
A. CALL TO ORDER
The meeting was called to order at 3:32 PM by Mayor Merkes.

B. ROLL CALL/EXCUSED ABSENCES
PLAN COMMISSION MEMBERS PRESENT: Mayor Merkes, Ald. Benner, DPW Radomski and Commissioners Homan and Cruickshank.

PLAN COMMISSION MEMBERS EXCUSED: Commissioners Schmidt and Sturm.

OTHERS PRESENT: CDD Schroeder, CDC Heim, Jeff Schweitzer (Community First Credit Union), Ald. Arnie Collier, Shelly Verhagen (Miron Construction), Pete Klosterman (Miron Construction), Jim Fletcher (336 Chute Street representative), Roger Beichler (Owner 336 Chute Street), Ron Wolf (McMahon), Sandra M Dabill Taylor (545 Broad Street) and LA Sauby (339 Broad Street).

C. PUBLIC HEARING
1. Proposed Special Use Permit – 336 Chute Street – Parcel #2-00121-00
Mayor Merkes called the public hearing to order at 3:32 p.m. CDD Schroeder provided an overview of the proposed Special Use indicating that the applicant is requesting the property to be residential in nature in the C-2 Central Business District. Currently the building has four apartments on the second floor and three apartments are being proposed for the first floor. No one from the gallery spoke. Mayor Merkes closed the public hearing at 3:38 p.m.

C. MINUTES TO APPROVE
1. Minutes of the February 12, 2018 Plan Commission Meeting
Motion by Comm. Cruickshank, seconded by DPW Radomski, to approve the February 12, 2018 Plan Commission meeting minutes. The motion carried.

D. PUBLIC COMMENT ON ANY ITEM OF CONCERN ON THIS AGENDA
Sandra Dabill-Taylor, 545 Broad Street. Ms. Dabill-Taylor stated concerns regarding the Downtown Vision Plan as 80-90% calls for residential use. Stated she is opposed to idea of a city owned banquet facility. She also stated that the increase in warehousing within the city is not bringing money into the city. Also stated that the city can’t afford to invest in a project if it is not high in value.

E. DISCUSSION / ACTION ITEMS
1. Certified Survey Map and Site Plan Review – 670 Lake Park Road – Community First Credit Union
CDC Heim presented an overview of the proposed Certified Survey Map (CSM) requested by Community First Credit Union for lot consolidation and reconfiguration of parcel # 7-01700-07, 7-01700-08 and 7-01700-09. All parcels are under the same ownership and all zoned C-1 General Commercial District. Both lots meet zoning code standards in the C-1 General Commercial District and are consistent with the Comprehensive Plan.
In addition to the CSM, the applicant is requesting a site plan approval for a new branch office on Lot 1 of said CSM. The façade of the building and the dumpster enclosure will be comprised of 100% brick veneer materials. Additional screening of the dumpster with landscape materials will provide adequate screening. The proposed layout of the parking lot meets the requirements for both stall and drive aisle size. A portion of the parking lot and drive aisle are located over an existing utility easement which runs north and south through the property. The applicant and
Menasha Utilities are working to resolve any future concerns. The landscape plan and lighting plan, as submitted, meet all requirements within the C-1 General Commercial District.

The Department of Public works has reviewed the stormwater management plan and reports no concerns. The water and sanitary plans have been approved by Harrison Utility.

Mr. Schweitzer, representative with Community First Credit Union, stated that the screening around the mechanicals will be accomplished with landscaping keeping safety and security in mind.

Commissioners discussed the stormwater and photometric plans and concluded that both fall within required standards.

Motion by Ald. Benner, seconded by DPW Radomski to recommend approval of the Certified Survey Map as presented for the lot consolidation and reconfiguration of parcel numbers 7-01700-07, 7-01700-08 and 7-01700-09. The motion carried.

Motion by Ald. Benner, seconded by Comm. Homan to approve the site plan for 670 Lake Park Road, Community First Credit Union with the following conditions:

1. Any and all outdoor mechanicals shall be screened from view with a wing wall, landscaping or a combination.
2. Prior to any building permits being issued a stormwater and site improvement agreement must be recorded for the development.

The motion carried.

2. Special Use Permit – 336 Chute Street

CDD Schroeder explained the request of the special use permit for 336 Chute Street is to convert the vacant first floor into three apartment units. The property being zoned C-2 Central Business District does require a special use permit when the principal use of the property is multifamily residential.

CDD Schroeder also stated that within the C-2 Central Business District, off-street parking is not required; however with the conversion to a multifamily use the property would be required to have a minimum of 10 on-site parking stalls. The plan submitted allows for 9 on-site stalls in order to meet the transitional yard requirements. The applicant is working with the owners of the Hmoob Union Hall to secure the additional parking with a lease agreement. This would satisfy the requirement to secure off-site parking within 300 feet of the building. It was also noted that the parking lot cannot be brought into conformance due to the physical constraints of the existing site without increasing the degree of nonconformity.

Commissioners discussed the status of the parking agreement to which the applicant, Mr. Fletcher indicated an agreement had been signed earlier that day. Commissioners also discussed if an accessory ramp into the building would be required and if not, would the handicap parking stall be required. Mr. Fletcher indicated that these issues will be addressed through the State plan approval process.

It was also added that should said lease be voided in the future, the applicant/owner of the property could work with the City to secure parking permits within the Chute Street parking lot.

Motion by DPW Radomski, seconded by Ald. Benner to recommend approval of the special use permit as presented to allow for a 7-unit multi-family development at 336 Chute Street, with the following conditions:

1. Prior to the issuance of building permits, a site improvement agreement must be recorded.
2. Should parking issues arise, the property owner shall work with the Community Development Department to secure one additional off-site parking stall.

The motion carried.
3. **Certified Survey Map and Site Plan Review – 1737 Racine Road – Sunshine Real Estate, LLP**

CDD Schroeder described the request for the Certified Survey Map (CSM) submitted by Miron Construction for the lot consolidation for parcels 4-00762-02, 4-00762-03 and 4-00762-05 on Racine Road. The purpose of the lot consolidation is to eliminate internal lot lines which will allow for the construction of a crane maintenance shop. The parcels are zoned I-1 Heavy Industrial and the newly created parcel meets the standards outlined within that district, will not create any zoning nonconformities and is consistent with the City’s Comprehensive Plan.

A site plan was submitted along with the CSM for the construction of a new crane maintenance shop which will include office and storage space. Also incorporated with the site plan is a large stormwater pond, expansion of the current access, hard surfacing of the internal drive with gravel proposed for the parking areas. The applicant is proposing gravel in these areas due to the low traffic volume and concern that the large equipment could damage any hard surface installed. The applicant has proposed the use of a treatment for the gravel areas to control any dust issues.

Proposed for the maintenance shop portion of the building are precast panels with an exposed aggregate finish while the office portion will consist completely of brick veneer. The I-1 Heavy Industrial zoning requires the lower 1/3 of the building to be brick or natural stone. The building will be 120 feet from the right-of-way with the stormwater pond located between the two. Staff believes the intent of the code is being met with the office have a solid brick veneer façade and additional plantings along the west portion of the building. There will also be a screened dumpster enclosure with additional plantings located south of the building.

The submitted lighting plan shows three full cutoff wall pack fixtures in addition to one existing 3-fixture light pole. The photometric plan fails to show the existing 3-fixture light pole in the point-to-point calculations and there is a spot with no lighting proposed within the parking/traffic circle.

The stormwater plan has been reviewed by Public Works staff and no major issues or concerns were noted.

Commissioners discussed the possibility of paving the areas proposed as gravel in place of the proposed treatment, realigning the parking and dumpster location to a paved area and orientation of the building. Mr. Klosterman with Miron Construction answered questions from the Commissioners regarding the paving, moving of the parking and dumpster locations and the orientation of the building.

Motion by DPW Radomski, seconded by Comm. Cruickshank to approve the Certified Survey Map as presented allowing the lot combination of parcels 4-00762-02, 4-00762-03 and 4-00762-05. The motion carried.

No action was taken on the proposed site plan. It was requested that the site plan be resubmitted showing changes to the paving, relocation of the parking and dumpster locations to be directly accessible through the pavement, in addition to updating the lighting plan.

4. **Downtown Vision Plan**

CDD Schroeder indicated that the recommendation to approve the plan by the Plan Commission at their January 9th meeting was brought before the Common Council on February 19th.

*DPW Radomski excused himself from the meeting at 5:00 p.m.*

The consultant had prepared a memorandum to address concerns brought up at the Plan Commission meeting as well as concerns that had come forward prior to the Common Council acting on the plan. These included addressing the concerns about eminent domain or forcing businesses to leave the downtown, changes to the land use policies and removing the designated future land use of Sonoco and Coveris from the future land use map. The Common Council had discussion regarding approving the plan that had changes made to without it coming back to Plan Commission for approval of the proposed changes.
Commissioners and staff had a lengthy discussion regarding the proposed changes to the plan which included:

- The use of the word “policy” in the plan
- Viewing the plan as a ten year plan, not as an ordinance
- Viewing the number of residential units proposed and the impact these could have on schools
- How the plan relates to the comprehensive plan and how required amendments to the comprehensive plan would occur
- Changes to the future land use map

Motion by Comm. Homan, seconded by Comm. Cruickshank to approve the Downtown Vision Plan as an advisory plan for future development with the following changes:

1. Remove the designated future land uses of Sonoco and Coveris from the future land use map.
2. The addition of a preface to the plan and modifying two of the Land Use Polices as outlined in the consultant Memorandum dated February 5, 2018.
3. Changing the word “policy” to “guideline” within the Land Use Principles.

The motion carried.

F. COMMUNICATION

1. Set Next Meeting Date
   The next Plan Commission meeting has been set for Tuesday, March 20, 2018 at 3:30 PM to bring back the requested changes for Miron’s proposed Crane Maintenance Building.

G. ADJOURNMENT

   Motion by Comm. Cruickshank, seconded by Mayor Merkes to adjourn at 5:30 PM. The motion carried.

Minutes respectfully submitted by CDC Heim.
Commission President Allwardt called the Regular Meeting of the Water and Light Commission to order at 8:00 a.m., with Commissioners Roy Kordus, Antoine Tines, and Gary Turchan present on roll call. Also present were Melanie Krause, General Manager; William Menting, Electric Manager; Adam Smith, Water Utility Manager; Kristin Hubertus, Finance Manager; Steve Grenell, Engineering Manager, David Christensen, Engineering Technician; John Teale, Technical Services Engineer; and Dawn Lucier, Administrative and Accounting Assistant. Also present was Don Voogt, of McMahon.

Those excused were Commissioner Don Merkes and Paula Maurer, Customer Service Manager.

Item II. No one from the Gallery requested to be heard on any topic of public concern to the Utility.

Item III. Motion made by Comm. Kordus, seconded by Comm. Turchan, was unanimous on roll call to approve the following:

B. Approve and warrant payments summarized by checks dated February 1-28, 2018, which includes Net Payroll Voucher Checks, and Operation and Maintenance Voucher Checks for a total of $875,173.98, and Operation and Maintenance Vouchers and Rebates to be paid prior to the next Regular Meeting. Motion approved unanimously on roll call
C. Correspondence as listed: Copy of Safe Drinking Water Loan Program 2018 Final Funding List.
Copy of Safe Drinking Water Loan Program 2019 Project Priority List.
Copy of letter dated February 6 from State of Wisconsin Department of Natural Resources RE: Safe Drinking Water Loan Program LSL year 2.
Copy of Memorandum dated February 1 from Donald Merkes, Mayor, to the Common council RE: Board of Commissioners of Public Lands / State Trust Fund Loans.
Copy of letter dated January 29 from State of Wisconsin Department of Natural Resources RE: Water main extension approval.
Copy of letter dated January 29 from Community Clothes Closet RE: Thank you.
Copy of card from the Boys’ & Girls’ Brigade Christmas Giving Program Recipient Re: Thank you.
Copy of February 2018 MU Employee Newsletter.

Item IV. Claims Against the Utility – After discussion, the motion by Comm. Allwardt, seconded by Comm. Kordus, was unanimously approved to issue a formal notice of disallowance for the claim of Steven Schotten, 744 Lakecrest Drive, and that he be advised of his statutory rights pursuant to Wis. Statue §893.80.
Item V. A revised list of purchase orders over $10,000.00, issued since the last Commission meeting, was distributed for informational purposes.

Item VI. Unfinished Business, Intake/Basin Project – Don Voogt of McMahon updated the commission regarding acquiring approvals for the project. The Drinking Water division of the DNR has granted approval of the project with the addition of a breakwater extension, however, other divisions of the DNR are questioning the extension; a revised request for a variance will be submitted. Staff is also considering basin sediment disposal options.

Mr. Voogt departed at 8:14 a.m.

Electric Rate Case – The PSC approved a rate decrease of 2.14% which is expected to be effective March or April 1st. Schedules have been created to help with understanding the financial impact of the decision and a rate case is proposed to be filed by the end of this year in order to recover capital expenditures.

Water Rate Case – An application with the PSC to increase water rates has been filed with an overall rate increase of 6%. A customer water bill comparison with present and proposed rates was included in the packet and a telephonic public hearing is scheduled for April 10th, 2018 at 10:00 a.m.

Item VII. New Business, 2018 Main Replacements Broad St. & First St. Project Bid Opening – Staff reviewed the bid opening held on January 25, 2018 which is a joint project between Menasha Utilities and the City of Menasha. Eight bids were received with Donald Hietpas & Sons, Inc. being the low bidder at $458,436. Notices will be sent out to customers affected by this project and will include information on the Lead Ordinance.

The motion by Comm. Allwardt, seconded by Comm. Turchan, was unanimous on roll call to award the bid for the 2018 Main Replacements Broad St. & First St. Project to Donald Hietpas & Sons, Inc. in the amount of $458,436. The Commission also recommended the award to be forwarded to the Common Council for approval.

Safety Manual, Gloving Guidelines Revision – Staff is looking to follow the MEUW gloving guidelines and add it as an addendum to the APPA safety manual. This change follows OSHA requirements and training on using minimum approach distance, when workers are required to wear rubber gloves, will take place annually.

The motion by Comm. Allwardt, seconded by Comm. Kordus, was unanimous to approve following the MEUW gloving guidelines and approve the addendum.

Out of State Travel – Adam Smith, Water Utility Manager, requested authorization to attend the American Water Works Association ACE 18 conference. The estimated costs were discussed.

The Commission asked to have an estimated breakdown of travel expenses supplied for future travel requests.
The motion by Comm. Allwardt, seconded by Comm. Kordus, was unanimous on roll call to approve Adam Smith’s travel request to attend the American Water Works Association ACE 18 conference in Las Vegas Nevada from June 11th until June 14th, 2018.

WE Acquisition Deerfield – A written plan was included in the packet which outlines the four construction phases and estimated costs for the project. The next step will be to send letters to customers affected and obtain PSC approval.

Commissioner Tines departed at 9 a.m.

Replace Feeder 13-5-3 – Cable testing has confirmed a fault on the C-phase conductor of an underground feeder cable which staff has determined should be replaced. The estimated cost is $150,000 and is covered in the revised budget.

The motion by Comm. Kordus, seconded by Comm. Allwardt, was unanimous on roll call to approve of reallocation of funds for the 13-5-3 feeder along with the budget adjustments for 2018 as outlined in the Electric Rate Case memo.

Item VIII. Strategic Reports, Monthly Strategic Initiative Update – The January report was discussed.

December & January Financial and Project Status Reports – The December financials are an unaudited version; the 2017 audited financials will be presented at the March Commission meeting. For the month of December, electric consumption was 1.2% higher than budget; Net Operating Income was 17% higher than budget; and the SCADA and Historian Upgrade amount on the electric Project Status report shown as $42,000 carried forward was adjusted to $20,000.

December water consumption was 8.8% higher than budget; system losses for the year were within our target loss ratio goal; and year-to-date Net Operating Income was 28.4% higher than budget due mainly to lower operation and maintenance expenses.

Completed 2017 projects for Electric and Water have been closed and unfinished projects have been transferred to the 2018 project status report.

January Net Operating Income was $271,636 higher than budget due mainly to a 4.2% higher than budget electric consumption and 4.1% lower than budget cost of power. Net Cash Balance was updated to include Working Capital balance and number of days of working capital.

Water consumption for January was 13.4% higher than budget with industrial customer class taking nearly 33% more than anticipated which resulted in higher Net Operating Income.

Telecommunications cash balance is higher due to the timing of receivables being paid in January.

After discussion, the Commission accepted the December & January Financial and Project Status Reports as presented.
Project Reports, Water Projects – No additional information was presented.

Electric Projects – No additional information was presented.

Item IX. No one from the Gallery requested to be heard on any topic of public concern to the Utility.

Item X. The motion by Comm. Allwardt, seconded by Comm. Turchan, was unanimously approved on roll call to adjourn at 9:25 a.m.

By: MARK L. ALLWARDT
President

GARY TURCHAN
Secretary

NOTE: THESE MINUTES ARE NOT TO BE CONSIDERED OFFICIAL UNTIL ACTED UPON AT THE NEXT REGULAR MEETING, THEREFORE, ARE SUBJECT TO REVISION.
MEMORANDUM

To: Common Council  
From: Donald Merkes, Mayor  
Date: 5 March 2018  
RE: Diversity & Inclusion Training

At its June 16th 2017 meeting, the Personnel Committee passed a requirement that all regular employees and elected officials attend Anti-Harassment and Diversity Training. Since that time David Bailey from CVMIC was here in August conducting the Diversity & Inclusion training. The training was recorded and two sessions were scheduled in October for viewing. In addition, an option was made for people who could not attend a proctored in house viewing to watch the video on their own and answer a series of six questions.

At this time all regular full and part time employees as well as all elected officials have attended the training, watched a proctored video session, or completed the questions after watching the video.
Memorandum

To: Menasha City Council

From: Officer Dan Hoernke

Date: March 11th, 2018

Subject: Cheers Alcohol Compliance Program

You may recall that last year we had 12 of the 34 license holder establishments fail the alcohol compliance checks. In 2016 there were 5 violations and in 2015 there were 8 violations. We have been brainstorming ways to lower the number of violations and increase the voluntary compliance with the alcohol laws in the community.

We have decided to reintroduce the Cheers Alcohol Compliance Training Program to run in conjunction with our bi-annual alcohol compliance checks. We last did this training in 2012 and found it to be very successful. We will be working in conjunction with Autumn Linsmeier, program coordinator for the Winnebago County Health Department.

The purpose of the Cheers Program is to educate Menasha bartenders, clerks and liquor license holders on several factors surrounding the sales of alcohol. Attendees of the Cheers Program will be educated on the health risks of alcohol consumption, identifying intoxicated individuals to prevent over serving and identifying fake or altered IDs. The program will be presented utilizing Power Point which will conclude with a refresher on City of Menasha ordinances and state statutes that govern the sale and serving of alcoholic beverages. Our goal is to reduce the number of violations and try to ensure that alcohol is being served in a legal and responsible manner.

The Police Department intends on offering the Cheers Program before the compliance checks in 2018. We would also like to explore the option in the future to allow license holders who are found to have served a minor during a compliance check to have the option to attend a Cheers Class as alternative to paying the summons. Our vision would be that if the person successfully completes the course then the ticket would get dismissed, so no fine would be paid or demerit points assessed to the establishment.

Please let Chief Styka or I know if you have any questions.
YOU ARE INVITED!

On the Board of Public Works Agenda for March 19th, 2018 is the final payment to Keller Construction for the evidence processing and storage areas at the Police Department. As a result, we would like to invite the Menasha Public Officials and Members of the Community to view the work that was done at the building prior to the Monday night meetings.

We will have people available to give you a quick tour of the updates from 4:30pm until 5:30pm on March 19th.

Thank you again for your support. We hope to see you on the 19th.

Chief Tim Styka
MEMORANDUM

To: City of Menasha Common Council

From: Nancy McKenney, Public Health Director
      Tim Styka, Police Chief

Date: March 15, 2018

RE: Winnebago County Overdose Fatality Review Program

The purpose of this Memo is to inform the Common Council that the City of Menasha Police and Health Departments are participating in the newly formed Winnebago County Overdose Fatality Review Program, at no cost to the City.

In October of 2017, as a result of the consequences of the opioid crisis affecting our Nation, the United States Department of Health and Human Services declared a nationwide public health emergency.

In September of 2016, the State Health Officer, Wisconsin Department of Health Services issued a health advisory to inform the public of the alarming statistics of the current opioid epidemic in Wisconsin.

“The number of Wisconsin citizens who die as a result of drug overdose now exceeds the number of those who die from motor vehicle crashes, as well as suicide, breast cancer, colon cancer, firearms, influenza, or HIV. Opioid-related overdose deaths more than tripled in Wisconsin from 194 deaths in 2003 to 622 deaths in 2014. They are now a leading cause of injury deaths in Wisconsin. Prescription opioid pain relievers such as oxycodone, hydrocodone, and methadone contributed to about one half of the total drug overdose deaths, and heroin contributes to about one-third. Opioid abuse and drug overdoses have a devastating impact on individuals, families, and communities in our state. Wisconsin must acknowledge this impact and work together to address this public health epidemic.”

The Menasha Police and Health Departments, have first-hand knowledge of the devastating effects of substance abuse, drug overdose and deaths. Both Departments have been engaged in national, state and local efforts to address substance abuse and reduce overdoses and deaths.

As City Departments with responsibility to promote and protect public health and safety, we supported a successful Wisconsin Department of Justice (DOJ) application to establish the Winnebago County Overdose Fatality Review Program. Through a highly selective grant process the agencies in Winnebago County were selected to receive funding for the program. The Overdose Fatality Review Program aims to identify the circumstances that ultimately led to a drug overdose death. The outcomes of the reviews will be the identification of preventable overdose deaths and recommendations for interventions and prevention.
Menasha Police and Health Departments will be represented on the multi-agency, multi-professional overdose fatality review team. Information will be shared with the WI DOJ and Centers for Disease Control and Prevention. It is important to learn all we can to address this public health emergency.
A. CALL TO ORDER
   Meeting called to order by Mayor Merkes at 6 pm

B. PLEDGE OF ALLEGIANCE
   The Pledge of Allegiance was recited.

C. ROLL CALL/EXCUSED ABSENCES
   Present: Ald. Nichols, Taylor, Sevenich, Collier, Krueger, Zelinski, Grade, & Benner
   Excused:
   Also Present: Mayor Merkes, CA Captain, PC Styka, FC Kloehn, PRD Tungate, PHD McKenney, ASD Jacobs, DPW Radomski, CDD Schroeder, Deputy Clerk Cheslock

D. PUBLIC HEARING

E. PUBLIC COMMENTS ON ANY MATTER OF CONCERN TO THE CITY
   1. Soroosh Werner Karamyar—415 S Olde Oneida St, Appleton—Owner of Fox River Kayak Company—Shared information regarding first year of Kayak Company open in Menasha; excited to answer questions regarding the lease on the agenda.
   2. Chris Evenson—523 Broad St.—comments regarding R-15-17; Racine Street Bridge reconstruction/repair; suggests independently investigating the 30 ton weight limit put on the bridge by the DOT.
   3. Sandra Dabill-Taylor—545 Broad St.—comments regarding Protocol Committee’s focus, open meetings law, how the consent agenda is used, how department heads are hired/appointed, Housing Authority, IT Steering Committee, Mayor’s Facebook page, Kayak Company Lease, and televising of Council meetings

F. REPORT OF DEPARTMENT HEADS/STAFF/CONSULTANTS
   1. Clerk Galeazzi - the following minutes and communications have been received and placed on file:
      Minutes to receive:
      a. Administration Committee, 2/19/2018
      b. Board of Public Works, 2/19/2018
      c. Landmarks Commission, 2/14/2018
      d. Neenah Menasha Sewerage Commission, 1/23/2018
      e. Park and Recreation Board, 1/9/2018
      Communications:
      f. City of Menasha Foundation Drain and Sump Pump Inspections (Second Letter)
      g. Spring Primary Election Results, 2/20/2018
      h. Recommendation for Award Memorandum, 2/28/2018, Melanie Krause MUGM
      i. 2018 CDBG Small Cities Non-Regional Housing Grant Memorandum, 3/5/2018, CDD Schroeder

   Moved by Ald. Sevenich seconded by Ald. Collier to receive Minutes and Communications a-i. Motion carried on voice vote.
G. CONSENT AGENDA
Minutes to approve:
1. Common Council, 2/19/2018
   Board of Public Works, 2/19/2018, Recommends the Approval of:
2. Recommendation to Award – Contract Unit 2018-01; City of Menasha New Concrete Street
   Construction Including Concrete Sidewalk and Street Lighting – Main Street from Tayco
   Street to 300’ East of Mill Street; Vinton Construction Company; $666,817.64
3. Recommendation to Award – Contract No. M0002-9-17-00839; 2018 Water Main &
   Sanitary Sewer Reconstruction – First Street Water Main, Broad Street Water Main and
   Broad Street Water Main & Sanitary Sewer; Donald Hietpas & Sons, Inc.; $552,864.15
   (Menasha Utilities & City of Menasha)
Ald. Sevenich requested to remove item 2 & 3
Moved by Ald. Sevenich seconded by Ald. Krueger to approve Consent Agenda Items 1
Motion carried on roll call 8-0

H. ITEMS REMOVED FROM THE CONSENT AGENDA
1. Moved by Ald. Taylor seconded by Ald. Krueger to approve Consent Agenda Item 2
   General discussion ensued on decision made by Board of Public Works, increased pricing if
   delayed in replacing lamp poles.

   Moved by Ald. Benner seconded by Ald. Collier to table until we have the necessary
   information to make a decision.
   Motion to table fails on roll call 4-4; Ald. Collier, Zelinski, Grade, and Benner voted yes; Ald.
   Nichols, Taylor, Sevenich, and Krueger voted no. Mayor voted no to break tie.

   General discussion ensued on Downtown merchants and residents expecting this construction
   to occur this summer, delays putting the whole project in jeopardy; whether or not we plan to
   replace the light poles; when the work is set to begin and what a delay will do to the timeline,
   the impact to special events and downtown activities if there is a delay,

   CA Captain reminded Council that what is on the agenda tonight is accepting the bid or not. If
   the project changes it will have to go back through the bid process

   General discussion ensued on the long term plans for downtown construction, whether or not
   the City has the equipment required for the project, retrofitting the light poles, and clarification
   on what the plan has in place.

   Motion carried on roll call 6-2. Ald. Collier and Benner voted no.

2. Moved by Ald. Taylor seconded by Ald. Collier to approve Consent Agenda Item 3
   General discussion ensued on if this is a mandatory replacement and funding assistance for
   residents.
   Motion carried on roll call 8-0

I. ACTION ITEMS
1. Accounts payable and payroll for the term of 2/22/2018—3/1/2018 in the amount of $1,582,000.89
   Moved by Ald. Krueger seconded by Ald. Grade to approve Accounts payable and payroll for the term of 2/22/2018—3/1/2018 in the amount of $1,582,000.89
   Motion carried on roll call 8-0

   Moved by Ald. Krueger seconded by Ald. Collier to approve Beverage operator’s license applications for the 2017-2019 licensing period as outlined in memorandum dated 2/28/2018

   Motion carried on roll call 8-0

   Police Department recommends denying beverage operator's license application of Steven Sager due to not meeting the criteria under the Guidelines for Operator Licenses approved by the Common Council.

   CA Captain reviewed the application and because the felony was from 27 years ago she recommends not taking the felony into account when review the application.

   Moved by Ald. Krueger seconded by Ald. Sevenich to approve beverage operator's license application for the 2017-2019 licensing year of Steven Sager
   Motion carried on roll call 8-0

3. Appeal of 2017 Wrongful Property Tax, Parcel #6-00648-00, Madison Pentecostal Assembly Inc.
   Moved by Ald. Krueger seconded by Ald. Grade to approve Appeal of 2017 Wrongful Property Tax, Parcel #6-00648-00, Madison Pentecostal Assembly Inc.

   Captain explained that new information was found since the appeal was filed that the church did operate into the calendar year of 2017.

   Motion carried on roll call 8-0

4. Fox River Kayak Company Lease
   General discussion ensued about why this lease is on the agenda again, what the owner is looking for in a lease, what this lease would do to the current permitting process in place for the property,

   Unanimous consent requested to hear from the owner; Not given. Ald. Zelinski said no.

   Roll Call Vote to hear from Owner of the Kayak Company—Soroosh Werner Karamyar Passes 5-3; Ald. Collier, Zelinski, and Grade voted no

   Mr. Werner Karamyar stated he is looking for a stable relationship with the City, which the permit does not give him; is concerned about the 50% increase in fee from year one to two; wants to set a solid foundation going forward.
General discussion ensued on history of the issue and how many boards and committees the issue of leasing or permitting the building has come before.

Moved by Ald. Krueger seconded by Ald. Zelinski to postpone indefinitely.

Ald. Sevenich called Point of Order—questioning what lease is being voted on.

General discussion ensued on what it means for a business to build a foundation in Menasha, the other business and economic development brought to the City due to this business, and whether or not a final decision had already been made by the Council.

Ald. Krueger called Point of Order—this discussion should be about the postponement.

Mayor agreed and general discussion ensued on what happens if this is postponed indefinitely, this lease overriding the current permit if it is passed, the ability to sublease the space, and length of current permit.

Motion carried on roll call 6-2; Ald. Benner and Nichols voted no.

5. Owner Request City Purchase of 995 Brighton Drive, Menasha

CA Captain explained why it is on the agenda and a brief history of the property and the current owner’s desire for the City to purchase it. She asked that the Council Postpone item until necessary information is received.

Moved by Ald. Krueger seconded by Ald. Nichols to postpone until next meeting

General discussion ensued on the property being removed from the Jefferson Park Vision Plan and why the city would purchase the property as it is not usable to the city.

Motion carried on roll call 6-2; Ald. Grade and Zelinski voted no

J. HELD OVER BUSINESS

K. ORDINANCES AND RESOLUTIONS

1. O-2-18 Substitute Amendment to An Ordinance Amending Title 2, Chapter 4 of the Code of Ordinances (Library Board) (Recommended by Administration Committee; Introduced by Ald. Nichols).

Moved by Ald. Nichols seconded by Ald. Krueger to approve O-2-18

Motion carried on roll call 8-0

2. O-3-18 An Ordinance Creating Title 11, Chapter 4, Section 2 of the Code of Ordinances (Sexting) (Recommended by Administration Committee; Introduced by Ald. Sevenich).

Moved by Ald. Sevenich seconded by Ald. Krueger to approve O-3-18

Motion carried on roll call 8-0
3. R-4-18 A Resolution Authorizing the Execution and Delivery of Documents Relating to the Fox Cities Exhibition Center Project (Introduced by Mayor Merkes)

ASD Jacobs discussed the financing on the project and the communities involved; Appleton’s part of the process and the reimbursement they may ask for; and explained the time restraints on the vote.

Mayor shared the suggested motion: Motion to approve R-4-18 Authorizing the execution and delivery of documents related to the Fox Cities Exhibition Center project. The issuance shall not include $803,130 reimbursement costs requested by the City of Appleton for; Phase IV legal fees, Phase V legal fees, financial advisor fees, and accrued lost interest.

General discussion ensued on the history of this issue, not paying for the actions Appleton took, presenting a united front to Appleton, Appleton’s lack of response to the other communities, the possibility of having a special meeting after other communities have taken action,

Mayor stated he will not sign the resolution until Grand Chute and other major players have passed this and would prefer to pass this and not have a special meeting.

Moved by Ald. Sevenich seconded by Ald. Grade to approve R-4-18 Authorizing the execution and delivery of documents related to the Fox Cities Exhibition Center project. The issuance shall not include $803,130 reimbursement costs requested by the City of Appleton for; Phase IV legal fees, Phase V legal fees, financial advisor fees, and accrued lost interest.

Motion carried on roll call 8-0

L. APPOINTMENTS

M. CLAIMS AGAINST THE CITY

N. PUBLIC COMMENTS ON ANY MATTER LISTED ON THE AGENDA

1. Sandra Dabill-Taylor—545 Broad St.—comments on wording of items on the agenda, open meetings law, and the Kayak Company Lease.

O. ADJOURNMENT

Moved by Ald. Krueger seconded by Ald. Collier to adjourn at 7:56pm

Motion carried on voice vote.

Stephanie Cheslock, Deputy Clerk
Memorandum

Date: March 1, 2018

To: Board of Public Works

From: Joshua Radomski – Public Works Director

RE: Storm Water Action Plan

Background

The City of Menasha has storm water facilities which operate under a Municipal Separate Storm Sewer System (MS4) permit through the Wisconsin Department of Natural Resources. As part of the permit process, the permit needs to be renewed every 5 years. The permit needs to be approved by Council before March 31, 2018 so that we can submit it to the DNR. Penalties for operating a MS4 system without a permit can be up to $1,000 per day.

In addition to the MS4 permit renewal, the City of Menasha falls within the Lower Fox Valley Watershed. The Lower Fox Valley Watershed was analyzed by the Environmental Protection Agency in 2012 and was determined to require a reduction of 72.2% of the Total Suspended Solids and a 40.5% reduction in the Total Phosphorous that is discharged into the Lower Fox River. As part of this EPA study, it is mandated that the City of Menasha and all other municipalities within the Lower Fox River Valley Watershed, develop a Storm Water Action Plan to develop a strategy towards meeting these goals in the future. An approved Storm Water Action Plan is also due on March 31, 2018 with the permit submittal.

The Council has previously approved the Storm Water Management Plan by McMahon and was informed of the Storm Water Action Plan requirement on March 7, 2016. During the Storm Water Action Plan Workshop held on February 28, 2018 there was a lot of good discussion and it was determined that the 25-year CIP plan should be brought forth for approval. The 25 year CIP outlines the approximate pond locations that we plan on constructing over the next 25 years, along with the timing that each pond will be constructed. The final design of each pond has not been determined at this time and will take into account the various social and economic concerns that may be present at the time. In addition, the plan does recommend that the Storm Water fee be adjusted by 7.5% every 5 years starting in 2020. This will require Council Action at that time to adjust the storm water rates. It should also be noted that this is a “living” plan where opportunities may present themselves that are currently not on our radar. We intend on bringing this Action Plan to Council a minimum of 1 time per year and the plan be included when the Comprehensive Plan is updated each year.

Recommendation

Staff recommends approval of the 25-year Capital Improvement Program for our Storm Water Action Plan.

Certificate of Payment

Date: February 28, 2018
Payment Request: 4 (four)

Contractor: Phifer Bros. Construction Co. Inc.
Address: 599 Bondow Drive, Neenah, WI 54956

Contract Unit No.: Unit No. 2017-04
Project: Fox River "Loop the Lake" Bridge Crossings

Original Contract Amount: $1,374,547.10

Change Order No.: Amount $ 

Previous Change Order(s): No.'s 1, 2 & 3 Amount $ 16,904.27

Total Contract Amount (Including Change Orders) $1,391,451.37
Total Earned to Date (Summary Attached) $895,499.56
Less Retainage $34,786.28
Amount Due $154,257.00
Previous Payments $741,242.56
Amount Due this Payment $154,257.00

Estimate Period from January 31, 2018 - February 28, 2018

I certify that all invoices for labor, equipment, materials and services are paid for which previous Certificates of Payment were issued.

By: ________________________________ Date: ______________________________

Lien Waivers from all subcontractors and suppliers shall accompany each Request for Payment. Affidavit of Compliance with Prevailing Wage Rates shall accompany Request for Final Payment.

Recommended for Payment

Director of Public Works: ________________________________ Date: ______________________________

Common Council Approval Date: ________________________________

Finance Department

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Updated December 2017
APPLICATION FOR PAYMENT

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</table>

CONTRACTOR’S CERTIFICATION

The undersigned Contractor certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise installed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interests or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By: ____________________________ Date: 2/28/2018

Loop the Lake Crossing-Menasha

1. ORIGINAL CONTRACT PRICE ........... $ 1,374,547.80
2. Net change by Change Orders ....... $ 16,004.27
3. CURRENT CONTRACT PRICE (Line 1 + 2) ....... $ 1,390,552.07
4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate) ........... $ 930,265.64
5. RETAINAGE:
   - 5% x work complete $ 432,809.67 $ 21,640.43
   - 5% x stored materials $ 252,916.01 $ 13,148.00
   - Total Retainage (Line 5a + Line 5b) ........... $ 34,788.65
6. AMOUNT ENSUBILE TO DATE (Line 4 - Line 5c) ........... $ 895,463.42
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application) ........... $ 741,243.58
8. AMOUNT DUE THIS APPLICATION ........... $ 154,219.84
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 9 above) ........... $ 494,951.51

Payment of: $ 154,219.84

is recommended by: ____________________________
Date: 2/28/18

Approved by: ____________________________
Date: 

Funding Agency (if applicable) ____________________________
Date: 

Page 1 of 2
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Contract $1,274,547.10 $790,295.93 $500,253.57 $241,165.53
Change Orders $19,904.27 $19,904.27
Current Contract $1,294,451.37 $1,294,451.37
Contract Due $150,000.00 $150,000.00
Contract Remaining $481,165.53 $481,165.53
Memorandum

Date: March 1, 2018

To: Board of Public Works

From: Joshua Radomski – Public Works Director

RE: Public Works Facility Architecture and Construction Management Award
Contract Unit No. 2018-03

On January 29, 2018 the Department of Public Works issued a Request for Proposal (RFP) for Architecture and Construction Management of the new Public Works maintenance facility, woodshop, sign shop and offices, as part of Phase I of the new Public Works Facility included in the 2018 budget. Three bidders submitted proposals for the work and were evaluated based on the experience of the architect with designing public works garage facilities, construction management team experience, and civil/environmental team experience. The three bidders were McMahon and Associates (both construction management and design), Barrientos Design & Consulting, and Gries Architecture with Miron Construction.

The architect/construction management team was required to submit two separate proposals, one a technical proposal which described the past experience of the architect, construction manager, engineering and geotechnical firms as well as the key players with respect to the architecture and construction management. A second separate proposal was submitted for the compensation for the work.

A team of six individuals (Don Merkes, Vince Maas, Brian Tungate, Adam Alix, Thad Brown and myself) met to discuss the technical proposals to determine the best fit for this project. Due to the complexity of designing a new maintenance shop, we felt that overall experience with garage and maintenance facilities was extremely important in considering the architect/construction management team. There were two submittals (Barrientos and Gries/Miron) that showcased numerous garage and maintenance facilities, whereas the third proposal (McMahon) did not include any maintenance facility or garage projects within their proposal. The projects that the McMahon proposal submitted included administrative complexes, village hall complexes, corporate office facilities and industrial manufacturing projects. Due to the lack of experience with large scale garages and maintenance facilities, we unanimously selected that Barrientos and Gries/Miron would come in for an interview.

During the interview process, both firms provided excellent examples of municipal garage and maintenance facilities that they have been involved in the design process or construction. The deciding factor was that Barrientos did not have a construction management team on board at this time. In addition, the architectural fees for Gries/Miron were $17,500 less than Barrientos. The interview team consisting of the same individuals unanimously selected the team of Gries Architecture and Miron Construction for this work.
The overall fees for this project are:

Architectural $138,500  
Construction Management $ 64,000  
Estimated Reimbursable Costs $ 10,000  
Survey Work $ 7,200  
Environmental Work $ 7,800  
Geotechnical $ 8,500  

Project Total $236,000

**Recommendation**
Staff recommends that the Council approve awarding the architectural design and construction management services to the team of Gries Architecture and Miron Construction for a total project cost of $236,000.
1. Lump Sum Fee (not including reimbursable fees) for architectural/construction management services and estimate for reimbursable fees.

<table>
<thead>
<tr>
<th>Lump Sum Fee - Architectural &amp; Construction Management</th>
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<tbody>
<tr>
<td>Architectural (with Structural, MEP/FP, Civil)</td>
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<tr>
<td>Construction Management Services</td>
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<tr>
<td>Total Cost</td>
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<td>Estimated Reimbursables (Architectural)</td>
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2. The name and lump sum cost for the engineer and surveyor.

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<thead>
<tr>
<th>Lump Sum Fee - Consultants</th>
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<tr>
<td>Point of Beginning</td>
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<tr>
<td>Survey</td>
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<td>Environmental</td>
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<th>ECS</th>
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<tbody>
<tr>
<td>Geotechnical</td>
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3. The hourly rates of each of the billable personnel for this project.

<table>
<thead>
<tr>
<th>Hourly Rates</th>
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<tbody>
<tr>
<td>In that this proposal is a lump sum fee, hourly rates of each of the billable personnel for this project are not applicable, but can be provided as necessary if additional services are authorized to be provided.</td>
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</tbody>
</table>
COMPENSATION PROPOSAL

4. Personnel proposal as described in the Project Staffing Requirements.

Project Personnel

We have assembled a strong team to work on the City of Menasha Public Works Facility project. Our Project Architect, Mark Keating, has been involved with this project for a decade, and brings expertise and understanding of all phases of facility design and construction. Our Senior Project Manager, Paul Riederer, has overseen work on numerous public works facilities throughout his 28-year tenure with Miron. He has also had involvement with this project for a number of years, assisting with conceptual estimates. All personnel assigned to this project are considered part-time. Please see our organizational chart below as well as resumes for key personnel on the following pages.
Experience Summaries

Stephen Gries, AIA  
Chief Architect/Chairman of the Board  
As president and founding principal of Gries Architectural Group, Steve will be responsible for overall client relations, project planning, site evaluation studies, coordination of project teams and consultants, quality control, and contract administration. Steve will also attend team input sessions and play an active role in establishing a consensus on the overall design. Since establishing GAGI in 1983, Steve has led the firm’s success and shaped its reputation for exceptional client service and design excellence.

Steve brings over 35 years experience in the design and management of recreation, commercial, public safety, historical, municipal, industrial, and manufacturing facilities. He has extensive experience in construction supervision and construction administration.

Education  
Associates Degree in Architecture, Rice Lake Technical College, WI

Professional Registration  
Wisconsin, Colorado, Illinois, Michigan, Minnesota, Missouri

Affiliations  
• AIA (American Institute of Architects)  
• AIA - Wisconsin, Northeast Chapter  
• U.S. Green Building Council – Affiliate  
• Wisconsin Green Building Alliance

Mark Keating, AIA, LEED AP  
Senior Project Architect  
Mark has a solid understanding of project phases, master planning, programming, design documentation and construction administration. Proven abilities in collaborating with discipline team leaders as well as maintaining a high level of quality service to clients. His reputation for attention to detail ensures that construction documents are precise and thorough.

Mark has considerable experience and a strong understanding of value engineering concepts as they relate to architectural elements, structural and building components, scheduling and cost comparisons, feasibility analysis as well as performing detailed system reviews. He has served as project architect and/or project manager on projects throughout the United States and South America for the commercial, industrial, correctional and institutional, educational, municipal, research and development and health care sectors.

Education  
Bachelor of Science in Architectural Studies, University of Wisconsin, Milwaukee

Professional Registration  
Wisconsin  
LEED Accredited Professional

Affiliations  
• AIA (American Institute of Architects)  
• AIA - Wisconsin, Northeast Chapter  
• U.S. Green Building Council – Affiliate
COMPENSATION PROPOSAL

Senior Project Manager

Basis for Selection
Paul will use his 30+ years of experience to manage all project activities including preliminary planning, budget development, financial control, value engineering assessments, scheduling, coordination of construction activity, project closeout, and owner occupancy.

Paul is responsible for regular communication with the architectural team and owner regarding items related to budget, constructability, bidding, and schedule.

Education
- University of Wisconsin - Stout, Bachelor of Science - Industrial Technology and Building Construction
- AGC of Wisconsin Project Manager Course

LEED AP BD+C

Representative Projects
Calumet County Highway Facility
   Chilton, WI
   48,416 SF
   $7,366,012

Village of Little Chute Municipal Services Building
   Little Chute, WI
   68,086 SF
   $6,056,912

Neenah City Services Building
   Neenah, WI
   69,000 SF
   $3,575,000

Outagamie County Airport Snow Removal Equipment Building
   Greenville, WI
   $1,546,685

Brookfield Public Works Building
   Brookfield, WI
   72,500 SF
   $6,343,440

WI Operating Engineers Training Center Expansion
   Coloma, WI
   108,800 SF
   $4,060,154

Madison Water Utility Admin Bldg
   Madison, WI
   43,400 SF
   $5,899,355

Neenah-Menasha Fire Rescue, New Fire Station #36
   Menasha, WI
   7,910 SF
   $1,325,522
   Awarded Silver LEED Certification

References
Todd Romenesko - County Administrator
Calumet County
920.849.1448

James Fenlon - Village Administrator
Village of Little Chute
920.423.3850

Al Auxier - Fire Chief
Neenah-Menasha Fire Rescue
920.886.6203

Adam Alix - Deputy Director of Municipal Operations
City of Menasha
920.967.5102
COMPENSATION PROPOSAL

Theresa Lehman
LEED Fellow, LEED AP BD+C, ID+C, USGBC Faculty™, WELL AP
Director of Sustainable Services

Theresa has dedicated her entire career to sustainable practice, and working to "lead by example to demonstrate the benefits of the triple bottom line (people, planet and payback) through education, corporate culture and practical construction solutions."

Over the last 16 years, Theresa has worked on more than 80 projects seeking LEED certification utilizing many of the LEED green building rating systems. She has successfully led the LEED certification process for projects in the commercial, retail, healthcare, K-12 education, higher education, religious, manufacturing, industrial, and government markets that have successfully been awarded Certified, Silver, Gold and Platinum LEED certifications. Theresa is also a member of USGBC Faculty™ authorized to instruct various USGBC workshops throughout the world, as well as is an active member of USGBC, serving on numerous committees and involved in many working groups. Locally, she serves on the USGBC-Wisconsin Green Schools and Advocacy Committees, serves on the Wisconsin Environmental Education Board (WEEB), is an advisory board member for both Fox Valley Technical College’s Construction Management Program and UW-Stout’s Masters in Construction Management Program, and is on the Board of Directors for the Neenah-Menasha YMCA.

Dan Bayer
Director of Virtual Construction, LEED Green Associate

Dan Bayer leads Miron’s Virtual Construction team with 20 years of national industry experience in the areas of architecture, AEC software implementation, and education. He focuses on the communication, collaboration, and continuous improvement aspects of BIM with design partners, building owners, and subcontractors throughout the construction process, as well as the research/development of BIM technologies to optimize Miron’s Internal BIM processes. Dan regularly participates in Autodesk beta software development working directly with software product developers to identify successes and challenges within new product releases. In 2012/2013 Dan participated in seven beta development products, including the all-inclusive Revit Gunslinger event held in Manchester, NH where participants guide the future of the Revit software platform. Dan holds a degree in Architectural Studies from the School of Architecture and Urban Planning at the University of Wisconsin – Milwaukee. He is a Revit Certified Professional, LEED Green Associate, sits on the AIA Wisconsin board representing the Associate AIA members, is an Autodesk University speaker and an adjunct instructor for the Construction Management Technology program at Fox Valley Technical College (Appleton, WI).
COMPENSATION PROPOSAL

Steve Wilz
Director of Conceptual Estimating, LEED Green Associate

Steve Wilz develops quality estimates at conceptual and construction document levels; evaluates material and labor costs; selects, evaluates, and tabulates subcontractor estimates and materials; prepares final tabulations, bid submittals, and presentation of project costs to owners.

Steve will attend meetings and assist with detailed and open book estimates. He will explore a variety of building systems to establish an optimum design that meets budget expectations.

Steve was recently selected “Estimator of the Year” by The Daily Reporter as part of its 2016 Newsmakers of the Year awards program. Each year, The Daily Reporter selects individuals and organizations for their outstanding achievements in the construction industry, as well as their impacts on the building community.

Kevin Finnegan
Scheduling Manager, LEED Green Associate

Kevin facilitates all schedule-related activities with the project team, and communicates regularly with the project manager, superintendent, consultants and subcontractors to update and monitor all project schedules. Kevin is also responsible for the analysis, identification, and potential resolution of schedule issues.

Kevin Hildebrandt
Director of Risk Management, LEED Green Associate

Kevin brings 20+ years of construction risk control experience to Miron. His experience in construction covers all types of construction from large manufacturing projects, industrial outages/turn-arounds, heavy demolition and remodeling, to multi-story new construction. Kevin’s diverse experience with complex and high-risk operations make him an asset to our organization and to our customers. Kevin has regional responsibilities which include the coordination of pre-planning efforts for our superintendents and project managers. He is also involved in the management of our subcontractors and routinely participates in construction progress/coordination meetings. Kevin supervises the safe operation of our equipment, including our mobile crane erection and dismantling and critical-lift operations.
COMPENSATION PROPOSAL

City of Menasha Proposal Price Sheet
Architectural and Construction Management Services
Public Works Facility Phase I - Maintenance Shop, Sign and Woodworking Shop & Offices Project

Having carefully examined the site, being fully informed of the conditions to be met in the prosecution and completion of this work; having read and examined the project documents and drawings applicable to this work; the undersigned proposes to furnish all necessary labor, materials, and equipment to complete the services indicated in the scope of services described in the Project Specifications, including all incidentals, for the prices listed.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
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<td><strong>222,500.00</strong></td>
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Date: February 19, 2018

Firm: Miron Construction Co., Inc. and Gries Architectural Group

Signature: [Signature]
Title: President & CEO, Chief Architect

Address:
1471 McMahon Drive 500 North Commercial Street
Neenah, WI 54956 Neenah, WI 54956

Telephone: 920.969.7000 920.722.2445
Fax: 920.969.7383 920.722.6905

E-Mail Address: dave.voss@miron-construction.com sgrDies@gries.design
City of Menasha Proposal Price Sheet  
Architectural and Construction Management Services  
Public Works Facility Phase I - Maintenance Shop, Sign and Woodworking Shop & Offices Project

Having carefully examined the site; being fully informed of the conditions to be met in the prosecution and completion of this work; having read and examined the project documents and drawings applicable to this work; the undersigned proposes to furnish all necessary labor, materials, and equipment to complete the services indicated in the scope of services described in the Project Specifications, including all Incidentals, for the prices listed.

<table>
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<tr>
<th>ITEM</th>
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<th>Assumed Construction Costs $</th>
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<td>BASE PRICE</td>
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<td>UNIT PRICE</td>
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<td>1</td>
<td>Percent of Construction Cost for Architectural/Engineering Services. Construction cost definition will be consistent with the AIA contract document language. This includes for construction, CM fee, contingencies and Add Alternates whether accepted or not. Construction cost is to be established and set at the end of Design Development or the establishment of a GMP, whichever is first. Fee does not include any printing of plan sets, plan review or other governmental agency fees.</td>
<td>6.00% $</td>
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Total (Item 1)   

Reimbursable Consultants

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<td>Topographic Survey $ 10,000.00</td>
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<td>WDNR Environmental $ 9,000.00</td>
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<td>Total Reimbursable Consultants $ 27,000.00</td>
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Date: 15-Feb-18  
Firm: Barrientos Design & Consulting, Inc.  
Signature:  
Title: President  
Address: 205 W. Highland Avenue, Suite 303, Milwaukee, WI 53203  
Telephone: 44-271-1812  
Fax: 414-271-1840  
E-Mail Address: norman@barrientosdesign.com
## City of Menasha Proposal Price Sheet

### Architectural and Construction Management Services

**Public Works Facility Phase I - Maintenance Shop, Sign and Woodworking Shop & Offices Project**

Having carefully examined the site; being fully informed of the conditions to be met in the prosecution and completion of this work; having read and examined the project documents and drawings applicable to this work; the undersigned proposes to furnish all necessary labor, materials, and equipment to complete the services indicated in the scope of services described in the Project Specifications, including all incidentals, for the prices listed.

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<td>$126,100*</td>
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**Total (Item 1)**  

Date:  
February 19, 2018


Signature:  

Title: Vice President / Senior Architect

Address:  
1445 McMahon Road  
Neenah, WI 54956

Telephone:  
(920) 751-4200

Fax:  
(920) 751-4284

E-Mail Address:  
mmcMahon@mcmgrp.com

*McMAHON, Inc. Part 1 Agreement*
ATTACHMENT NO. 1

MCMAHON, INC. SCOPE OF SERVICES

Part 1 Preliminary Design Services, Including:

The City of Menasha intends to construct a new Public Works Facility in the City of Menasha in two phases. The first phase of the project which is the purpose proposal is to design and provide construction management for a new vehicle maintenance area and associated service bays, bulk fluids storage, parts storage, traffic and sign workshop area, wood workshop area and office space for supervisors and customer service. Phase 1 must be coordinated with the proposed Phase 2 of the project which will include heated parking space for vehicles, wash bay, parts storage, equipment and supplies storage and fueling station. Site facilities will include paved areas, parking, utilities, lighting and landscaping in addition to a public recyclables drop off site. The entire facility is estimated to be approximately 70,000 to 75,000 square feet on one level (Phase 1 = 21,500 – 24,500 sq. ft.; Phase 2 = 48,500 – 50,000 sq. ft.).

➤ Provide the following Deliverables to the Owner:
- Preliminary project design documents.
- Firm pricing for project construction, based on the preliminary design.
- A Part 2 Design-Build Agreement with project cost spreadsheet and project schedule.

Items Excluded From This Part 1 Agreement include, but are not limited to:

➤ Soil borings and geotechnical engineering services.
➤ Final design documents. These are provided under the Part 2 Agreement.
➤ Construction phase services. These are provided under the Part 2 Agreement.
Memorandum

Date: March 14, 2018

To: Common Council and Mayor Merkes

From: Josh Radomski – Public Works Director

RE: 133 Water Street

Background

In late 2016, Best Friends of Neenah-Menasha proposed repurposing the building at 133 Water Street as the Learning Harbor. The proposal envisioned opportunities for area youth to participate in classes, concession sales, boat rentals and to provide public restrooms. The City has been notified that the non-profit will not be able to meet the requirements in the development agreement and will not proceed forward with the project.

In December of 2017 and on February 5, 2018, a recommendation was brought to the Board of Public Works to utilize Department of Public Works personnel to remove the building and restore the site to a green condition in preparation for the 2020 reconstruction of Water Street. The Board of Public Works was informed that the building will need to be brought up to various IEBC codes in order to be reused. Based on estimates from a salvage contractor, the building is worth approximately $500 as scrap metal. The Board of Public Works took no action and recommended that the City should investigate the possibility of selling the building for a substantial sum of money. On February 19, 2018, a communication detailing this Request for Proposal was placed as a communication item on the agenda. The Request for Proposal allowed for negative bids if contractors felt there was significant value in the building. Per the request of the Chair, the Request for Proposal was not distributed and placed on the agenda as an action item. An additional suggestion to list the building on an online auction website was also explored.

On March 5, the Request for Proposal was brought to the Board of Public Works along with a secondary recommendation to list the building on the Wisconsin Online Surplus website. There were several motions that failed during the meeting until the final motion being approved was to allow Public Works personnel to remove the building and clean up the site.

Recommendation

The Board of Public Works recommends City Crews to demolish the building and restore the site.
Memorandum

TO: NMFR Joint Finance & Personnel Committee
FROM: Chief Kevin Kloehn
DATE: February 28, 2018
RE: Firefighter Vacancy

Jim Peglow’s promotion to Assistant Chief of Training has created a firefighter vacancy within our Department. His vacancy is a budgeted position and filling his position will be needed to maintain our current staffing levels.

Per Local 275’s contract, when a line staff member transfers from a union position to a non-union position they have a 30 days to familiarize themselves and transfer back to their union position within 31 days. Therefore, we cannot have a new person start until April 6th. Once an offer is made, the candidate will need to successfully pass pre-employment testing, give notice to their current employer and go through four weeks of recruit training before they can begin working 24-hour shifts. Therefore, we would like to make an offer to someone, on our hiring list, as soon as both Common Council’s approve replacing this vacancy with the contingency that they cannot begin employment until April 6th and is subject to Jim Peglow not returning to his line staff position. This would allow us to have both new employee begin their recruit training together.

An appropriate motion would be recommending the City of Neenah and City of Menasha Common Council’s authorize hiring one firefighter after April 6, 2018 and subject to Jim Peglow not returning to his line staff position.

If you have any questions, please feel free to call me at 886-6202. Thank you for your consideration.

KK/te
Memorandum

TO: Mayor Kaufert
    Mayor Merkes
    Menasha Common Council Members
    Neenah Common Council Members
    NMFR Joint Fire Commission Members

FROM: Chief Kevin Kloehn

DATE: February 27, 2018

RE: New Assistant Chief of Training

Our Department began the interview process to fill the vacant Assistant Chief of Training position two weeks ago. Of the 8 applicants who met the minimum qualifications, 3 were within the state of Wisconsin, and were interviewed. 2 finalists – one internal, and one external, were interviewed by the Fire Commission.

I’m pleased to announce NMFR Fire Officer Jim Peglow has accepted the position of Assistant Chief of Training and will begin his new position on Monday, March 5, 2018.

Jim began his career with the Neenah Fire Department 24 years ago and has held the positions of Firefighter, Shift Inspector, Driver and Fire Officer until his promotion to Assistant Chief. Jim has been involved in many different areas within our department. His most recent activities include coordination and training of our intern program along with involvement with our Safety Committee and working on our cancer prevention initiative.

Please join me in congratulating Assistant Chief Jim Peglow on his promotion!
MEMORANDUM

To: Common Council
From: Community Development Department/KH
Date: March 19, 2018
Re: CSM Lot Consolidation and Reconfiguration – Lake Park Road (Parcel # 7-01700-07, 7-01700-08 and 7-01700-09)

Community First Credit Union requests approval of a Certified Survey Map (CSM) for the consolidation and reconfiguration of three lots for construction of a new branch office. All lots are under the same ownership, currently all vacant and zoned C-1 General Commercial. The existing lots are located at the northwest corner of USH 10/STH 114 and Lake Park Road. This CSM as proposed would create two lots. The size, setback, and dimensional requirements for the proposed lots meet code standards for the C-1 General Commercial District. Furthermore, the proposed CSM will not create any zoning nonconformities and is consistent with the City of Menasha Comprehensive Plan.

At the March 6th Plan Commission meeting, staff recommended approval of the Certified Survey Map as presented. The Plan Commission recommended to approve the Certified Survey Map as presented for the lot consolidation and reconfiguration of parcel numbers 7-01700-07, 7-01700-08 and 7-01700-09.

RECOMMENDED MOTION: Approval of the Certified Survey Map by Community First Credit Union as presented for the lot consolidation and reconfiguration of parcels 4-00762-02, 4-00762-03 and 4-00762-05.
CERTIFIED SURVEY MAP NO. ______ SHEET 1 OF 3

ALL OF LOT 1 OF CERTIFIED SURVEY MAP No. 3586, AND ALL OF LOTS 7 AND 8, LAKE PARK VILLAS, BEING PART OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4, SECTION 17, TOWNSHIP 20 NORTH, RANGE 18 EAST, CITY OF MENASHA, CALUMET COUNTY, WISCONSIN

LEGEND

- 3/4" x 24" ROUND IRON REBAR
  WEIGHING 1.5 lbs./linear ft. SET
- MAG NAIL SET
- MAG NAIL FOUND
- 1" IRON PIN FOUND
- CERTIFIED LAND CORNER CALUMET COUNTY

- RECORDED BEARING LAKE PARK VILLAS
  DOCUMENT No. 347976
S.F. - SQUARE FEET

- NO ACCESS AREA PER LAKE PARK VILLAS
  DOCUMENT No. 347976, SEE PLAT
  FOR ADDITIONAL WOOTT RESTRICTIONS,
  SECTION 236.293

SCALE - FEET

BEARINGS ARE REFERENCED TO THE EAST LINE
OF THE SOUTHEAST 1/4 OF SECTION 17,
TOWNSHIP 20 NORTH, RANGE 18 EAST WHICH
BEARS N00°36'55"E PER PUBLISHED CALUMET
COUNTY COORDINATES.

LOT 10

(590°36'16")E
SO0°25'32"S
32.4"4'

LOT 1

(590°36'16")E
SO0°25'32"S
32.4"4'

COMMUNITY WAY

N98°34'28"W
105.46'

LOT 6

N98°34'28"W
105.46'

LOT 2

67,053 S.F.
1.539 ACRES

LOT 3

67,053 S.F.
1.539 ACRES

LOT 4

67,053 S.F.
1.539 ACRES

LOT 7

67,053 S.F.
1.539 ACRES

LOT 8

67,053 S.F.
1.539 ACRES

FOR:
COMMUNITY FIRST CREDIT UNION
P.O. BOX 1487
APPLETON, WI 54912
PHONE (920) 830-7200

DRAFTED BY: Kyle J. Tensey
MEMORANDUM

To: Common Council
From: Community Development Department/SS
Date: March 19, 2018
Re: CSM Review – Miron Crane Building – 1737 Racine Road (Parcels #4-00762-02, 4-00762-03, and 4-00762-05)

Miron Construction requests approval of a Certified Survey Map (CSM) that would combine three parcels into one large parcel. The combination of the parcels would allow construction of a crane shop at 1737 Racine Road; which as proposed would be constructed across existing property lines. The parcels are all zoned I-1 Heavy Industrial and under the same ownership. The size, setbacks, and dimension requirements would meet city standards for the I-1 Heavy Industrial zoning district for the proposed lot. Furthermore, the proposed CSM will not create any zoning nonconformities and is consistent with the City of Menasha Comprehensive Plan.

At the March 6th Plan Commission meeting, staff recommended approval of the Certified Survey Map as presented allowing the lot combination of the three parcels. The Plan Commission recommended to approve of the Certified Survey Map as presented allowing the lot combination of parcels 4-00762-02, 4-00762-03 and 4-00762-05.

RECOMMENDED MOTION: Approval of the Certified Survey Map by Miron Construction as presented allowing the lot combination of parcels 4-00762-02, 4-00762-03 and 4-00762-05.
MEMORANDUM

To: Common Council
From: Community Development Department/SS
Date: March 19, 2018
Re: Downtown Vision Plan

Over the course of the last year, the City has been working with Place Dynamics and SEH to develop a Downtown Vision Plan with the primary goal of the document designed to guide revitalization efforts within Downtown Menasha as it relates primarily to future land uses. Throughout this process, the public participation through various workshops, open houses, public hearings has been extraordinary and relatively positive. Without active public participation and strong community support, planning efforts such as this, would fall short of being successful and would never have the backing to be implemented. Since finalizing the draft of the plan, below is a timeline of what has transpired.

- Public hearing and final draft was presented to the Plan Commission on January 9, 2018. The Plan Commission recommended approval of the Downtown Vision Plan to the Common Council as an advisory tool for future development.
- Additional concerns arose regarding the content of the plan specifically to the designation of future land uses for the Sonoco, Coveris and St. Patrick’s Church.
- Public hearing, final draft, and the Plan Commissions recommendation were presented to the Common Council on February 19, 2018. With a motion on the floor to approve the Plan Commissions recommendation with the added conditions that the designated future land uses of Sonoco, Coveris, and St. Patrick’s be removed showing no change and that the noted changes, adding a preface and modifying two of the land use principle policies noted in the Consultants memo be added, the Council ultimately decided to refer the plan back to the Plan Commission to review the proposed changes.
- The plan was brought back to Plan Commission on March 6, 2018. After some discussion, the Plan Commission recommended approval of the Downtown Vision Plan to the Common Council as an advisory tool for future development with the added changes that the designated future land uses of Sonoco and Coveris be removed from the map; that the changes, adding a preface and modifying two of the land use principle policies, noted in the Consultants memo be added; and to change the word “policy” under the land use principles to “guideline”.

The recommended motion by Plan Commission is bolded above.
MEMORANDUM

5 February 2018

TO: City of Menasha Common Council

FROM: Michael Stumpf, Place Dynamics

RE: Potential changes to the draft Downtown Vision Plan

During the Plan Commission meeting when the draft Downtown Vision Plan was recommended to the Common Council, there was some discussion concerning the working of some of the Land Use Policies in the document. Since that meeting, there has been public concern about the potential use of eminent domain, or the City “forcing” industries to leave the downtown area. To help alleviate these concerns, we are proposing two edits to the document.

1. Addressing concerns about eminent domain or forcing businesses to leave the downtown.

   It has never been the intention of this plan to compel industries to leave, and use of eminent domain was never contemplated during the planning process. To make this clear, we propose to add a preamble to the document to state these intentions:

   Change is inevitable. The intent of this plan is to look forward, anticipate change, and be prepared to respond in a way that produces the most favorable outcomes for Menasha and its citizens.

   The Downtown Vision Plan accomplishes this by recommending land uses, an urban form, public improvements, and policies that will lead to a vision determined by community residents.

   The industries in the downtown have been a part of the community’s history and continue to play an important role in its economy and culture. Still, the trend in the Fox Valley shows clearly that riverfront industrial uses are leaving, and in most cases, those vacated properties are being converted to alternative uses. The Downtown Vision Plan creates a framework to respond to those changes, if or when they occur. It does not recommend using the City’s eminent domain authority or other regulatory powers as tools to cause those changes.

   The City will play a proactive role in constructing infrastructure and amenities, creating a consistent and easily negotiated regulatory environment, and providing financial and technical resources to encourage or shape change. Private property redevelopment will be initiated by the property owner.

2. Changes to the Land Use Policies.

   Changes are proposed to two of the Land Use Policies. These are the first two policies under “AT LEAST HALF OF THE NEW HOUSING UNITS ADDED IN THE DOWNTOWN WILL BE OWNER OCCUPIED. THESE WILL BE DISTRIBUTED THROUGHOUT THE DISTRICT.” The new policies better address the intent that the City reserve its limited resources for projects that
create the highest value and contribute to the goal of 50 percent owner occupied housing. The first two policies are proposed to be replaced with the following:

POLICY: In its review of any proposed housing development in the downtown, the City will consider the degree to which the proposed project will affect the balance of owner and rental housing in the subarea in which the project is located, and the ability to meet the goal of 50 percent owner occupied housing. The City may refuse to approve proposals that will significantly increase the percentage of rental units in the subarea above 50 percent, or hamper the future ability to create more owner occupied housing in the subarea.

POLICY: The City of Menasha will not provide TIF or other incentives, or support state funding applications (such as Low Income Housing Tax Credits), for any proposed housing development project with more than 20 units, if that development will raise the percentage of rental housing units in the downtown sub-area to over 65 percent of the total housing units in the sub-area.
At least half of the new housing units added in the downtown will be owner occupied. These will be distributed throughout the district.

Menasha recognizes market demand for owner occupied rowhouse and condominium style housing built on the waterfront. Downtown development sites are well suited to the use in either renovated industrial buildings or new construction. In addition to meeting the housing needs of residents, this policy will result in higher assessed values, generating taxes to support public investment in the downtown through mechanisms such as tax incremental financing. In 2015 the US Census estimated that 63 percent of existing housing in the city was owner occupied.

**Policy:** Any development with 40 or more residential units will be required to provide a minimum of 20 percent of the units are made available for sale as owner occupied housing. In its review of any proposed housing development in the downtown, the City will consider the degree to which the proposed project will affect the balance of owner and rental housing in the subarea in which the project is located, and the ability to meet the goal of 50 percent owner occupied housing. The City may refuse to approve proposals that will significantly increase the percentage of rental units in the subarea above 50 percent, or hamper the future ability to create more owner occupied housing in the subarea.

**Policy:** The City of Menasha will not provide TIF or other incentives, or support state grant applications, for any proposed project with 20 or more units, unless at least 30 percent of the units are made available for sale as owner occupied housing. The City of Menasha will not provide TIF or other incentives, or support state funding applications (such as Low Income Housing Tax Credits), for any proposed housing development project with more than 20 units, if that development will raise the percentage of rental housing units in the downtown sub-area to over 65 percent of the total housing units in the sub-area.

**Policy:** The City of Menasha will require that at least 50 percent of the units constructed on property controlled by the City, and made available for private development, will be owner occupied.
MEMORANDUM

To: Common Council
From: Community Development Department/SS
Date: March 19, 2018
Re: Special Use Permit – 336 Chute St – Multifamily

Jim Fletcher, representing the property owner and potential purchaser has submitted a special use permit application for the property of 336 Chute Street, zoned C-2 Central Business District. Currently this historic two story building houses 4 – one bedroom apartment units on the second floor and is vacant on the first floor. In December of 2013, the Plan Commission reviewed and approved a special use permit for a change of occupancy to allow the first floor of the existing structure to be converted into a tavern. While this special use permit was approved and the site improvements were made, the property owner never followed through with converting the space into a bar and has since put the property up for sale. The potential purchaser of the property is now requesting to convert the remaining first floor into an additional 3 apartment units making the principal use of the property multifamily residential. Under Section 13-1-30 any multifamily use within the C-2 zoning district requires approval through a special use permit.

At the March 6th meeting, the Plan Commission reviewed the findings of how the proposed special use aligns with the comprehensive plan and the affects to the health, safety, morals, and general welfare of the surrounding lands under Section 13-1-11(b) and found no major concerns. The one discussed item in regards to the request was the on-site parking. Due to site constraints of existing development the site plan showed 9 on-site parking stalls, one short of code requirement. The Plan Commission discussed the abundances of public parking, both on- and off-street, and the majority of the units being one bedroom, and that the applicant submitted a draft of a lease agreement based upon conversations with the owners of the neighboring Hmoob Union Hall property. This property is meeting the requirement of being within 300 feet of the principal structure for off-site parking as well as the neighboring use does not require on-site parking.

The Plan Commission recommends the following motion to the Common Council:

RECOMMENDED MOTION: Approval of the special use permit as presented to allow for a 7-unit multi-family development at 336 Chute Street, with the following condition:

1) Prior to the issuance of building permits, a site improvement agreement must be recorded.
2) Should parking issues arise, the property owner shall work with the Community Development Department to secure one additional off-site parking stall.
Special Use Permit Location
336 Chute Street

Legend
Parcel Proposed for Special Use Permit
Parcel ID# 2-00121-00

1 inch = 100 feet
MEMORANDUM

To: Administration Committee

From: John Jacobs, Administrative Services Director
       Brian Tungate, Director of Parks and Recreation

Date: March 15, 2018

RE: Update on Loop the Little Lake Project and a Request for a 2018 CIP Budget Adjustment

Background
On February 5, the Board of Public Works tabled a request to build a canopy over Menasha’s Loop the Little Lake pedestrian bridge. The City of Neenah has approved a canopy for its bridge. The addition of a roof structure over the observation deck and trail would enhance the trail user experience by providing a shaded sitting area to enjoy the natural surroundings.

If the Menasha Common Council would like to proceed with revising the scope of the project by adding a canopy, a 2018 CIP budget adjustment is required. The cost of the structure has increased from an original estimate of just over $51,000 to $70,400 ($67,900 – construction and $2,500 design/engineering). This increase is due mainly to the use of more durable materials, lighting expenses, design costs, and the need to access the work area with light equipment because the working causeway (bridge) was removed on March 1 due to DNR requirements. The attached document breaks down the exact budget adjustment request. It includes a generous $18,000 donation from Mike Pheifer. As noted in the attached change order summary, there are additional anticipated expenses that will be brought forward as needed. It is for this reason that staff would like to leave the $19,472.23 contingency balance in place for future change orders. If any contingency funds remain at the end of the project, it would be our intent to apply them to the final cost of the canopy.

Fiscal Impact
Two scenarios are presented to you for your consideration.
The **first option** would be to **not** apply any of the unused contingency balance at this time towards the total cost of the canopy addition. The total 2018 CIP budget adjustment would be for $70,400, and would be funded as follows:

- State DNR Grant Funding Earmark: $35,201
- Pheifer Brothers Donation: 18,000
- Transfer Funds from the $89,000 Undesignated 2018 CIP Park Projects Budget: 17,199

Total Funding Allocation for Canopy Addition (and Proposed Budget Adjustment): $70,400

The **second option** would be to apply all of the unused contingency balance at this time towards the total cost of the canopy addition. The total 2018 CIP budget adjustment would then be for $50,928, and would be funded as follows:

- State DNR Grant Funding Earmark: $25,465
- Pheifer Brothers Donation: 18,000
- Transfer Funds from the $89,000 Undesignated 2018 CIP Park Projects Budget: 7,463

Total Proposed Budget Adjustment: $50,928

Plus: Apply Unused Contingency Balance: 19,472

Total Funding Allocation for Canopy Addition: $70,400

**Staff Recommendation**

Since staff would like to preserve the remaining balance of the contingency reserve of $19,472 until the project is fully completed, staff would recommend Option #1 – approve a $70,400 budget adjustment for this project, with the funding as outlined above. If the contingency balance was not needed for any other change orders, then the amount could be applied towards the City’s portion of this project cost.

Therefore, staff would recommend for the Common Council to approve a 2018 CIP Budget Adjustment in the amount $70,400, with the funding coming from the revenue sources highlighted above.

The City’s share of this project is proposed to be funded from the $89,000 undesignated 2018 CIP Park Projects Budget, which had been previously approved (but not yet designated) in November 2017.
# Loop the Lake Project - Menasha Bridge

## Overview of Project Costs & Project Funding - as of 03/09/2018

(if NOT apply Unused Contingency balance to fund the Canopy Addition)

### Expenditures:

#### Planning/Engineering:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015 costs</td>
<td>$5,935</td>
</tr>
<tr>
<td>2016 costs</td>
<td>$66,252</td>
</tr>
<tr>
<td>2017 costs (through 10/06/17)</td>
<td>$48,974</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$121,161</td>
</tr>
<tr>
<td>Engineering (projected remaining)</td>
<td>$20,773</td>
</tr>
<tr>
<td>Total Planning/Engineering</td>
<td>$141,934</td>
</tr>
</tbody>
</table>

#### Construction:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Unit 2017-04</td>
<td>$1,374,547</td>
</tr>
<tr>
<td>Contingency (7%)</td>
<td>$96,218</td>
</tr>
<tr>
<td>Unused Contingency</td>
<td>$-</td>
</tr>
<tr>
<td>Total Construction</td>
<td>$1,470,765</td>
</tr>
</tbody>
</table>

#### Other Costs:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct purchase lights</td>
<td>$42,000</td>
</tr>
<tr>
<td>Direct purchase decking</td>
<td>$62,000</td>
</tr>
<tr>
<td>100 Fox Street labor/materials</td>
<td>$25,000</td>
</tr>
<tr>
<td>Canopy Construction - Pheifer</td>
<td>$67,900</td>
</tr>
<tr>
<td>Canopy Design - Graef</td>
<td>$2,500</td>
</tr>
<tr>
<td>Total Other Costs</td>
<td>$199,400</td>
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</table>

**TOTAL EXPENDITURES** $1,812,099

### Revenues:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>State DNR Grant #1</td>
<td>$768,000</td>
</tr>
<tr>
<td>State DNR Grant #2 (earmark)</td>
<td>$102,849</td>
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<tr>
<td>State DNR Grant #2 (earmark) - additional amount added</td>
<td>$35,201</td>
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<tr>
<td>Total State Grants for project</td>
<td>$906,050</td>
</tr>
<tr>
<td>Future Neenah - donations</td>
<td>$545,850</td>
</tr>
<tr>
<td>Pheifer Brothers Construction canopy donation</td>
<td>$18,000</td>
</tr>
<tr>
<td>Total Donations for project</td>
<td>$563,850</td>
</tr>
<tr>
<td>City Funds (borrowed)</td>
<td>$300,000</td>
</tr>
<tr>
<td>Apply Fund Balance - 2017 CIP Budget Savings</td>
<td>$25,000</td>
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<tr>
<td>Transfer from $89,000 undesignated 2018 CIP Park projects</td>
<td>$17,199</td>
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<td>Total City Contribution for project</td>
<td>$342,199</td>
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**TOTAL REVENUES** $1,812,099

2017 CIP Budget - original $1,741,699
2018 CIP Budget Amendment $70,400
2018 CIP Budget - proposed (as amended) $1,812,099
# Loop the Lake Project - Menasha Bridge

## Overview of Project Costs & Project Funding - as of 03/09/2018

(if apply Unused Contingency balance to fund the Canopy Addition)

<table>
<thead>
<tr>
<th>Expenditures:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Planning/Engineering:</strong></td>
<td></td>
</tr>
<tr>
<td>2015 costs</td>
<td>$ 5,935</td>
</tr>
<tr>
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</tr>
<tr>
<td>2017 costs (through 10/06/17)</td>
<td>$ 48,974</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>$ 121,161</td>
</tr>
<tr>
<td>Engineering (projected remaining)</td>
<td>$ 20,773</td>
</tr>
<tr>
<td><strong>Total Planning/Engineering</strong></td>
<td>$141,934</td>
</tr>
<tr>
<td><strong>Construction:</strong></td>
<td></td>
</tr>
<tr>
<td>Contract Unit 2017-04</td>
<td>$ 1,374,547</td>
</tr>
<tr>
<td>Contingency (7%)</td>
<td>$ 96,218</td>
</tr>
<tr>
<td><strong>Unused Contingency</strong></td>
<td>(19,472)</td>
</tr>
<tr>
<td><strong>Total Construction</strong></td>
<td>$1,451,293</td>
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<td><strong>Other Costs:</strong></td>
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<tr>
<td>Direct purchase lights</td>
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</tr>
<tr>
<td>Direct purchase decking</td>
<td>$ 62,000</td>
</tr>
<tr>
<td>100 Fox Street labor/materials</td>
<td>$ 25,000</td>
</tr>
<tr>
<td>Canopy Construction - Pheifer</td>
<td>$ 67,900</td>
</tr>
<tr>
<td>Canopy Design - Graef</td>
<td>$ 2,500</td>
</tr>
<tr>
<td><strong>Total Other Costs</strong></td>
<td>$199,400</td>
</tr>
<tr>
<td><strong>TOTAL EXPENDITURES</strong></td>
<td><strong>$ 1,792,627</strong></td>
</tr>
</tbody>
</table>

| Revenues: |  |
| State DNR Grant #1 | $ 768,000 |
| State DNR Grant #2 (earmark) - projected amount needed | $ 102,849 |
| State DNR Grant #2 (earmark) - additional amount added | $ 25,465 |
| **Total State Grants for project** | **$ 896,314** | **50.00%** |
| Future Neenah - donations | $ 545,850 |
| Pheifer Brothers Construction canopy donation | $ 18,000 |
| **Total Donations for project** | **$ 563,850** | **31.45%** |
| City Funds (borrowed) | $ 300,000 |
| Apply Fund Balance - 2017 CIP Budget Savings | $ 25,000 |
| Transfer from $89,000 undesignated 2018 CIP Park projects | $ 7,463 |
| **Total City Contribution for project** | **$ 332,463** | **18.55%** |

**TOTAL REVENUES** **$ 1,792,627** **100.00%**

- 2017 CIP Budget - original $ 1,741,699
- 2018 CIP Budget Amendment $ 50,928
- 2018 CIP Budget - proposed (as amended) $ 1,792,627
## Loop the Lake Change Order Summary

<table>
<thead>
<tr>
<th>Change Order Number</th>
<th>Original Amount</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>$19,500.00</td>
<td>Precast Decorative Concrete</td>
</tr>
<tr>
<td>2</td>
<td>-$10,000.00</td>
<td>Lighting Donation (Faith)</td>
</tr>
<tr>
<td>3</td>
<td>$226.05</td>
<td>Rebar Change</td>
</tr>
<tr>
<td></td>
<td>$2,557.72</td>
<td>Add Steel Rebar</td>
</tr>
<tr>
<td></td>
<td>$3,246.10</td>
<td>Light Pole Anchor Plates</td>
</tr>
<tr>
<td></td>
<td>$774.40</td>
<td>Alignment Adjustment</td>
</tr>
<tr>
<td></td>
<td>$600.00</td>
<td>1/2 Dam Opening/Closing Cost</td>
</tr>
<tr>
<td></td>
<td><strong>$7,404.27</strong></td>
<td><strong>Overall Change Order Cost</strong></td>
</tr>
</tbody>
</table>

### Total Contingency After Approved CO's as of 3/5/18

<table>
<thead>
<tr>
<th>Storm Sewer Change Order</th>
<th>$616.00</th>
<th>Storm Sewer Alteration (Complete)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Lighting Costs</td>
<td>$14,195.50</td>
<td>Additional Lighting Equipment &amp; Crane Rental</td>
</tr>
<tr>
<td>Electric Pedestal</td>
<td>$2,130.00</td>
<td>Estimate</td>
</tr>
<tr>
<td>Change Order Number 5 Proposed</td>
<td>$16,941.50</td>
<td><strong>Overall Change Order Cost</strong></td>
</tr>
</tbody>
</table>

### Total Contingency After Proposed CO's as of 3/19/18

| RR Flagging             | $11,000.00 | Assuming 26,000 for RR Flagging  |
|                        |           | 15,000 included in contract       |
| Gateway Arches         | $18,000.00 | Change order for balance due      |
| Additional Engineering | $13,900.00 | Graef Inspections                 |

### Estimated Balance in Change Orders as of 3/19/2018

| **$19,472.23** | Left Over After Known Change Orders |

### Proposed Addition to Project Cost:

<table>
<thead>
<tr>
<th>CANOPY - Change Order 4 proposed</th>
<th>$70,400.00</th>
<th>Bridge Canopy Addition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>67,900 - Canopy Construction</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2,500 - Canopy Design/Engineering</td>
</tr>
</tbody>
</table>

### Total Project Cost Increase

| **$70,400.00** | CIP Budget Amendment needed |

### Necessary Changes
### Possible Changes
### Loop the Lake Change Order Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Original Bid Contingency</strong></td>
<td>$96,218.00</td>
</tr>
<tr>
<td><strong>Change Order Number 1</strong></td>
<td>$19,500.00</td>
</tr>
<tr>
<td><strong>Change Order Number 2</strong></td>
<td>-$10,000.00</td>
</tr>
<tr>
<td><strong>Change Order Number 3</strong></td>
<td>$226.05, $2,557.72, $3,246.10, $774.40, $600.00</td>
</tr>
<tr>
<td><strong>Total Contingency After Approved CO's as of 3/5/18</strong></td>
<td>$79,313.73</td>
</tr>
<tr>
<td><strong>Storm Sewer Change Order</strong></td>
<td>$616.00</td>
</tr>
<tr>
<td><strong>Extra Lighting Costs</strong></td>
<td>$14,195.50</td>
</tr>
<tr>
<td><strong>Electric Pedestal</strong></td>
<td>$2,130.00</td>
</tr>
<tr>
<td><strong>Change Order Number 5 Proposed</strong></td>
<td>$16,941.50</td>
</tr>
<tr>
<td><strong>Total Contingency After Proposed CO's as of 3/19/18</strong></td>
<td>$62,372.23</td>
</tr>
<tr>
<td><strong>RR Flagging</strong></td>
<td>$11,000.00</td>
</tr>
<tr>
<td><strong>Gateway Arches</strong></td>
<td>$18,000.00</td>
</tr>
<tr>
<td><strong>Additional Engineering</strong></td>
<td>$13,900.00</td>
</tr>
<tr>
<td><strong>Estimated Balance in Change Orders as of 3/19/2018</strong></td>
<td>$19,472.23</td>
</tr>
</tbody>
</table>

**PROPOSED ADDITION TO PROJECT COST:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CANOPY - Change Order 4 proposed</strong></td>
<td>$70,400.00</td>
</tr>
<tr>
<td><strong>Bridge Canopy Addition</strong></td>
<td>$67,900 - Canopy Construction, $2,500 - Canopy Design/Engineering</td>
</tr>
<tr>
<td><strong>Total Project Cost Increase</strong></td>
<td>$70,400.00</td>
</tr>
</tbody>
</table>

**Necessary Changes**

**Possible Changes**
Memorandum

Date: March 14, 2018

To: Board of Public Works

From: Joshua Radomski – Public Works Director

RE: Fox River “Loop the Lake” Bridge Crossings
Contract Unit No. 2017-04; Bridge Canopy Addition

Background

On October 17, the Loop the Lake project was approved by the Common Council with a 7% contingency for cost over runs on the project. The 7% contingency provides a grand total of $96,218 of extra funding to the project of which $16,904.27 has been allocated based on prior change orders. This leaves the project with $79,313.73 left in the contingency fund for this project.

Fiscal Impact

Currently the City is anticipating several other change orders that will impact the contingency within this budget amount. There is the possibility of cost overruns on both the railroad flagging allowance and the gateway arches. The railroad flagging was originally budgeted with a $15,000 allowance, however currently it is anticipated that this amount may be exceeded by as much as $11,000. The gateway arches had an original allowance of $15,000, however current indications are that the cost of the arches may exceed the allowance by as much as $18,000. There is a change order for $16,941.50 that is being brought forth during the regular March 19, 2018 BPW meeting. In addition, there are approximately $13,900 of bridge inspection costs that were not included in the original engineering estimate for this project. When combined, the potential known change orders would impact the contingency fund and leave $19,472.23 available for future change orders.

On February 5, the Board of Public Works tabled the canopy with the request that we get more defined pricing, explore donor options and to determine if other change orders would be necessary. The original estimate of $51,060.65 is no longer valid and the cost of the canopy structure is now anticipated to be $70,400 ($67,900 construction & $2,500 design). The cost increase is due to the addition of better materials to the canopy, lighting and the alteration of construction methods.
necessary now that the causeway is no longer in the river. There is not currently funding available within the original contingency amount to cover the entire cost of the canopy addition. Although the cost of the canopy has increased since the last meeting, we do want to recognize that Mike Pheifer of Pheifer Brothers Construction has agreed to donate $18,000 towards the addition of the bridge canopy.

**Recommendation**

Staff recommends that the bridge canopy be added to the Loop the Lake project to enhance the aesthetic appeal of the bridge and provide shelter along the bridge route.
## Change Order

**Date:** January 30, 2018 (Revised 3/15/18)  
**Change Order No.:** Four (4)

**Contractor:** Pheifer Bros. Construction Co. Inc.  
**Contract No.:** Unit No. 2017-04  
**Project:** Fox River "Loop the Lake" Bridge Crossings

You are directed to make the changes noted below in the subject contract unit number:

1. Canopy Addition to Bridge with Lighting  
   **ADD:** $67,900.00

### The above changes result in the following adjustments:

<table>
<thead>
<tr>
<th></th>
<th>Contract Total</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to this Change Order</td>
<td>$ 1,391,451.37</td>
<td></td>
</tr>
<tr>
<td>Adjustments per this Change Order</td>
<td>$ 67,900.00</td>
<td></td>
</tr>
<tr>
<td>Current Contract Status</td>
<td>$ 1,459,351.37</td>
<td></td>
</tr>
</tbody>
</table>

**Directed/Authorized**

**City of Menasha Department of Public Works:**

<table>
<thead>
<tr>
<th>By:</th>
<th>By:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
</tbody>
</table>

**Accepted:**
City of Menasha Disbursements

Weekly Accounts Payable
3/7/18-3/15/18
Checks # 60520-60673
$ 240,379.16

BI-Weekly Payroll
3/15/18
$ 180,634.55

Additional Regular Cycle Accounts Payables - Paid Electronically

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationwide Deferred Compensation</td>
<td>3/2/18</td>
<td>$8,498.50</td>
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<tr>
<td>TASC-Flexible Spending</td>
<td>3/5/18</td>
<td>$4,998.45</td>
</tr>
<tr>
<td>Wisconsin Deferred Compensation</td>
<td>3/5/15</td>
<td>$4,590.00</td>
</tr>
<tr>
<td>Delta Dental</td>
<td>3/7/18</td>
<td>$2,762.70</td>
</tr>
<tr>
<td>Federal Tax Withholding</td>
<td>3/7/18</td>
<td>$64,406.40</td>
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<tr>
<td>World Pay Charges - FFM</td>
<td>3/7/18</td>
<td>$3.25</td>
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<tr>
<td>Returned Check</td>
<td>3/13/18</td>
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<tr>
<td>Banking Fee</td>
<td>3/13/18</td>
<td>$10.00</td>
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<td>Delta Dental</td>
<td>3/14/18</td>
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<td>Community First Credit Union - Payroll Deductions</td>
<td>3/15/18</td>
<td>$2,712.00</td>
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<tr>
<td>State Trust Fund Loan Payment - City &amp; MU</td>
<td>3/15/18</td>
<td>$6,442,918.87</td>
</tr>
</tbody>
</table>

$ 6,535,833.01

Total

$ 6,956,846.72

Items included on this list have been properly audited and certified by the City Comptroller and are being presented for approval by the Common Council.

Jennifer Sassman
Finance Manager

Date 3/15/18

Notes:
- Medical Expense Reimbursement Trust - Retirement Pay Out
- United Way - Employee Donations
- Wisconsin Support Collections - Child/Spousal Support
- WI SCTF - Child Support Annual Fee
- Gaps in check numbers indicate that more invoices being paid than fit on one check stub
(The last check stub used is the check number that will appear on the check register)
<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Check Number</th>
<th>Check Date</th>
<th>Invoice Number</th>
<th>Account Number</th>
<th>Amount</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>SPORT VIDEOS</td>
<td>60520</td>
<td>3/7/2018</td>
<td>7047</td>
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<td>Library Materials</td>
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<td>WINNEFOX AUTOMATED LIBRARY SYSTEM</td>
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<td>3/7/2018</td>
<td>WALS877</td>
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<td>WINNEFOX COOPERATIVE TECH SERVICES</td>
<td>60522</td>
<td>3/7/2018</td>
<td>WCTS541</td>
<td>100-0601-551.30-18</td>
<td>723.00</td>
<td>2017 DVD's Refinished</td>
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<td>ANA ACOSTA</td>
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<td>AUTOMATED COMFORT CONTROLS</td>
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<td>BAKER &amp; TAYLOR INC</td>
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<td>3/7/2018</td>
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<td>311.73</td>
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Page 3

Combined Page 9
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**Combined Page 21**
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**Total for check: 60665**

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**Combined Page 24**
### AP Check Register

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**Total for check: 84,812.12**
To: Menasha Common Council

From: Jenny Groeschel Police Records

RE: Beverage Operator License (Bartender) Applicants

Date: March 13, 2018

The below individuals have applied for a bartender license to serve, dispense and/or sell alcohol at a licensed establishment within the City. They have all met the criteria under the "Guidelines for Operator Licenses" approved by the Common Council. Therefore, staff is recommending the following people be APPROVED for an Operator's License for the 2017-2019 licensing period:

Zach Conn
Nathaniel Flauger
Kayla Sinclair

cc: chief via email
MEMORANDUM

To: Common Council

From: Nancy McKenney, MS, RDH, Public Health Director

Date: March 14, 2018

RE: Request Authority to Sign a Contract with the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) to Administer the Retail Food and Recreational Programs

The Menasha Health Department is seeking authority to sign a contract with DATCP on behalf of the Bridges of Fox River Consortium (City of Menasha and City of De Pere) to administer the Retail Food and Recreational Programs.

Background:
The City of Menasha currently contracts with DATCP to administer Retail Food and Recreational Programs in the City of Menasha. The City of Menasha and De Pere Common Councils recently approved an intergovernmental Agreement creating the Bridges of Fox River Consortium. Both Cities revised ordinances which: 1) define the Consortium; 2) clarify that the City of Menasha shall hold the Agent contract with DATCP and the City of Menasha Registered Sanitarian (Agent of the State) who shall act as the Program Standard for the Consortium; 3) allows the De Pere Registered Sanitarian to assist in Menasha in the event the Menasha Registered Sanitarian is unavailable; and 4) updates language consistent with revisions made to Wisconsin Administrative Code ATCP 74 and SPS 221 Tattoo and Body Piercing.

The City of Menasha is the Agent who will hold and supervise both Retail Food and Recreational Programs. The DATCAP contract recognizes the Bridges of Fox River Consortium and the Agent’s Jurisdiction as the Cities of De Pere and Menasha. The Contract period is April 1, 2018 through June 30, 2019.

Fiscal Impact:
This Contract recognizes the Bridges of Fox River Consortium, as created by an intergovernmental agreement between De Pere and Menasha, designating Menasha’s Registered Sanitarian as the Agent. The intergovernmental agreement generates 10 percent of De Pere’s licensed facility revenue.

Staff Recommendation:
Staff recommends the Menasha Health Department be granted the authority to sign a contract with DATCP on behalf of the Bridges of Fox River Consortium to administer the Retail Food and Recreational Programs.
CONTRACT TO ADMINISTER THE
RETAIL FOOD AND RECREATIONAL PROGRAMS
FOR THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

This Contract is made between the Wisconsin Department of Agriculture, Trade and Consumer Protection ("the Department") and The Bridges of Fox River Consortium ("the Agent"), pursuant to Wis. Stat. §§ 97.41 and 97.615 and Wis. Admin. Code ch. ATCP 74, authorizing the Department to enter into a written contract designating a local health department, defined in Wis. Stat. § 250.01 (4), to act as the Department’s local agent to administer the retail food and recreational establishment program. The Department designates and authorizes The Bridges of Fox River Consortium to act as the Department’s agent for the purpose of enforcing Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, and the applicable provisions of the Wisconsin Administrative Code.

The Agent's jurisdiction under this Contract includes the following geographic area(s): Cities of De Pere and Menasha

This Contract shall run from April 1, 2018 to June 30, 2019 and shall remain in effect, unless specifically terminated, revoked or suspended under Section XIV. The Department shall issue contracts, for future contract periods, to the Agent by January 1st of the last year of the current contract. The Agent shall commit to continue as the Department’s Agent for the future contract period, by signing and returning the contract by March 1st of the last year of the current contract.

The Agent hereby agrees to protect public health and safety, as the agent of the Department under Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, and Wis. Admin. Code ch. ATCP 74, and the terms and conditions of this Contract. The Agent agrees to issue licenses to, inspect, and regulate retail food establishments (including restaurants), campgrounds, recreational and educational camps, public swimming pools and water attractions, hotels, motels, tourist rooming houses, and bed and breakfast establishments, as specified in this Contract, enforcing all applicable provisions of the Wisconsin Statutes and Administrative Code and associated Department policies including, but not necessarily limited to, Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, and Wis. Admin. Code chs. ATCP 72 (Hotel, Motel and Tourist Rooming Houses), 73 (Bed and Breakfast Establishments), 74 (Local Agents and Regulation), 75 (Retail Food Establishments) and Appendix (Wisconsin Food Code), 76 (Safety, Maintenance, and Operation of Public Pools and Water Attractions), 78 (Recreational and Educational Camps), and 79 (Campgrounds). If the Agent inspects individual vending machines, the Agent will receive reimbursement from the Department.

The Department agrees to fulfill its responsibilities to the Agent required by Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, Wis. Admin. Code ch. ATCP 74, and this Contract.

This Contract incorporates any amendments to the statutes or administrative rules cited in this Contract, as well as any additional statutes or rules, related to retail food and recreational establishment licensing that may be enacted or adopted during the term of this Contract.
Agent agrees that all of its obligations under this Contract include any of these amendments, enactments or adoptions.

I. DEFINITIONS

A. The Agent means the local public health department (LPHD) operating under the terms of this Contract, unless the context indicates it means any local public health department acting as the Department’s agent under Wis. Stat. §§ 97.41 and 97.615.

B. Agent Program Plan means the plan developed by the Agent for the administration of the agent program and enforcement of Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, related provisions of the Wisconsin Administrative Code, and any applicable local ordinances or regulations cited in its enforcement actions for the types of facilities for which the Agent has been delegated agent status.

C. Agent Standard means a member of the Agent’s inspection staff, responsible for leading standardization exercises for the environmental health inspection personnel in the Agent’s jurisdiction, who has successfully completed the initial standardization process, is current in their inspection standardization maintenance exercises, and has received a letter of completion from the Department.

D. Complaint means an allegation, presented to an Agent or the Department, of a possible public health hazard or violation of any provision of the Wisconsin Statutes and Administrative Code or a local public health ordinance or regulation.

E. Conflict of interest means a conflict between the private interests and the official responsibilities of a person in a position of trust. As provided in Wis. Stat. § 19.59 (1), a conflict of interest occurs when the exercise of a person's official responsibilities gives the person the opportunity to obtain financial gain or anything of substantial value for the private benefit of himself or herself, his or her immediate family, or an organization with which he or she is associated.

F. The Department means the Wisconsin Department of Agriculture, Trade and Consumer Protection.

G. Enforcement Action means a statutorily-authorized action imposed on a licensee for non-compliance with a provision of the Wisconsin Statutes, Administrative Code, local public health ordinance or regulation. Enforcement actions include, but are not limited to, holding orders, citations, forfeitures, temporary orders, suspension or revocation of a license.

H. Establishment or Facility means a retail food establishment, hotel, motel, tourist rooming house, bed and breakfast establishment, food vending machine, camping resort or other campground, recreational educational camp, public swimming pool or water attraction.
I. **Fiscal Year** means the period from July 1 through June 30 of each year.

J. **Follow up Inspection** means a non-mandatory inspection by the Agent to ensure non-critical violations, cited in a routine inspection, have been corrected by a licensee.

K. **Foodborne Outbreak** means the occurrence of two or more cases of a similar illness of persons, resulting from the ingestion of a common food.

L. **Inspection Fee** means a fee charged by the Department or the Agent, for inspection services required under a Memorandum of Understanding (MOU), or a fee charged by the Agent for inspecting a mobile food establishment or temporary food establishment that has a valid license from another jurisdiction or the Department.

M. **License** means an annual written authorization issued by the Department or the Agent, required to operate an establishment.

N. **Licensee** means the person or entity licensed to operate the establishment.

O. **Local Public Health Ordinance or Regulation** means an ordinance adopted by a village, city or county, or a regulation adopted by a local board of health, as the Department’s agent, pursuant to Wis. Stat. § 97.41 (7) or 97.615 (2) (g).

P. **Memorandum of Understanding (MOU)** means an agreement between the Department and another state agency for designating each agency’s responsibilities in shared governance.

Q. **Person** means an individual, married couple, legal entity of a partnership, corporation, or limited liability corporation, municipality, county, town, or state or local agency.

R. **Pre-licensing Inspection** means an inspection that must be completed before a license is granted and the licensee may begin operating.

S. **Program Evaluation** means an assessment by the Department of the Agent’s adherence to the provisions of this Contract.

T. **REHS / RS** means the National Environmental Health Association (NEHA) Registered Environmental Health Specialist/Registered Sanitarian or the Wisconsin Registered Sanitarian credential.

U. **Reimbursement** means the portion of the license fee, collected by the Agent, that is remitted to the Department, pursuant to Wis. Stat. § 97.41 (5) or 97.615 (2) (e).

V. **Reinspection** means a mandatory inspection to ensure that priority, critical or recurring violations have been corrected, including:
a. An observed violation of immediate danger to public health (priority or critical) that is not corrected during the inspection;

b. Six or more priority (critical) violations observed and noted,

c. Repeat violations noted during two previous inspections (3 consecutive times); or

d. With consultation from a supervisor, an excessive number of violations that show a lack of managerial control observed during an inspection.

W. **Routine inspection** means the annual evaluation of a licensee’s operation of its establishment.

X. **Standardization (initial)** means an environmental health inspection staff person’s first successful completion of required field exercises by using risk based inspection methods.

Y. **Standardization (maintenance)** means an environmental health inspection staff person’s successful completion of field exercises by using risk based inspection methods, required every three years to maintain standardization certification.

Z. **State Fees** means the Department’s fees in Wis. Stat. §§ 97.41 (5) and 97.615 (2) (e), levied to recoup Department costs related to setting standards and for monitoring and evaluating the activities of, and providing education and training to, agent local health departments.

AA. **State License Fees** means the license fees set by the Department, pursuant to Wis. Stat. §§ 97.30 (3) and (3m), 97.613, and 97.67 (4).

BB. **Waterborne Outbreak** means the occurrence of two or more cases of a similar illness of persons after the ingestion of drinking water from the same source, or after exposure to water from the same source used for recreational purposes, and for which epidemiologic evidence implicates water as the probable source of the illness.

II. ISSUING LICENSES

A. The Agent shall issue licenses to all facilities designated in this contract within its jurisdiction except:

1. Mobile retail food establishments that cross geographical boundaries, in conducting their business, shall be licensed by the Department under Wis. Stat. § 97.30 (2) (a).
a. If the mobile retail food establishment has a service base, as defined in Wis. Admin. Code ch. ATCP 75 Appendix Part 1-201.10 (B), located within their jurisdictional boundary, the Agent shall issue the service base license.

b. The Agent may charge an inspection fee for any inspection of a Department-licensed mobile retail food establishment.

2. Temporary retail food establishments that cross jurisdictional boundaries, in conducting their business, shall be licensed by the Department under Wis. Stat. § 97.30 (2) (a).

a. The Department shall provide a guidance document for the Agent to use to determine which temporary retail food establishment license applies.

b. The Agent may charge an inspection fee for any inspection of a Department-licensed temporary retail food establishment.

3. Any establishment exempt from the requirement to hold a retail food establishment license, pursuant to Wis. Stat. § 97.30 (2) (b), are under the regulatory authority of the Department and may not be licensed or inspected, in any manner related to food, dairy or meat processing, wholesale or retail operations, by the Agent.

B. The Agent shall require a person who applies for, or a licensee who requests renewal of, a license to include, at a minimum, the following information:

1. Individual, Married Couple or Legal Entity who will hold the license and complete address.

2. Doing Business As (DBA) Name and complete address of the establishment.

3. License number and expiration date of any current license.

4. Type of Establishment, for licensing purposes

5. Numbers of units, rooms, or sites and complexity, if applicable.

C. A license issued by the Agent shall expire on June 30 of each year, except that a new license issued during the period beginning on April 1 and ending on June 30 shall expire on June 30 of the following year (15-month license), except as follows: The Agent of a city of the 1st class that has entered into a Contract with the Department may issue a required license for a retail food establishment or bed and breakfast establishment at any time during the year, which shall expire one year from the date of its issuance.
D. The Agent shall transfer any license held for a hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary, as required in Wis. Stat. § 97.605 (4).

E. The Agent shall transfer any license held for a campground, camping ground, recreational or educational camp, or public swimming pool, as required in Wis. Stat. § 97.67 (2).

III. INSPECTIONS

A. Each fiscal year the Agent shall conduct one routine inspection of each license holder’s facility under its jurisdiction, except for vending machines, to determine if the facility is in compliance with the requirements of the applicable provisions of the Wisconsin Statutes and Administrative Code and any local public health ordinances and regulations adopted under Wis. Stat. § 97.41 (7) or 97.615 (2) (g).

1. The Agent may propose a different inspection frequency to the Department that may only be implemented if approved by the Department, in writing.

2. The Agent shall conduct an investigation if there is a complaint concerning an exempt retail food establishment, as defined in Wis. Admin. Code § ATCP 75.03 (9), within its jurisdiction, or upon Department request.

B. Agent may elect, in writing to the Department, to inspect vending machines.

C. Agent shall give priority to pre-licensing inspections, inspections involving emergency complaints, food or waterborne illness investigations, and re-inspections.

D. A routine inspection shall be unannounced except when it is necessary that the owner or operator be present for the inspection, or when the Agent is conducting a follow-up inspection, reinspection or other activity where having the owner or operator present is important for continued compliance.

E. If a routine inspection is performed in conjunction with another investigation, a separate inspection report shall be completed for the investigation and the routine inspection. Each report shall be signed by the environmental health inspection staff person and the licensee, or licensee’s designated person in charge.

F. The Agent shall perform inspection duties required by, and in compliance with, the Department’s MOUs. The Department will provide the Agent a copy of each MOU it executes.

G. The Agent may, with written approval from the Department, enter into written contracts with other units of government or other persons to perform inspection activities related to enforcement responsibilities under this Contract. The Agent assumes ultimate responsibility for the performance and quality of the inspections and
for the enforcement of all applicable provisions of the Wisconsin Statutes and Administrative Code under this Contract.

H. Other than inspections involving foodborne or waterborne outbreaks, which require an immediate response, the Agent shall conduct inspections due to any complaints against an establishment in a timely and adequate manner. Each complaint, and documentation of its investigation, shall be physically or electronically linked with the establishment licensing and inspection information.

I. When the Agent receives information that indicates a foodborne or waterborne outbreak has occurred, the Agent shall conduct an investigation. In conducting the investigation, the Agent shall follow the criteria in the Wisconsin’s Foodborne and Waterborne Disease Outbreak Investigation Manual. The Agent shall conduct an investigation of the facility, in which the outbreak occurred, as soon as epidemiological evidence links that facility with the outbreak. In addition:

1. The Agent shall notify the Department and the Department of Health Services’ (DHS) Communicable Disease Epidemiology Section (CDES.)

2. Upon the Agent's request, the Department shall assist in the investigation.

3. In the event the outbreak becomes cross-jurisdictional, the Department, in coordination with DHS CDES, will coordinate the activities of the Agent and other governmental agencies in order to most quickly and effectively end the outbreak.

J. The Agent shall include in its inspection report the following information for each violation observed during an inspection:

1. Violation Observation – A factual description, including location, of the observed violation.

2. Code Reference – Citation and a brief description of the statute, administrative rule, or local ordinance for the observed violation.

3. Corrective Action – A statement indicating what action the licensee has taken, or shall take, to regain compliance with the administrative rule, statute or local ordinance.

K. The Agent shall perform an exit interview with the licensee’s designated person in charge and obtain a signature. A copy of the inspection report shall be left with the person in charge at the completion of the inspection or e-mailed or otherwise presented shortly thereafter. If the person in charge refuses to sign the inspection report, an indication shall be made on the inspection report of the refusal to provide a signature.
L. If the Agent became the Department’s agent on or after April 1, 2009, the Agent shall use the Department’s electronic software program for conducting and documenting inspections. If the Agent has been the Department’s agent before April 1, 2009, the Agent may use the Department’s electronic software program or the Department-approved paper forms for conducting inspections. The Department will provide, maintain and support this software. The Agent may be responsible for additional user licenses or development costs specific to the Agent’s program.

M. The Department may conduct an inspection of any establishment in the Agent's jurisdiction in response to any emergency, for the purpose of monitoring and evaluating the Agent’s activities pursuant to this Contract, for the purpose of training or education, or at the Agent's request. The Department shall make a reasonable effort to notify the Agent before conducting an inspection. Agent may accompany the Department during such inspections.

N. The Agent, if requested by the Department, shall conduct effectiveness checks pertaining to product recalls or other situations in which food must be removed from sale or service.

IV. ENFORCEMENT

A. The Agent shall take necessary and reasonable action to enforce Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, Wis. Admin. Code chs. ATCP 72, 73, 75 & Appendix, 76, 78 and 79, and any local ordinances or regulations adopted pursuant to Wis. Stat. §§ 97.41 (7) and 97.615 (2) (g), for the establishments for which Agent has been delegated authority under this Contract including, but not limited to, the following:

1. An immediate danger to public health as required in Wis. Stat. §§ 97.12 and 97.65.

2. Noncompliance with written orders.

3. Continued repeat violations noted on inspection reports.

4. Operating without a required establishment license.

B. The Agent shall cover the costs of these actions.

C. The Department shall provide technical assistance to the Agent for enforcement activities upon the Agent's request.

D. The Agent shall notify the Department, in writing, within 10 days after taking any enforcement action to suspend or revoke a license or initiating a court action against a license-holder.
E. The Agent shall implement and distribute to all its inspection staff, the Agent Program Plan required by Wis. Admin. Code ch. ATCP 74. The Department shall review the plan, and any changes to it, during the Department’s periodic evaluations of the Agent’s performance.

F. If the Agent has been notified by the Department of any deficiency on the part of a facility under its jurisdiction, in complying with the applicable statutory, administrative code or local ordinance requirements, and if Agent has had reasonable opportunity to take enforcement action but has failed to act expeditiously in taking appropriate enforcement action, the Department may act under Wis. Stat. §§ 97.12 and 97.65 to enforce compliance.

G. If the Department makes a request, the Agent shall conduct food or environmental sampling from any establishment in the Agent’s jurisdiction for laboratory analysis.

1. The Agent may conduct the analysis if its laboratory is capable of performing the required analytical procedures.

   a) The Agent shall assume all costs involved in collecting the samples and running the analysis.

   b) The Agent shall inform the department of the analysis results.

2. If the Agent does not have the laboratory capability to perform the required analyses, or who choose not to perform the analyses, the Agent shall submit the samples to the Department’s Bureau of Laboratory Services (BLS) or the State Lab of Hygiene (LOH).

   a) The Agent shall fund the cost of acquiring any samples and shipping the samples to the laboratory.

   b) The Department shall fund the cost of the laboratory analysis of the samples.

V. STAFFING

A. The Agent shall employ at least one Wisconsin Registered Sanitarian (WI-RS) or Registered Environmental Health Specialist / Registered Sanitarian (REHS/RS) to conduct inspections or supervise other non-RS sanitarians who conduct inspections. The agent’s inspection staff shall meet the educational or experience requirements established for sanitarian registration under chs. SPS 174 to 177 or the National Environmental Health Assn. REHS/RS. The expectation is that all inspection work completed under this contract is accomplished by a RS/REHS credentialed staff.

B. If the Agent loses its only WI-RS or REHS/RS, Agent shall hire a RS/REHS replacement within 120 days; or upon the Agent's written request, the Department, in its sole discretion, may allow the Agent additional time to hire a qualified
replacement. A replacement that does not hold the WI-RS or REHS/RS credential may be hired, if approved by the Department, and if a Contract has been executed to ensure that a person holding the credential provides oversight. The replacement hire shall attain the WI-RS or REHS/RS credential within six months of being hired. A copy of the oversight Contract shall be provided to the Department and shall include the amount of time allotted for oversight activities and what specific duties the supervising REHS/RS will provide.

C. The Agent shall designate at least one environmental health inspection staff person, as required by the Department, to undergo the standardization process in the retail food program. The initial standardization process involves the number of establishment exercises in the Wisconsin Standardization Manual. After successfully completing the exercises, the staff person shall be designated as the Agent Standard. The Agent Standard shall perform the Department-required maintenance exercises, as described in the Wisconsin Standardization Manual, every three years to maintain certification. The Agent shall have at least one Agent Standard who shall standardize the other members of the Agent’s environmental health inspection personnel, using the standardization process described above. As the Department develops standardization processes for programs other than the retail food program, the Agent will comply with the standardization process in those programs.

D. The Agent’s staff shall participate on Department rule making and policy advisory committees when requested.

E. The Agent shall make written environmental health inspection staffing arrangements to assure adequate coverage during the absence of regular inspection and enforcement staff. These arrangements shall be made a part of the Agent’s Program Plan, approved by the Department before implementation, and available for the Department’s review during periodic evaluations.

F. The Agent shall not permit an employee to conduct an inspection in a situation in which the employee may have a conflict of interest.

G. Upon the Agent’s request, DATCP will provide technical assistance and training to staff.

H. The Agent is required to send at least one environmental health inspection staff person to the Department’s annual training meetings and conferences.

VI. EDUCATIONAL OUTREACH

The Agent will cooperate with the Department in conducting training programs for licensees and employees of establishments located in its jurisdiction.

VII. REPORTS AND RECORDS
A. The Agent shall maintain a file of the current records for each licensed facility within its jurisdiction. Records shall include the name, address, ID number and type of establishment or facility. A file shall contain at least the latest three (3) years of inspection reports, follow-up investigation reports, reports of enforcement actions, confirmed complaint follow-ups and summaries, foodborne disease outbreak information, and approvals of variance requests, HACCP plans and waivers.

B. If the Agent is not using the Department’s electronic inspection and licensing software, the Agent shall use inspection report forms approved by the Department for all pre-licensing inspections, routine inspections, re-inspections, and follow-up inspections.

C. The Agent shall submit reports as requested by the Department. The Department may review or request a copy of any inspection report, correspondence, or order served on any licensee within Agent’s jurisdiction; annual program budget reports, projections, and any other report the Department determines it needs to monitor the Agent’s performance, including, but not limited to, CDC risk factor reports, self-assessments, or any other required reports, pursuant to Wis. Stat. § 97.41 (7) or 97.615 (2) (g) or Wis. Admin. Code ch. ATCP 74.

D. By the 10th of the month immediately following the month in which the Agent issues a license, or receives notification from a licensee of a change affecting its license, the Agent shall provide a report of all such license issuances and changes to the Department. This requirement applies to temporary restaurants, as defined in Wis. Admin. Code ch. ATCP 75. This reporting requirement is satisfied by the Agent’s use of the Department’s electronic licensing and inspection software.

E. By September 1 of each year, the Agent shall give the Department a complete list of the names and addresses of the licensees to whom licenses were issued by the Agent during the previous fiscal year. This reporting requirement is satisfied by the Agent’s use of the Department’s electronic licensing and inspection software.

F. The Agent shall maintain records documenting the cost of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to licensees, and the cost of enforcing applicable state statutes and rules and local ordinances. Upon request, the Agent shall provide copies of these records to the Department.

G. Within ten (10) days after the date on which it takes place, Agent shall report to the Department, in writing, any change in the assignment of a supervisor of the environmental health inspection personnel who are not currently Wisconsin registered sanitarians and any change in the organization of the inspection staff, including authority line changes. If the Agent employs only one or two sanitarians, the Agent shall report any change in assignment of environmental health inspection personnel that are providing services under this Contract.
H. The Agent shall submit the CDC Risk Factor Tracking Sheet annually to the Department for the purpose of enabling the Department to determine the types of violations found in facilities throughout the State of Wisconsin. This reporting requirement is satisfied by the Agent’s use of the Department’s electronic licensing and inspection software.

I. As required by Wis. Admin. Code ch. ATCP 74, the Agent shall maintain and keep readily available for use by inspection staff and review by the Department, a copy of its Agent Program Plan. The plan shall include, at a minimum, all the components identified in Wis. Admin. Code ch. ATCP 74 and any other information the Department requests in writing that it determines is necessary or relevant for its review of the plan. The minimum components include:

1. Identification of any employee that will issue licenses or conduct investigations and inspections.

2. A description of the staffing and budget for issuing licenses, making investigations and inspections, providing technical assistance, and enforcing applicable state statutes and rules, and local ordinances.

3. A list of the fees to be charged by the Agent to licensees under this Contract.

4. A description of the Agent’s license issuance and recordkeeping system maintained under this Contract.

5. A declaration that Agent will contract with the Department, as permitted by Wis. Stat. §§ 97.41 and 97.615, if the Agent wants the Department to collect fees and issue licenses.

6. A description of the inspection and enforcement program implemented by the Agent, with a copy of any applicable city or county ordinance or regulation.

7. A plan of action to ensure that there will be cooperation between the Agent and appropriate federal, state and local agencies, in the event of a natural disaster or other emergency.

8. Procedures for the investigation and follow-up of complaints concerning licensees under this Contract and unlicensed activity that may require licensing and inspection.

9. Procedures for notifying the Department when the Agent receives information or a complaint concerning an establishment, within the Agent’s geographical area but under the Department’s jurisdiction, that may need to be licensed or inspected.

10. Procedures for the investigation and follow-up of reports of suspected foodborne illness, including cooperation with the Department’s Rapid Response Team.
11. Procedures to ensure the time period, within which the Agent will make a determination on an application for a license, does not exceed 30 days following receipt of a complete application.

12. An assurance of continued support by the city or county for carrying out this Contract.

13. Any other information which the Department considers necessary or relevant for its review of Agent’s Program Plan.

VIII. REIMBURSEMENT BY THE DEPARTMENT FOR VENDING INSPECTIONS

A. The Agent shall submit a list of vending machine inspections it conducted during the previous fiscal year to the Department, no later than August 30 unless the Department in its sole discretion extends the deadline for submission, to receive reimbursement from the Department for performing the inspections.

B. No later than September 30 of the next fiscal year, the Department shall reimburse the Agent for inspections of vending machines during the previous fiscal year, as required in Wis. Stat. § 97.615 (1). If the Department extends the deadline for submitting inspection information, the Department may reimburse the Agent up to 30 days after receiving this information. The reimbursement amount for vending machine inspections is the portion that remains after deducting the Department’s clerical and automated licensing processing costs from the license fee.

C. Fee reimbursements for the inspection of vending machines moved from one Agent's jurisdiction to another Agent’s jurisdiction will be credited to the Agent making the first inspection during the fiscal year.

IX. REIMBURSEMENT TO THE DEPARTMENT FOR STATE FEES COLLECTED BY AGENT

A. The Agent shall reimburse the Department for the state fees from the license fees the Agent collects, as provided under sub. B.

B. The state fees shall not exceed 20% of the state license fees the Department sets by administrative rule for the types of facilities for which the Agent issues licenses. The calculation of the state fees is based on state license fees only, not preinspection and reinspection fees.

C. As of the date of this Contract, the state fees are 10% of the state license fees. The department may increase the state fees up to 20% of the state license fees by announcing a change in the percentage one year prior to the licensing year for which the change applies. Retail food and recreational establishment license fee reimbursement shall be:
1. A fee equal to 10% of the applicable state license fee, regardless of the license fee actually charged by the local agent, if the local agent prepares and submits to the Department, by September 30 of that year, an annual self-assessment as required by Wis. Stat. §§ 97.41 and 97.615.

2. A fee equal to 20% of the applicable state license, regardless of the license fee actually charged by the local agent, if the local agent fails to submit the annual self-assessment in par. 1. to the Department, by September 30 of that year. A fee payment under this paragraph does not exempt the Agent from the duty to prepare and submit an annual self-assessment.

D. The Department shall provide the Agent with a reimbursement summary form to be used by the Agent to identify all the facilities for which the Agent has issued licenses during the licensing year. The summary shall be formatted by the Agent to include the complexity assessment rating assigned to each retail food establishment licensed during the licensing year.

E. State fees for each licensee shall be based on the state license fee, determined by the license category as follows:

1. Retail Food Establishments - Restaurants - are determined using the table in Wis. Admin. Code Subch. III of ch. ATCP 75 for restaurant license category. The Agent may use the restaurant license category assignment formula in that subchapter or a complexity tool approved in writing by the Department.

2. Retail Food Establishments – Values, listed in Wis. Admin. Code § ATCP 75.03, shall be used in determining the license category.

3. Recreation Facilities – Values, listed in Wis. Admin. Code chs. ATCP 72, 73, 76, 78 and 79, shall be used in determining the license category.

F. No later than September 30 of each year, the Agent shall return the completed summary form and reimburse the Department for the state fees.

X. COSTS

The total fees the Agent collects may not exceed the Agent’s reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to licensed establishments, plus the state fees.

XI. EVALUATION

A. The Department shall perform an evaluation of the Agent’s licensing, investigation and inspection program to determine whether the Agent meets the program standards set
by the Department and applicable administrative rules, as required under Wis. Stat. §§ 97.41 (2) and 97.615 (2) (b) and this Contract. The evaluation will consist of the following:

1. The Agent shall submit an annual self-assessment report to the Department, no later than September 30, which the Department shall use as part of its onsite evaluation of the Agent’s performance.

2. The Department shall conduct an onsite evaluation, at least once every three years, to assess the Agent’s compliance with the provisions of this Contract, program standards set by the Department and applicable statutes and administrative rules. The Department may conduct the onsite evaluation process at any reasonable time and shall give the Agent reasonable advance notice. The onsite evaluation process shall include an office component and a field component. The office component shall include, but is not limited to, review of ordinances, regulations, inspection reports, budget information, and other required documentation. The field component shall include the Department personnel performing maintenance standardization with the Sanitarian who is the Agent - Standard, as well as evaluating other sanitarians, if applicable.

B. In addition to the required evaluation, the Department may perform additional evaluations of the Agent’s performance at any reasonable time with reasonable advance notice.

C. As part of the Department’s onsite evaluation report, the Department shall notify the Agent of any deficiencies in standards set by the Department, the Agent’s inspection, permit issuance or enforcement program and establish a deadline for correction of the deficiencies.

D. In response to the Department’s report, if needed, the Agent shall submit to the Department a draft Corrective Action Plan, detailing how the Agent will meet contract requirements and the recommendations based on the Department’s program standards and conformance to Wisconsin Statues and Administrative Rules and this Contract.

E. The Department, after receiving the draft Corrective Action Plan, shall review, make additional comments, and approve the Corrective Action Plan when it is deemed acceptable.

F. The Agent shall include the approved Corrective Action Plan in its Agent Program Plan and distribute it to its staff as required in Section IV. E.

G. The Agent shall document progress on the approved Corrective Action Plan on their next one or two yearly self-assessments as necessary.

H. The Department may, at its discretion, increase the frequency of evaluation for the Agent as deems necessary.
I. If the Agent fails to meet the conditions of the Corrective Action Plan in the Agent Program Plan, the Department shall do the following:

1. In writing, the Department shall notify the Agent of the deficiency and the agent contract shall be placed in a conditional status, with a deadline set for the Agent to meet the conditions and return to full compliance.

2. If deficiencies are corrected within the conditional time period, the contract is returned to active status.

3. If deficiencies remain uncorrected after a conditional deadline has passed, the Department shall notify the Agent of its intent to terminate the contract and revoke agent status, as provided under XIV (B) of this Contract.

XII. NONDISCRIMINATION

A. In connection with the performance of work under this Contract, the Agent agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Stats., sexual orientation as defined in s. 111.32(13m), Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Agent shall take affirmative action to ensure equal employment opportunities. The Agent shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

B. The Department assumes no liability for the job safety or welfare of the Agent employees, or for the actions or omissions of the Agent employees relating to the administration of the retail food and recreational program, except as otherwise provided by law.

XIII. PRIVACY AND CONFIDENTIAL INFORMATION

A. Definitions: The following definitions apply to this section.

1. “Confidential Information”: means all tangible and intangible information and materials, including all Personally Identifiable Information, being disclosed in connection with this Contract, in any form or medium (and without regard to whether the information is owned by the State or by a third party), that satisfy at least one of the following criteria

   a) Personally Identifiable Information as defined in 2;
b) Information not subject to disclosure under Wis. Stat. ch. 19, subch. II, Public Records and Property, that is related to the Department’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or

c) Information expressly designated as confidential in writing by the Department.

2 “Personally Identifiable Information” means an individual’s last name and the individual’s first name or first initial, in combination with, and linked to, any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable:

a) The individual’s Social Security number;

b) The individual’s driver’s license number or state identification number;

c) The number of the individual’s financial account, including a credit or debit card account number or any security code, access code, or password that would permit access to the individual’s financial account;

d) The individual’s DNA profile; or

e) The individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

3 “Corrective Action Plan” means a plan, developed by the Agent and approved by the Department, that the Agent must follow in the event of any threatened or actual use or disclosure of any Confidential Information not specifically authorized by this Contract, or in the event that any Confidential Information is lost or cannot be accounted for by the Agent.

B. Duty of Non-Disclosure and Security Precautions

1. The Agent shall not use Confidential Information for any purpose other than the limited purposes set forth in this Contract and all related and necessary actions taken in fulfillment of the obligations thereunder. The Agent shall not disclose such Confidential Information to any persons other than those Agent Representatives who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract. The Agent shall be responsible for the breach of this Contract by any said Representatives.
2. The Agent shall institute and maintain such security procedures as are reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation or transmission, whether physically or electronically.

3. The Agent shall insure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by the Agent on any reproduction, modification, or translation of such Confidential Information. If requested by the department, Agent shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the department, as directed.

4. The Agent shall return to the department all Personally Identifiable Information it maintains possesses or controls, collected on behalf of this Contract, upon termination of this Contract and shall destroy all copies.

C. Legal Disclosure. If Agent or any of its Representatives shall be under a legal obligation in any administrative, regulatory or judicial circumstance to disclose any Confidential Information, the Agent shall give the Department’s Office of Legal Counsel prompt notice thereof (unless it has a legal obligation to the contrary) to allow the department to inspect the Confidential Information and seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, Agent and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature. Agent or its representatives shall not be obligated to wait on any action or inaction by the Department, under this section, at any time when Agent is required to release information under other authority of law.

D. Unauthorized Use, Disclosure or Loss

1. Immediately upon becoming aware of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Contract, or that any Confidential Information has been lost or is unaccounted for, the Agent shall notify the Department’s Office of Legal Counsel of the problem. Such notice shall include, to the best of the local agent’s knowledge at that time, the persons affected, their identities and the Confidential Information disclosed.

2. The Agent shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure or loss. The Agent shall cooperate with the Department’s efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such threatened or actual breach, or to recover the Confidential Information, including complying with a Corrective Action Plan.

XIV. TERMINATION, REVOCATION OR SUSPENSION OF AGENT CONTRACT
A. TERMINATION. The Agent may terminate this Contract upon 90 days written notice to the Department. The notice shall specify the reasons for termination and the last day the Agent will have agent status.

B. REVOCATION. If the Department finds that the Agent has failed to comply with the requirements for agent status under Wis. Stat. § 97.41(2) or 97.615 (2) (b), Wis. Admin. Code ch. ATCP 74, or the terms and conditions of this Contract, the Department may revoke agent status, as provided by statute, upon 90 days written notice to the Agent. The notice shall specify the reasons for revocation and the last day that the Agent will have agent status.

C. SUSPENSION. If the Department finds that suspension of this Contract is necessary to protect the public’s health or safety, the Department may immediately suspend this Contract upon notice to the Agent. The Agent may request a hearing on the suspension in writing, as provided in Wis. Admin. Code § 1.03 (3), including the information required in Wis. Admin. Code § ATCP 1.06. The Department shall hold a hearing, if requested by Agent, within 15 days after the Department receives the request, unless the Agent agrees to a different date. The suspension shall remain in effect until the final hearing decision is issued.

D. Reimbursement upon Termination or Revocation:

1) Vending: If this Contract is terminated or revoked, the Agent shall receive reimbursement for inspections of vending machines and vending machine commissaries performed under the Contract up to and including the date of termination or revocation.

2) Other Licenses: If this Contract is terminated or revoked, the Agent shall reimburse the Department for the prorated amount, for the remainder of the fiscal year, of all license fees received by the Agent. The reimbursement shall be based on this formula: Days left in fiscal year/365 times the state license fees for all the establishments the Agent has licensed.

E. Upon termination or revocation of this Contract, the Agent shall transfer all inspection and enforcement records to the Department.

Signed this ______________ day of ___________________________, 2018.

For ________________________________
Signed this ______________ day of __________________________, 2018.

For the Department of Agriculture, Trade and Consumer Protection:

Steven C. Ingham, Administrator
Division of Food and Recreational Safety
MEMORANDUM

To: City of Menasha Common Council

From: John Jacobs, Administrative Services Director

Date: March 15, 2018

RE: Reconsideration of Resolution R-4-18: A Resolution Authorizing the Execution and Delivery of Documents Relating to the Fox Cities Exhibition Center Project

BACKGROUND UPDATE

After the Menasha Common Council had taken action on Resolution R-4-18 on 3/05/2018, the Appleton Common Council had offered to remove the reimbursement for the Phase IV ($240,000) and Phase V ($268,000) legal fees, and also to remove the Speer Financial Fees ($10,000), for a grand total of $518,000. The City of Menasha received this communication from Neenah Mayor Kaufert on 3/09/2018 (see attachment). This means that the city of Appleton would not be requesting reimbursement for these expenditures with the issuance of the 2018 revenue bonds for the Fox Cities Exhibition Center financing, which is now planned for May 1st.

Then, the ten participating municipalities met on 3/12/2018 to agree to terms requested by the City of Appleton, whereby Appleton would only request reimbursement of the accrued lost interest costs of $285,130 in the 2018 bond issuance costs. However, the City of Menasha had passed Resolution R-4-18 on 3/05/2018 with the exclusion of all of the legal costs ($518,000) since this information had NOT yet been included on Exhibit A at the time of the 2/08/2018 draft of the documents, and with the exclusion of the $285,130 accrued interest, which now should be “removed” from the previous 3/05/2018 motion.

I have attached the “Exhibit A” document from the updated Cooperation Agreement with the fully disclosed items that the City of Appleton has requested to be reimbursed with the issuance of these 2018 revenue bonds.

Finally, I have also attached all of the supporting documents (to the online version) of the meeting packet, which include the original 2/08/2018 documents (which were included with the 3/05/2018 packet) and now the updated 3/09/2018 documents (which are attached to the online version packet for the 3/19/2018 Council meeting). The 3/09/2018 version of documents includes the most recent “clean” version of the documents, along with the “redlined” version that you are able to clearly see all changes.
made between the 2/08/2018 and 3/09/2018 draft. The three documents that have been updated to the 3/09/2018 version are the following:

- Amended and Restated Cooperation Agreement for the Fox Cities Exhibition Center
- First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement
- Amended Pledge and Security Agreement – relating to Fox Cities Exhibition Center

**STAFF RECOMMENDATION**
Based on the feedback from the City of Appleton Common Council and the 3/12/2018 meeting of the ten municipalities, the City of Menasha Common Council should make a motion at the 3/19/2018 Common Council meeting to:

- Move to reconsider and adopt Resolution R-4-18 and supporting documents along with the final changes made to Exhibit A of the updated Cooperation Agreement as presented.

**FISCAL IMPACT**
There is no fiscal impact to the City of Menasha for the execution and approval of the attached resolution (and other accompanying documents) with the following condition precedent outline above.
To Fox Cities Tourism Zone member municipalities:

Yesterday, March 8th, the Appleton City Attorney informed us that the Appleton Common Council offered to remove the reimbursement of the Phase IV & V legal fees and Speer Financial fee from the FCEC bond issue. The imputed interest for Appleton carrying the project costs remains as a reimbursable in the bond issue.

This offer, while not everything we requested, strikes a balance that provides a means to resolve the project financing and begins the rebuilding of the cooperative arrangement between the municipalities of the Fox Cities Tourism Zone. However, it is important that all of the participating municipalities of the Fox Cities Tourism Zone are in agreement. Thus the meeting announced yesterday scheduled for Monday, March 12 at 3 p.m. at Neenah City Hall will provide the opportunity for all to express their views on the proposed resolution.

Thanks to all for their efforts on this project. I look forward to our meeting on Monday.

Dean
**EXHIBIT A**

**Exhibition Center Project**

The Fox Cities Exhibition Center ("FCEC") is an approximately 30,000 square foot facility with an iconic spire and glass façade overlooking Jones Park located at 355 West Lawrence Street, Appleton, Wisconsin, includes exhibition, trade show, and meeting space with state of the art technical capabilities. The exhibition space can be divided into three 10,000 square foot sections and features a pre-function space and dedicated meeting space. The FCEC also has 17,000 square feet of outdoor exhibition space that can be rented. The FCEC is connected to the Radisson Paper Valley Hotel, which offers an additional 40,000 square feet of meeting, banquet and break-out space and 390 sleeping rooms.

<table>
<thead>
<tr>
<th>Costs Paid by the City of Appleton</th>
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<tr>
<td>Design Costs</td>
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<td>Site Development</td>
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<td>Construction Costs</td>
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<td>Debt Issuance Costs - Private - Phase III only</td>
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<td>Accrued Lost Interest Costs</td>
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<td><strong>Total Project Costs</strong></td>
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<td>Less: Prior Reimbursements Received by City</td>
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<tr>
<td>Reimbursement Amount to City of Appleton</td>
<td>$30,311,053</td>
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</table>
RESOLUTION R-4-18

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATING TO THE FOX CITIES EXHIBITION CENTER PROJECT

Introduced by Mayor Merkes

WHEREAS, the City of Menasha, Wisconsin (the “Municipality”), certain other municipalities in the Fox Cities area (together with the Municipality, the “Municipalities”), the Redevelopment Authority of the City of Appleton, Wisconsin (the “Authority”), the Fox Cities Room Tax Commission (the “Commission”), and the Fox Cities Performing Arts Center, Inc. (the “PAC”) have entered into an Exhibition Center Cooperation Agreement, dated as of November 24, 2015 (the “Original Cooperation Agreement”), pursuant to which the Municipalities, the Authority, and the Commission agreed, among other things, to enact resolutions, ordinances, and all other municipal acts necessary to effect a 3% room tax (the “Exhibition Center Room Tax”), in addition to the room taxes then being collected, to be pledged to pay debt service on bonds to be issued by the Authority (the “Bonds”) to finance the construction and equipping of the Fox Cities Exhibition Center (the “Exhibition Center”) and related payments or deposits such as costs of issuance, a debt service reserve fund, a stabilization fund, and any capitalized interest; and

WHEREAS, the Municipality adopted an ordinance (the “Room Tax Ordinance”), that levied a 10% room tax (the “Room Tax”), which included the Exhibition Center Room Tax, restated other existing room tax percentage allocations, including the 2% PAC Room Tax (the “PAC Room Tax”) pledged to pay debt service on bonds issued by the Authority to finance or refinance the Fox Cities Performing Arts Center (the “PAC Bonds”), and set forth the priority of application of payments of the Room Tax; and

WHEREAS, in connection with the execution of the Original Cooperation Agreement, the Municipalities and the Commission also entered into an Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015 (the “Commission and Zone Agreement”), to restate a prior agreement, to confirm the establishment of the Fox Cities Tourism Zone, to confirm the establishment of the Commission and its powers, duties, and membership, to appoint the Fox Cities Convention & Visitors Bureau (the “CVB”) as a tourism entity to provide the administrative support for collecting and allocating a portion of the Room Tax, and to confirm the Municipalities’ agreements set forth in the Original Cooperation Agreement with respect to the Exhibition Center and the Room Tax; and

WHEREAS, the Original Cooperation Agreement and the Tourism Entity Agreement, dated December 31, 2015, by and between the Commission and the CVB (the “Tourism Entity Agreement”) contemplate that when the Bonds are issued to finance the Exhibition Center, a Pledge and Security Agreement will be entered into by and among the Municipalities, the
Commission, and a trustee (the “Pledge and Security Agreement”) to provide for the pledge of the Exhibition Center Room Tax for the payment of the Bonds; and

WHEREAS, pursuant to the Pledge and Security Agreement, the Exhibition Center Room Tax will be required to be paid to the trustee for the Bonds; and

WHEREAS, subsequent to the execution of the Original Cooperation Agreement, the Commission and Zone Agreement, and the Tourism Entity Agreement, certain facts and assumptions contemplated in said agreements have changed, including that

(i) the Bonds have not yet been issued,

(ii) the Pledge and Security Agreement has not been entered into,

(iii) the PAC Bonds are being called for redemption in full on March 1, 2018, at which time the PAC Cooperation Agreement (defined in the Original Cooperation Agreement) will terminate and the PAC Room Tax will be reallocated,

(iv) a municipality that is party to the Original Cooperation Agreement has been incorporated as a village, and

(v) the City of Appleton, Wisconsin has constructed the Exhibition Center with its own funds; and

WHEREAS, the hotelkeepers, motel operators, and other persons or entities furnishing accommodations that are available to the public in the Municipality and obligated to collect the Room Tax (the “Operators”) have been forwarding the PAC Room Tax directly to the trustee for the PAC Bonds; and

WHEREAS, it is necessary and desirable to amend and restate the Original Cooperation Agreement and amend the Commission and Zone Agreement to reflect current facts and assumptions, and to enter into the Pledge and Security Agreement as contemplated under the above agreements; and

WHEREAS, there have been presented to the Municipality substantially final drafts of an Amended and Restated Cooperation Agreement, a First Amendment to the Amended and Restated Room Tax Commission and Tourism Zone Agreement, and a Pledge and Security Agreement (collectively, the “Exhibition Center Documents”);

NOW, THEREFORE, BE IT RESOLVED by the Common Council (the “Governing Body”) of the Municipality as follows:

Section 1. Approval of Exhibition Center Documents.

The terms and provisions of the Amended and Restated Cooperation Agreement, the First Amendment to the Amended and Restated Room Tax Commission and Tourism Zone Agreement, and the Pledge and Security Agreement are hereby approved. The Mayor and Clerk
are hereby authorized for and in the name of the Municipality to execute and deliver the Exhibition Center Documents in substantially the forms thereof presented herewith, with such insertions therein or corrections or changes thereto as shall be approved by such officers consistent with this resolution, their execution thereof to constitute conclusive evidence of their approval of any such insertions, corrections, or changes.

Section 2. Notification to Operators; Exhibition Center Room Tax to Trustee.

The officers of the Municipality are hereby directed to cause notice to be delivered to each Operator that, effective April 1, 2018, (i) the PAC Room Tax (2%) shall no longer be forwarded to the trustee for the PAC Bonds, (ii) the Exhibition Center Room Tax (3%) shall instead be forwarded to the trustee for the Bonds on the quarterly dates set forth in the Pledge and Security Agreement, and (iii) the remaining Room Tax (7%), which includes the PAC Room Tax, shall be forwarded to the Municipality.

Section 3. General Authorizations.

The officers of the Municipality are hereby each authorized to execute, publish, file, and record such other documents, instruments, notices, and records and to take such other actions, including entering into additional agreements and amending existing agreements, as shall be necessary or desirable to accomplish the purposes of this resolution and to comply with the obligations of the Municipality under the Commission and Zone Agreement and the Exhibition Center Documents, as each may be amended and restated, and to facilitate the issuance of the Bonds. In addition, the representatives of the Municipality that serve as commissioners on the Commission are hereby authorized and directed to take any necessary action on behalf of the Municipality with respect to actions taken by the Commission relating to the Bonds and the Exhibition Center Room Tax allocated to the payment, either directly or indirectly, of debt service on the Bonds.

Section 4. Effective Date.

This resolution shall be effective immediately upon its passage [and approval]. To the extent that any prior resolutions of the Governing Body are inconsistent with the provisions hereof, this resolution shall control, and such prior resolutions shall be deemed amended to such extent as may be necessary to bring them in conformity with this resolution.

Passed and approved this ____ day of __________, 2018.

______________________________
Donald Merkes, Mayor

ATTEST:

_____________________________
Deborah A. Galeazzi, City Clerk
AMENDED AND RESTATED
COOPERATION AGREEMENT
FOR THE
FOX CITIES EXHIBITION CENTER

Dated as of [May 1], 2018

Amending and Restating in its entirety
the Exhibition Center Cooperation Agreement,
dated as of November 24, 2015

by and among

THE MUNICIPALITIES NAMED HEREIN

the

REDEVELOPMENT AUTHORITY OF THE
CITY OF APPLETON, WISCONSIN

and the

FOX CITIES AREA ROOM TAX COMMISSION
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AMENDED AND RESTATED
COOPERATION AGREEMENT
FOR THE
FOX CITIES EXHIBITION CENTER

This AMENDED AND RESTATED COOPERATION AGREEMENT (this “Agreement”), is made as of [May 1], 2018, by and among the CITY OF APPLETON, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Appleton”), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kaukauna”), the CITY OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Neenah”), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kimberly”), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Little Chute”), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin political subdivision (“Grand Chute”), the TOWN OF NEENAH, WISCONSIN, a Wisconsin political subdivision (“Town of Neenah”), the VILLAGE OF FOX CROSSING, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Fox Crossing”), the CITY OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Menasha”), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Sherwood” and, collectively with Appleton, Kaukauna, City of Neenah, Kimberly, Little Chute, Grand Chute, Town of Neenah, Fox Crossing, and Menasha, the “Municipalities”), the REDEVELOPMENT AUTHORITY OF THE CITY OF APPLETON, WISCONSIN, a Wisconsin body corporate and politic (the “ARA”), and the FOX CITIES AREA ROOM TAX COMMISSION, a Wisconsin intergovernmental commission (the “Room Tax Commission”), to amend and restate in its entirety the Exhibition Center Cooperation Agreement, dated as of November 24, 2015 (the “Original Agreement”), entered into by and among the above parties and the Fox Cities Performing Arts Center, Inc. (the “PAC”), as a result of certain changes in facts and assumptions that have occurred subsequent to the execution of the Original Agreement.

ARTICLE I
DEFINITIONS

In addition to those terms defined throughout this Agreement, the following terms shall have the following meanings ascribed to them:

“Additional Bonds” means such revenue bonds in such series and in such principal amounts as the ARA may issue from time to time pursuant to a supplement to the Indenture for the purpose of refinancing or refunding then-outstanding Bonds.

“Additional Municipality” means any municipality within the Tourism Zone which, subsequent to the date of this Agreement, becomes a member of the Room Tax Commission and which, pursuant to Section 5.02, becomes a party to this Agreement.

“Bonds” means, collectively, the Series 2018 Bonds and any Additional Bonds issued by the ARA for the purposes set forth in this Agreement.
“Commission Agreement” means the Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015, by and between the Municipalities and the Room Tax Commission, as amended by a First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of [May 1], 2018, and as further amended from time to time.

“Credit Enhancement” means a policy of bond insurance, a letter of credit, a guaranty, or another form of credit enhancement as security for payment of debt service on the Bonds.

“CVB” shall mean the Fox Cities Convention & Visitors Bureau, Inc., a Wisconsin nonprofit corporation, or its successors and assigns pursuant to the Tourism Entity Agreement.

“Exhibition Center” means the Fox Cities Exhibition Center, a convention center as referenced in the Room Tax Act, more specifically described in Exhibit A hereto and situated on the Exhibition Center Property.

“Exhibition Center Property” means the real property legally described in Exhibit B hereto.

“Exhibition Center Room Tax” means the 3% Room Tax levied by each Municipality pursuant to the Room Tax Act and the Commission Agreement for purposes of paying, directly or indirectly, debt service on the Bonds and related purposes.

“Governing Body” means, when used with reference to a Municipality, the Common Council, Village Board, or Town Board, as applicable, of such Municipality.

“Governing Body Authorizations” means (i) the Ordinances, (ii) the resolutions titled “Resolution Authorizing the Execution and Delivery of Documents relating to the Fox Cities Exhibition Center Project” adopted by the Governing Bodies of: (a) Appleton on March 7, 2018, (b) Grand Chute on __________, 2018 (c) Kaukauna on __________, 2018, (d) Kimberly on __________, 2018, (e) Little Chute on __________, 2018, (f) City of Menasha on __________, 2018, (g) Town of Menasha on __________, 2018, (h) City of Neenah on __________, 2018, (i) Town of Neenah on __________, 2018, and (j) Sherwood on February 26, 2018, (iii) the resolution of the Room Tax Commission adopted on [March 19], 2018 relating to the Exhibition Center, (iv) an additional resolution of Appleton on [March 21], 2018, and (v) the resolutions of the ARA adopted on February 16, 2018 and on [April 11], 2018, each relating to the Exhibition Center.

“Indenture” means the Indenture of Trust, dated as of [May 1], 2018, by and between the ARA and the Trustee with respect to the Series 2018 Bonds as supplemented or amended from time to time pursuant to the terms thereof, including pursuant to which Additional Bonds are issued.

“Lease” means the instrument of lease between the ARA and Appleton described in Section 3.05 hereof, as amended from time to time pursuant to the terms thereof, including in connection with the issuance of Additional Bonds.
“Management Agreement” means the Management Agreement dated November 18, 2015 entered into by Appleton Holdings, LLC, as owner and operator of the Paper Valley Hotel, and [______________], a single purpose entity owned by Appleton Holdings, LLC, as amended from time to time.

“Mortgages” means, collectively, any and all mortgages and assignments of leases, security agreements or other agreements or instruments entered into by the ARA and delivered to the Trustee for the purpose of granting the Trustee a mortgage lien on the Exhibition Center Property and all improvements located thereon, including the Exhibition Center[, and a security interest in the personal property described therein,] as collateral security for the payment of the Bonds, in each case as amended from time to time pursuant to the terms thereof.

“Municipality” means each of Appleton, Kaukauna, City of Neenah, Kimberly, Little Chute, Grand Chute, Town of Neenah, Fox Crossing, Menasha, Sherwood, and any Additional Municipality.

“Operators” means any hotelkeepers, motel operators, and other persons that furnish accommodations that are available to the public and are obligated to collect the Room Tax.

“Ordinances” means the room tax ordinances adopted in November, 2015 by each Municipality’s Governing Body pursuant to the Room Tax Act, which levied a 10% Room Tax, including the Exhibition Center Room Tax.

“Pledge and Security Agreement” means the Pledge and Security Agreement, dated as of [May 1], 2018, by and among the Municipalities, the Room Tax Commission, and the Trustee, incorporating the pledge of Exhibition Center Room Taxes to the payment, directly or indirectly, of the costs of construction of the Exhibition Center and debt service on the Bonds and/or such other reasonable and customary payments or deposits related to the Bonds as may be provided in the Indenture, such as, but not limited to, costs of issuance and administration, Credit Enhancement, debt service reserve and room tax stabilization funds, and capitalized interest, if any, as amended from time to time pursuant to the terms thereof.

“Redevelopment Act” means Section 66.1333 of the Wisconsin Statutes, as amended.

“Room Tax” means a tax levied pursuant to the Room Tax Act.

“Room Tax Act” means Section 66.0615 of the Wisconsin Statutes, as amended.

“Room Tax Commission” means the Fox Cities Area Room Tax Commission created by the Municipalities for the purpose of coordinating tourism promotion and tourism development in the Tourism Zone, the membership of which shall be established as set forth in the Commission Agreement and subsection (1m)(c)(2) of the Room Tax Act.

“Series 2018 Bonds” means the ARA’s Taxable Lease Revenue Bonds, Series 2018 (Fox Cities Exhibition Center Project), dated their date of initial delivery, issued in the aggregate principal amount of $______________ pursuant to the Indenture.
“Tourism Entity Agreement” means the Amended and Restated Tourism Entity Agreement, dated as of [May 1], 2018, by and between the CVB and the Room Tax Commission.

“Tourism Zone” means the Fox Cities Tourism Zone, established pursuant to the Commission Agreement and the Room Tax Act, encompassing the Municipalities and any neighboring municipalities.

“Trustee” means Associated Trust Company, National Association, as trustee under the Indenture, and its successors in such capacity.

ARTICLE II

FACTS AND RECITALS

Section 2.01 Governing Body Authorizations.

The execution, delivery and performance of this Agreement by the Municipalities, the Room Tax Commission, and the ARA have been authorized by the respective Governing Body Authorizations and pursuant to Section 66.0301 of the Wisconsin Statutes, the Room Tax Act and the Redevelopment Act.

Section 2.02 Tourism Zone Objectives.

The Municipalities, the Room Tax Commission and the ARA have identified the development and redevelopment of the Tourism Zone and the promotion and development of tourism within the Tourism Zone as matters of group interest.

Section 2.03 Importance of Exhibition Center.

The Municipalities, the Room Tax Commission and the ARA have found and determined:

(a) that (i) each Municipality is located in a county or counties with a population of less than 380,000; (ii) the counties in which the Municipalities are located are not located adjacent to any county with a population of over 380,000; and (iii) the Municipalities have worked cooperatively together to construct and finance the Exhibition Center, as contemplated by subsection (1m)(am)(3) of the Room Tax Act; and

(b) that the control, disposition, and use of the Exhibition Center is crucial to the achievement of a sound and coordinated development of the Tourism Zone and for the promotion and development of tourism activities within the Tourism Zone.

Section 2.04 Construction of Exhibition Center.

Since the date of the Original Agreement, the Exhibition Center project has been undertaken and completed by Appleton on behalf of the Municipalities, the Room Tax Commission, and the ARA. Appleton has acquired the Exhibition Center Property within the
Tourism Zone and has completed the construction of the Exhibition Center as described in Exhibit A hereto. The Exhibition Center project involved the construction, installation, and improvement of real property within the Tourism Zone, which improvements and interrelated facilities constitute a “convention center” within the meaning of the Room Tax Act.

Section 2.05 Levy and Importance of Room Tax Revenues.

The Municipalities have enacted the Ordinances to levy, and authorize the collection and enforcement of, a 10% Room Tax, which includes the Exhibition Center Room Tax, as permitted in the Room Tax Act. The Exhibition Center Room Tax revenues, as pledged and utilized pursuant to this Agreement and the Pledge and Security Agreement, will assist in the financing of the Exhibition Center.

Section 2.06 Contract with CVB.

The Room Tax Commission has entered into the Tourism Entity Agreement with the CVB, as a tourism entity, to obtain staff, support services, and assistance in developing and implementing programs to promote the Tourism Zone to visitors, and to receive and administer certain of the Room Taxes on behalf of the Room Tax Commission.

Section 2.07 Management Agreement.

Appleton has entered into the Management Agreement, providing for the operation and management of the Exhibition Center in such a manner as to promote and develop tourism within the Tourism Zone.

Section 2.08 Termination of PAC Cooperation Agreement; Application of Remaining Funds.

The Cooperation Agreement dated June 1, 2000 (the “PAC Cooperation Agreement”), in which the Municipalities (excluding the City of Menasha and Sherwood, but including Fox Crossing, into which the Town of Menasha was incorporated, and Little Chute, which was added as a party after the initial execution) agreed to impose a Room Tax at the rate of two percent (2%) (the “PAC Room Tax”) and pledged certain revenues thereof to the payment of bonds (the “PAC Bonds”) which were issued to pay the costs associated with the construction of the Fox Cities Performing Arts Center has been terminated, and the PAC Bonds have been paid in full. The continued imposition and collection of the PAC Room Tax was authorized by the Ordinances. The Municipalities, the ARA, and the Room Tax Commission agree that all PAC Room Taxes not applied to the payment of the PAC Bonds, and all other amounts held by the trustee for the PAC Bonds, shall be applied as follows:

(a) the amount set forth in Section 3.03(c) shall be applied as described in Section 3.03, and

(b) all other funds shall be forwarded to the CVB for deposit in the [Room Tax Clearing Account] established pursuant to the Tourism Entity Agreement to be applied for tourism promotion and development. Notwithstanding the language in the indenture for the PAC Bonds, the ARA acknowledges that it will not receive any other
funds remaining in the funds and accounts with respect to the PAC Bonds and it shall direct the trustee for the PAC Bonds to apply the funds as described above.

ARTICLE III

FINANCING OF THE EXHIBITION CENTER PROJECT

Section 3.01 Contribution of Exhibition Center Property to ARA.

Acting pursuant to Sections 6(f) and 13 of the Redevelopment Act, to provide general support and assistance to the ARA in carrying out redevelopment as provided in the Redevelopment Act, Appleton shall contribute to the ARA, all Appleton’s right, title, and interest in and to the Exhibition Center and the Exhibition Center Property. Appleton shall execute and deliver to the ARA such deeds, bills of sale, and other instruments as the ARA may reasonably request to evidence and perfect such contribution from Appleton.

Section 3.02 Acceptance of Appleton Contribution.

The ARA agrees to accept ownership of the Exhibition Center and the Exhibition Center Property from Appleton pursuant to Section 3.01 hereof. The ARA shall accept said ownership at any time as deemed appropriate by Appleton and the ARA.

Section 3.03 Total Costs of Construction; Reimbursement to Appleton.

The amounts spent by Appleton on the costs of the Exhibition Center project are set forth in Exhibit A. The Municipalities hereby agree that the following amounts shall be paid to Appleton to reimburse it for such project costs:

(a) net proceeds of the Series 2018 Bonds, after payment of costs of issuance and funding of debt service reserve and stabilization funds as provided in the Indenture;

(b) all Exhibition Center Room Taxes collected from January 1, 2016 through [____________] [the date of issuance of the Series 2018 Bonds], which are held by the CVB in the [Room Tax Clearing Account] established pursuant to the Tourism Entity Agreement; and

(c) $750,000 of funds held by the trustee for the PAC Bonds and remaining after payment of the PAC Bonds.

The Municipalities acknowledge that the application of the funds described in (b) and (c) above will reduce the principal amount of the Series 2018 Bonds necessary to finance the Exhibition Center project. The Room Tax Commission shall direct the CVB to apply the funds described in (b) above to such reimbursement, and the ARA shall direct the trustee for the PAC Bonds to apply the funds described in (c) above to such reimbursement.
Section 3.04 Issuance of Bonds.

(a) The ARA shall issue and sell the Series 2018 Bonds upon terms acceptable to Appleton. Appleton’s acceptance shall be conclusively evidenced by its execution of the Lease as provided in Section 3.05.

(b) The ARA may, from time to time, issue and sell Additional Bonds upon terms acceptable to Appleton. Appleton’s acceptance shall be conclusively evidenced by its execution of an amendment to the Lease with respect to Additional Bonds pursuant to the terms thereof.

(c) The Bonds will be limited obligations of the ARA and shall not constitute a debt or obligation of the ARA, Appleton, or the other Municipalities and shall not be a charge against the general credit or taxing powers of the ARA or any Municipality except for and limited to the Exhibition Center Room Tax revenues pursuant to the Pledge and Security Agreement. Each series of Additional Bonds shall be payable by the ARA solely from revenues derived by the ARA from the Lease, the Pledge and Security Agreement, amounts recovered by recourse to any Mortgage or any Credit Enhancement pursuant to Sections 3.07 or 3.08, and cash and securities held from time to time in certain trust funds held by the Trustee under the Indenture and the investment earnings thereon.

Section 3.05 Lease of Exhibition Center Property.

The ARA agrees to lease to Appleton the Exhibition Center and the Exhibition Center Property contributed to the ARA. The Lease shall contain restrictions on the use of the Exhibition Center Property consistent with the restrictions on the use of the Exhibition Center and the Exhibition Center Property as a “convention center” within the meaning of the Room Tax Act and otherwise consistent with the terms hereof. The Lease shall be a “triple net lease” and shall provide for rents payable on such dates and in such amounts as shall be sufficient to make all payments of principal of and premium, if any, and interest on the Bonds. The obligation of Appleton to pay rents or other amounts due under the Lease shall be conditioned upon Appleton’s “quiet enjoyment” of the Exhibition Center Property. The ARA shall waive any rights it may have to reenter or retake possession of the premises or accelerate the payment of rents or other amounts due under the Lease in the event of a default by Appleton under the Lease. The Lease will also grant to Appleton an option to purchase all of the ARA’s right, title, and interest in and to the Exhibition Center Property for a price of $100, which may be exercised at any time after the date of the full and final retirement of all outstanding Bonds (or provision therefor in accordance with the Indenture), except in the event of a termination of the Lease as provided therein.

The Lease shall provide for a credit against the rents due from Appleton for all Exhibition Center Room Taxes then on deposit with the Trustee and available for payment of debt service on the Bonds. The ARA and Appleton anticipate that the Exhibition Center Room Taxes will be sufficient to make all payments of debt service on the Bonds; however, in the event that such Exhibition Center Room Taxes are insufficient to make such payments, Appleton will agree, subject to the terms of the Lease, to fund such payments then due and payable under the Lease.
To the extent that Appleton is required to fund such payments under the Lease, or in the event Appleton is required to pay the Trustee’s fees and expenses or any arbitrage rebate amounts with respect to Additional Bonds or to replenish the Debt Service Reserve Fund held under the Indenture, such payments shall be considered a loan or advance to the Room Tax Commission to be reimbursed from future Exhibition Center Room Taxes, together with interest at a rate equal to the rate of interest established by the Local Government Investment Pool of the State of Wisconsin on the date of such loan or advance; such reimbursement to occur as soon as reasonably practicable and to the extent that the Exhibition Center Room Taxes have been collected in excess of that amount required for payment of principal, interest and premium, if any, on the Bonds, the payment of the Trustee’s fees and expenses or any arbitrage rebate amounts with respect to Additional Bonds, and the replenishment of the Debt Service Reserve Fund.

Section 3.06 Municipalities to Pledge the Exhibition Center Room Tax.

The Municipalities and the Room Tax Commission shall enter into the Pledge and Security Agreement setting forth the terms and conditions of the pledge of Exhibition Center Room Taxes, which pledge shall terminate upon payment in full of all outstanding Bonds.

Section 3.07 Mortgage of the Exhibition Center Property.

The ARA may grant to the Trustee, as security for the payment of the Bonds, a Mortgage. Any Mortgage will be subordinate to the Lease and will not give the Trustee any right to evict Appleton or retake possession of the Exhibition Center Property or to accelerate the payment of rents under the Lease.

Section 3.08 Credit Enhancement.

As further security for any Additional Bonds, the ARA may provide or cause to be provided Credit Enhancement with respect to the Bonds. Any premium or other fees payable to the issuer of a policy of bonds insurance or a letter of credit or any other guarantor of the Bonds (such issuer or other guarantor, a “Bond Guarantor”) may be paid from Exhibition Center Room Tax revenues or other funds as provided in the Indenture. In the event a Bond Guarantor is required to make debt service payments, Exhibition Center Room Tax revenues may be used to reimburse the Bond Guarantor for all payments of debt service on the Bonds.

ARTICLE IV

OPERATION OF THE CONVENTION CENTER

Section 4.01 Appleton to Provide Administrative Support to ARA.

Appleton agrees to provide the necessary administrative support to enable the ARA to achieve the objectives set forth herein. Administrative support may include services such as the provision of office space and the provision of financial, accounting, legal and engineering consultation in connection with the financing and operation of the Exhibition Center.
Section 4.02  Advisory Committee.

During the term of this Agreement, the ARA shall provide an opportunity for reasonable participation of the Municipalities in decisions relating to the operation of the Exhibition Center through the creation of an advisory committee which is intended to provide counsel to the ARA and to assist in program development and operations for the Exhibition Center (the “Advisory Committee”). The membership of the Advisory Committee shall include the following: one representative from each Municipality (appointed by the Municipality); two Operators collecting Room Taxes (appointed by the ARA Chairperson and approved by ARA), two community members residing within a Municipality (appointed by the ARA Chairperson and approved by ARA), one member of the ARA (appointed by the ARA Chairperson); and the Executive Director of the CVB, or his/her designee. The Appleton Community and Economic Development Director, or a designee thereof, shall also be a non-voting, advisory member of the Committee. The Chair and Vice-Chair of the Committee shall be designated by ARA and shall serve one-year terms that may be renewed at the discretion of ARA. Committee members, with the exception of the Executive Director of the CVB and Appleton Community and Economic Development Director, or designees thereof, shall serve terms of two years and may serve up to three consecutive terms. However, upon establishment of the Advisory Committee, the following shall serve an initial term of three years: one half of the participating Municipalities chosen by random selection, one of the hotelier representatives, and one of the community members, chosen by the ARA Chairperson.

The roles and responsibilities and general operating rules of the Advisory Committee shall be as passed and approved by the Advisory Committee from time to time.

Section 4.03  Municipalities to Plan to Promote Private Development.

The Municipalities agree to continue to work with the Room Tax Commission and the CVB to develop plans for the use of the Exhibition Center property in a manner that will promote and assist the future private development of the Tourism Zone and that will promote and develop tourism and redevelopment.

Section 4.04  Municipalities to Participate in the Room Tax Commission.

The Municipalities agree to continue the existence of, and to participate in, the Room Tax Commission as provided by the Room Tax Act until payment in full of all outstanding Bonds.

Section 4.05  Nondiscrimination.

Each party agrees that the Exhibition Center shall not be operated in a manner to permit discrimination or restriction on the basis of race, color, ancestry, religion, national origin, political affiliation (except to members of political groups or parties who advocate the overthrow of the United States government), sex, gender identity, gender expression, age, disability, marital status, arrest or conviction record, sexual orientation, disabled veteran or a covered veteran status and that the Exhibition Center shall be operated in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.
ARTICLE V

MISCELLANEOUS

Section 5.01 Amendment and Restatement of Original Agreement.

This Agreement amends and restates the Original Agreement and shall become effective as of the date of this Agreement, on which date the Original Agreement shall be superseded in its entirety. The PAC has executed and delivered this Agreement solely to acknowledge and agree that its rights and obligations under the Original Agreement have been terminated by this Agreement.

Section 5.02 Additional Municipalities.

Any Additional Municipality that becomes an additional member of the Room Tax Commission pursuant to the Commission Agreement shall, as a condition of such membership under said agreement, become an additional party to this Agreement. Each Additional Municipality shall be bound to the terms, conditions, and obligations of the Municipalities under this Agreement by execution and delivery to the Room Tax Commission of a joinder agreement in substantially the form attached hereto as Exhibit C. A copy of the executed joinder agreement shall be delivered by the Room Tax Commission to the other then-current parties to this Agreement. Acceptance by the Room Tax Commission of such joinder agreement shall, without further action or approval of the parties to this Agreement, be deemed an approval of such Additional Municipality as an additional party to this Agreement by the then-current parties to this Agreement.

Any Additional Municipalities to hereafter become a party to this Agreement agree to enact governing body authorizations to effect the same as the Governing Body Authorizations.

Section 5.03 Assignment of Rights Under this Agreement.

No party may assign its rights under this Agreement without the written consent of all the other parties, except in the case of a Municipality’s assignment to a successor municipality that has complied with the requirements of an Additional Municipality under Section 5.02 hereof.

Section 5.04 No Personal Liability.

Under no circumstances shall any officer, official, director, member or employee of the Municipalities, the Room Tax Commission or the ARA have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

Section 5.05 Parties and Interests.

This Agreement is made solely for the benefit of the parties hereto, the Trustee and the owners of the Bonds and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof.
Section 5.06 Notices.

All notices, demands, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when hand delivered, or when sent by first class mail, email, or overnight delivery service, with proper address as indicated in each party’s address indicated beneath the signature(s) of such party to this Agreement. Any party may, by written notice to the other parties, designate a change of address for the purposes aforesaid.

Section 5.07 Amendment.

No modification, alteration or amendment to this Agreement shall be binding upon any party hereto until such modification, alteration or amendment is agreed upon in writing and executed by all parties hereto.

Section 5.08 Termination of Agreement; Sunset of Exhibition Center Room Tax.

This Agreement and the terms and obligations hereunder shall terminate upon payment in full of all outstanding Bonds, and discharge of the Indenture, and upon any reimbursement to (i) Appleton, in accordance with the Lease or (ii) any Bond Guarantor for any debt service payments made and other amounts due to such Bond Guarantor pursuant to Section 3.08 hereof. Pursuant to the Ordinances, the Exhibition Center Room Tax shall sunset upon payment in full of all outstanding Bonds and thereafter the Room Tax shall be reduced by 3%, with such reduction being deemed to be the share of the Room Tax allocated to the Exhibition Center Room Tax. At the time all outstanding Bonds are fully satisfied, any excess Exhibition Center Room Tax collected but not needed for the payment of the Bonds or any reimbursement due to Appleton or a Bond Guarantor shall be reallocated to the [Room Tax Clearing Account] held by the CVB accordance with the Tourism Entity Agreement for use of tourism promotion and tourism development in the Fox Cities Tourism Zone. Notwithstanding the forgoing, Operators shall continue to collect Exhibition Center Room Tax until the respective Municipality has given notice of the termination of the Exhibition Center Room Tax.

Section 5.09 Governing Law

The laws of the State of Wisconsin shall govern this Agreement.

Section 5.10 Captions.

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

Section 5.11 Counterparts.

This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.
Section 5.12  Severability.

If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

CITY OF APPLETON, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Appleton
Attention: Director of Finance
100 North Appleton Street
Appleton, Wisconsin 54911

Email: tony.saucerman@appleton.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

CITY OF KAUKAUNA, WISCONSIN

By: ________________________________
    Its: Mayor

And: ________________________________
    Its: Clerk

ADDRESS:

City of Kaukauna
Attention: Clerk-Treasurer
201 West Second Street
Kaukauna, Wisconsin 54130

Email: clerk-treasurer@kaukauna.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

CITY OF NEENAH, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Neenah
Attention: Finance Director
211 Walnut Street
Neenah, Wisconsin 54956

Email: measker@ci.neenah.wi.us
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

VILLAGE OF KIMBERLY, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Kimberly
Attention: Village Administrator
515 West Kimberly Avenue
Kimberly, Wisconsin  54136

Email: dblock@vokimberly.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

VILLAGE OF LITTLE CHUTE, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Little Chute
Attention: Village Administrator
108 West Main Street
Little Chute, Wisconsin 54140

Email: jfenlon@littlechutewi.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

TOWN OF GRAND CHUTE, WISCONSIN

By: ______________________________
   Its: Chairperson

And: ______________________________
   Its: Clerk

ADDRESS:

Town of Grand Chute
Attention: Town Administrator
1900 West Grand Chute Boulevard
Grand Chute, Wisconsin 54913

Email: jim.march@grandchute.net
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

TOWN OF NEENAH, WISCONSIN

By: ________________________________
   Its: Chairperson

And: ________________________________
   Its: Clerk

ADDRESS:

Town of Neenah
Attention: Clerk-Treasurer
1600 Breezewood Lane
Neenah, Wisconsin 54956

Email: ellen@townofneenah.com
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

VILLAGE OF FOX CROSSING, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Fox Crossing
Attention: Village Administrator
2000 Municipal Drive
Neenah, Wisconsin 54956

Email: jsturgell@foxcrossingwi.gov
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

CITY OF MENASHA, WISCONSIN

By: __________________________________________
Its: Mayor

And: __________________________________________
Its: Clerk

ADDRESS:

City of Menasha
Attention: Administrative Services Director
100 Main Street, Suite 200
Menasha, Wisconsin 54952

Email: jjacobs@ci.menasha.wi.us
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

VILLAGE OF SHERWOOD, WISCONSIN

By: ____________________________
   Its: President

And: ____________________________
   Its: Clerk

ADDRESS:

Village of Sherwood
Attention: Village Administrator
W482 Clifton Road
Sherwood, Wisconsin 54169

Email: administrator.sherwood@newbc.rr.com
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

REDEVELOPMENT AUTHORITY OF THE CITY OF APPLETON, WISCONSIN

By:____________________________________
   Its: Executive Director

ADDRESS:

Appleton Redevelopment Authority
Attention: Executive Director
100 North Appleton Street
Appleton, Wisconsin 54911

Email: karen.harkness@appleton.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

FOX CITIES AREA ROOM TAX COMMISSION

By: ________________________________
   Its: ______________________________

And: ______________________________
   Its: ______________________________

ADDRESS:

Fox Cities Area Room Tax Commission
Attention: Chairperson
c/o Fox Cities Convention & Visitors Bureau
3433 West College Avenue
Appleton, Wisconsin  54914

Email: bruce.sherman@grandchute.net
ACKNOWLEDGEMENT OF AMENDED AND RESTATED COOPERATION AGREEMENT

The undersigned hereby acknowledges that it is a party to the Exhibition Center Cooperation Agreement, dated as of November 24, 2015, by and among certain Municipalities in the Fox Cities area, the Redevelopment Authority of the City of Appleton, Wisconsin, and the Fox Cities Area Room Tax Commission (the “Original Agreement”) and that the Original Agreement has been amended and restated by the foregoing Amended and Restated Cooperation Agreement, dated as of [May 1], 2018, to which the undersigned is not a party. The undersigned further acknowledges that it has no further rights or obligations under the Original Agreement.

FOX CITIES PERFORMING ARTS CENTER, INC.

By ____________________________
Title: ____________________________
EXHIBIT A

Exhibition Center Project

The Fox Cities Exhibition Center (“FCEC”) is an approximately 30,000 square foot facility with an iconic spire and glass façade overlooking Jones Park located at 355 West Lawrence Street, Appleton, Wisconsin, includes exhibition, trade show, and meeting space with state of the art technical capabilities. The exhibition space can be divided into three 10,000 square foot sections and features a pre-function space and dedicated meeting space. The FCEC also has 17,000 square feet of outdoor exhibition space that can be rented. The FCEC is connected to the Radisson Paper Valley Hotel, which offers an additional 40,000 square feet of meeting, banquet and break-out space and 390 sleeping rooms.

Costs Paid by the City of Appleton

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EXHIBIT B

Exhibition Center Property Description

[Legal Description Attached]
Legal Description

Parcel No. 312011600

CSM 5460 Lot 1 Vol 31 Doc 1726114 being all of Lots 1,2,3,4,5,8,9,10, 11 & 12 Blk 8 Appleton Plat and Prt of Vac Eighth St

Parcel No. 312012601

CSM 5460 Lot 2 Vol 31 Doc 1726114 being all of Lots 1,2,3,4,5,8,9,10, 11 & 12 Blk 8 Appleton Plat and Prt of Vac Eighth St

Parcel No. 312012600

CSM 5460 Lot 3 Vol 31 Doc 1726114 being all of Lots 1,2,3,4,5,8,9,10, 11 & 12 Blk 8 Appleton Plat and Prt of Vac Eighth St
EXHIBIT C
JOINDER AGREEMENT TO
AMENDED AND RESTATED COOPERATION AGREEMENT

The undersigned municipality hereby agrees that it shall be an Additional Municipality as defined in the Amended and Restated Cooperation Agreement, dated as of [May 1], 2018 (the “Agreement”), and hereby agrees to enter into and be bound by the terms, conditions, and obligations of the Municipalities under the Agreement, as amended from time to time. On and after the date of this Joinder Agreement, the undersigned shall be deemed a Municipality under the Agreement.

IN WITNESS WHEREOF, the undersigned Municipality has duly executed this Joinder Agreement effective as of ________________, 20____.

_____________________, WISCONSIN

By: ________________________________
   Its: ______________________________

And: ________________________________
   Its: ______________________________

ADDRESS:

______________________, of ________________
Attention: ________________________________
______________________________, Wisconsin _____
Email: ________________________________
Accepted on behalf of itself, the Municipalities, and the Redevelopment Authority of the City of Appleton, Wisconsin:

FOX CITIES AREA ROOM TAX COMMISSION

By: ________________________________
   Its: ______________________________

And: ______________________________
   Its: ______________________________
FIRST AMENDMENT TO

AMENDED AND RESTATED
ROOM TAX COMMISSION AND TOURISM ZONE AGREEMENT

Dated as of [May 1], 2018

by and among

THE MUNICIPALITIES NAMED HEREIN

and the

FOX CITIES AREA ROOM TAX COMMISSION
FIRST AMENDMENT TO AMENDED AND RESTATED
ROOM TAX COMMISSION AND TOURISM ZONE AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED ROOM TAX COMMISSION AND TOURISM ZONE AGREEMENT, dated as of [May 1], 2018 (this “First Amendment”), by and among the CITY OF APPLETON, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Appleton”), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kaukauna”), the CITY OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Neenah”), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kimberly”), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Little Chute”), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin political subdivision (“Grand Chute”), the TOWN OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Town of Neenah”), the VILLAGE OF FOX CROSSING, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Fox Crossing”), the CITY OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Menasha”), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Sherwood”) and, collectively with Appleton, Kaukauna, City of Neenah, Kimberly, Little Chute, Grand Chute, Town of Neenah, Fox Crossing, and Menasha, the “Municipalities”, and the FOX CITIES AREA ROOM TAX COMMISSION, an authority formed pursuant to the powers provided in Section 66.0615 of the Wisconsin Statutes (the “Commission”), is an amendment to the Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015, by and among the Municipalities and the Commission (the “Commission Agreement”). Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Commission Agreement.

RECITALS

WHEREAS, the Municipalities (including the Town of Menasha, Wisconsin as the predecessor to Fox Crossing) and the Commission have entered into the Commission Agreement; and

WHEREAS, subsequent to the date of the Commission Agreement, certain facts and assumptions contemplated in the Commission Agreement have changed, including that the bonds contemplated to be issued (the “Exhibition Center Bonds”) to finance the Fox Cities Exhibition Center (the “Exhibition Center”) have not yet been issued, Appleton has constructed the Exhibition Center with its own funds, the PAC Bonds have been paid in full and the Amended and Restated Pledge and Security Agreement relating to the PAC Bonds has been terminated, the Room Tax Act has been amended, and the Town of Menasha, Wisconsin, a party to the Commission Agreement, has been incorporated as the Village of Fox Crossing, Wisconsin; and

WHEREAS, each Municipality has adopted an ordinance imposing a 10% Room Tax, allocated as described in the Commission Agreement; and

WHEREAS, the Commission has contracted with the Fox Cities Convention & Visitors Bureau, Inc. (the “CVB”), as a tourism entity, to obtain staff, support services and
assistance in developing and implementing programs to promote the zone to visitors and to receive and administer certain of the 10% Room Taxes on behalf of the Room Tax Commission pursuant to an Amended and Restated Tourism Entity Agreement, dated as of [May 1], 2018, by and between the CVB and the Room Tax Commission (the “Tourism Entity Agreement”).

WHEREAS, the Municipalities, the Commission, and Redevelopment Authority of the City of Appleton, Wisconsin (the “Authority”) have entered into an Amended and Restated Cooperation Agreement for the Fox Cities Exhibition Center, dated as of [May 1], 2018 (the “Amended and Restated Exhibition Center Cooperation Agreement”), which amends and restates the Exhibition Center Cooperation Agreement, dated as of November 24, 2015, in its entirety; and

WHEREAS, the Municipalities and the Commission have entered into a Pledge and Security Agreement, dated as of [May 1], 2018 (the “Pledge and Security Agreement”), with Associated Trust Company, National Association, as trustee (the “Trustee”), pursuant to which the 3% Room Tax imposed for the payment of the Exhibition Center Bonds shall be forwarded directly to the Trustee by the Operators; and

WHEREAS, the Exhibition Center Bonds are being issued contemporaneously with the execution and delivery of this First Amendment; and

WHEREAS, the Municipalities and the Commission desire that the Commission Agreement be amended to reflect current facts, circumstances, and documents;

NOW, THEREFORE in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1. References to Certain Terms.

Certain terms in the Commission Agreement shall be revised as follows:

(a) References in the Commission Agreement to “this Amended and Restated Room Tax Commission and Tourism Zone Agreement” or “this Agreement” shall be deemed to refer to the Commission Agreement as amended by this First Amendment.

(b) References in the Commission Agreement, including as amended hereby, to the “Exhibition Center Cooperation Agreement dated of even date herewith” or to the “Exhibition Center Cooperation Agreement” shall be deemed to refer to the Amended and Restated Exhibition Center Cooperation Agreement.

Section 2. Amendments to Agreement.

(a) Section 5 is amended in its entirety to read as follows:

Imposition of Room Tax. Pursuant to the Room Tax Act, each municipality that imposes a Room Tax in the Fox Cities Tourism Zone shall levy the same percentage of Room Tax. If the Municipalities are unable to agree on the percentage of tax to be levied in the Fox
Cities Tourism Zone, then the Fox Cities Room Tax Commission shall set the percentage. The Municipalities have each adopted an ordinance that imposed a 10% Room Tax. Pursuant to subsection (lm)(am)(3) of the Room Tax Act, the parties hereto find and agree that (i) each Municipality is located in a county or counties having a population of less than 380,000, (ii) the counties in which the Municipalities are located are not located adjacent to any county with a population of over 380,000, and (iii) the Municipalities have worked cooperatively to construct and finance the Exhibition Center.

(b) Section 7 is amended in its entirety to read as follows:

Collection of Room Tax. Each Municipality shall cause each Operator within its jurisdiction to collect the 10% Room Tax imposed by such Municipality pursuant to its ordinance (the “Ordinance”). The 10% Room Tax is comprised of (i) a 3% Room Tax collected for the support of the CVB (the “CVB Room Tax”), (ii) the 2% PAC Room Tax for the development and support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone, (iii) a 3% Room Tax collected for the direct or indirect payment of the costs of construction of the Exhibition Center or debt service on bonds (the “Exhibition Center Bonds”) issued to finance or refinance the Exhibition Center (the “Exhibition Center Room Tax”), (iv) a 1% Room Tax collected for general purposes, including, but not limited to tourism support and development in the Municipality (the “Municipal Room Tax”), and (v) 1% Room Tax collected for the development and support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone (the “Tourism Facilities Room Tax”). Pursuant to the Ordinances, the Exhibition Center Room Tax shall sunset upon payment in full of all outstanding Exhibition Center Bonds and thereafter the 10% Room Tax shall be reduced by 3%, with such reduction being deemed to be the share of the Room Tax allocated to the Exhibition Center Room Tax. The Municipalities acknowledge that, because the PAC Bonds have been paid in full, the PAC Room Tax and the Tourism Facilities Room Tax are dedicated to the same purposes; however they are assigned separate payment priorities in Section 9 hereof and in the Ordinances.

The Municipalities shall cause each Operator to forward the Exhibition Center Room Tax directly to Associated Trust Company, National Association, or its successor as trustee for the Exhibition Center Bonds (the “Trustee”), quarterly no later than each January 31, April 30, July 31, and October 31 pursuant to the Pledge and Security Agreement, dated as of [May 1], 2018 (the “Pledge and Security Agreement”), entered into by and among the Municipalities, the Fox Cities Room Tax Commission, and the Trustee.

Each Municipality shall distribute the remaining 7% Room Tax collected as follows:

a. 95% of the 3% CVB Room Tax shall be forwarded by the Municipality to the CVB on behalf of the Fox Cities Room Tax Commission;
b. 5% of the 3% CVB Room Tax may be retained by the Municipality for general purposes, including, but not limited to tourism support and development in the Municipality in accordance with the requirements of the Room Tax Act;

c. the 2% PAC Room Tax shall be forwarded by the Municipality to the CVB on behalf of the Fox Cities Room Tax Commission;

d. the 1% Municipal Room Tax shall be retained by the Municipality; and

e. the 1% Tourism Facilities Room Tax shall be forwarded by the Municipality to the CVB on behalf of the Fox Cities Room Tax Commission.

(c) Section 8 is amended in its entirety to read as follows:

Use of Room Tax. The 95% portion of the CVB Room Tax, the PAC Room Tax, and the Tourism Facilities Room Tax received by the Fox Cities Room Tax Commission shall be utilized as described in Section 7.a., c., and e. The 5% portion of the CVB Room Tax and the Municipal Room Tax retained by the Municipalities shall be utilized as described in Section 7.b. and d. The Exhibition Center Room Tax shall be utilized as described in the Pledge and Security Agreement.

Notwithstanding the foregoing, the parties agree that (i) the Exhibition Center Room Tax received by the CVB on behalf of the Fox Cities Room Tax Commission, or by the Fox Cities Room Tax Commission or any Municipality received from January 1, 2016 through [___________, 2018] [the Effective Date of the First Amendment] shall be applied as provided in the Exhibition Center Cooperation Agreement, (ii) funds held by the trustee for the PAC Bonds in the amount of $750,000 shall also be applied as provided in the Exhibition Center Cooperation Agreement, and all remaining funds held by such trustee shall be applied to the purposes for which the PAC Room Tax is to be applied, and (iii) at the time all outstanding Exhibition Center Bonds are fully satisfied, any excess Exhibition Center Room Tax collected but not needed for the payment of the Exhibition Center Bonds or any reimbursement due to Appleton or to a Bond Guarantor, as defined in and pursuant to the Exhibition Center Cooperation Agreement, shall be reallocated to the [Room Tax Clearing Account ] (the “Tourism Development Fund”) for use of tourism promotion and tourism development in the Fox Cities Tourism Zone.

(d) Section 9 is amended in its entirety to read as follows:

Priority of Payment. In the event any Operator fails to remit to the Trustee or to the Municipality the Room Tax for a period of one calendar quarter, or is in arrears by one calendar quarter or more after any January 31, April 30, July 31, or October 31 quarterly payment date, or in the event the Municipality fails to remit to the CVB on behalf of the Room Tax Commission, the applicable remaining Room Tax described in Section 7 within [10 business days] after receipt of such quarterly payment (a “Deficient Payment”) under this Agreement, the Pledge and Security Agreement, and the ordinances imposing the Room Tax, the Deficient Payment amounts actually received by the
Municipality, the Trustee, or the CVB on behalf of the Fox Cities Room Tax Commission shall be applied in the following priority order:

a. *First*, toward the payment of the 3% CVB Room Tax;

b. *Second*, toward the payment of the 2% PAC Room Tax;

c. *Third*, toward the payment of the 3% Exhibition Center Room Tax (for so long as it is being collected);

d. *Fourth*, toward the payment of the 1% Municipal Room Tax; and

e. *Fifth*, toward the payment of the 1% Tourism Facilities Room Tax.

(e) The introduction to Section 12 is amended to read as follows:

Powers and Duties. The Fox Cities Room Tax Commission shall have the powers, rights, and duties as provided for a “commission” in the Room Tax Act, including:

(f) Subsection 12(c) is amended to read as follows:

c. To report, or cause the CVB to report, no less than annually to each Municipality from which it received Room Taxes, the purposes for which the revenues were spent and the information required to be reported to the Wisconsin Department of Revenue (the “DOR”) under subsection (4) of the Room Tax Act; *provided, however,* that such report shall be delivered to each Municipality so that it may timely comply with its required annual certification to the DOR due on or before each May 1.

(g) Section 13 is amended in its entirety to read as follows:

Additional Municipalities. It is anticipated that from time to time the geographic area comprising the Fox Cities Tourism Zone may change such that additional municipalities not party to this Agreement may become part of the Fox Cities Tourism Zone. The Fox Cities Room Tax Commission shall use its best efforts to encourage and accept such additional municipalities (each, an “Additional Municipality”) to become a member of the Fox Cities Room Tax Commission. Each Additional Municipality shall be required, as a condition to becoming a member of the Fox Cities Room Tax Commission, to impose by ordinance the 10% Room Tax as described in Sections 7 and 9 hereof (or, after the termination of the Exhibition Center Room Tax, a 7% Room Tax), and for so long as the Exhibition Center Bonds remain outstanding, to become a party to the Pledge and Security Agreement and the Exhibition Center Cooperation Agreement. Each Additional Municipality shall become bound to the terms, conditions, and obligations of the Municipalities hereunder by execution of a joinder agreement, in substantially the form attached hereto as Exhibit B, accepted by the Fox Cities Room Tax Commission, which shall provide a copy of such joinder agreement to the other then-current parties to this Agreement.
(h) Section 14 is amended in its entirety to read as follows:

Municipal Action. The Municipalities shall enact such ordinances and/or resolutions as are necessary to satisfy the terms of this Agreement and to effect any provisions of this Agreement.

(i) Exhibit B is added to the Commission Agreement, to read as set forth in Exhibit A to this First Amendment.

Section 3. Effective Date; Ratification of Agreement.

The amendment to the Commission Agreement contained herein shall be effective as of the date of this First Amendment. Except as expressly provided in this First Amendment, the provisions of the Commission Agreement shall remain in full force and effect.

Section 4. Counterparts; Headings.

This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The section headings in this First Amendment are for convenience only and in no way define, limit or describe the scope or intent of any provision of this First Amendment.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

CITY OF APPLETON, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Appleton
Attention: Director of Finance
100 North Appleton Street
Appleton, Wisconsin 54911

Email: tony.saucerman@appleton.org
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

CITY OF KAUKAUNA, WISCONSIN

By: _________________________________
   Its: Mayor

And: _________________________________
   Its: Clerk

ADDRESS:

City of Kaukauna
Attention: Clerk-Treasurer
201 West Second Street
Kaukauna, Wisconsin 54130

Email: clerk-treasurer@kaukauna.org
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

CITY OF NEENAH, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Neenah
Attention: Finance Director
211 Walnut Street
Neenah, Wisconsin 54956

Email: measker@ci.neenah.wi.us
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

VILLAGE OF KIMBERLY, WISCONSIN

By: __________________________
   Its: President

And: __________________________
   Its: Clerk

ADDRESS:

Village of Kimberly
Attention: Village Administrator
515 West Kimberly Avenue
Kimberly, Wisconsin  54136

Email: dblock@vokimberly.org

[Signature Page to First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement – Kimberly]
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

VILLAGE OF LITTLE CHUTE, WISCONSIN

By: _________________________________
   Its: President

And: _________________________________
   Its: Clerk

ADDRESS:

Village of Little Chute
Attention: Village Administrator
108 West Main Street
Little Chute, Wisconsin  54140

Email: jfenlon@littlechutewi.org
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

TOWN OF GRAND CHUTE, WISCONSIN

By: ________________________________
   Its: Chairperson

And: ________________________________
   Its: Clerk

ADDRESS:

Town of Grand Chute
Attention: Town Administrator
1900 West Grand Chute Boulevard
Grand Chute, Wisconsin 54913

Email: jim.march@grandchute.net
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

TOWN OF NEENAH, WISCONSIN

By: ________________________________
   Its: Chairperson

And: ________________________________
   Its: Clerk

ADDRESS:

Town of Neenah
Attention: Clerk-Treasurer
1600 Breezewood Lane
Neenah, Wisconsin 54956

Email: ellen@townofneenah.com
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

VILLAGE OF FOX CROSSING, WISCONSIN

By: ________________________________  
   Its: President

And: ________________________________  
   Its: Clerk

ADDRESS:

Village of Fox Crossing  
Attention: Village Administrator  
2000 Municipal Drive  
Neenah, Wisconsin  54956

Email: jsturgell@foxcrossingwi.gov
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

CITY OF MENASHA, WISCONSIN

By:________________________________________
   Its: Mayor

And:_______________________________________
   Its: Clerk

ADDRESS:

City of Menasha
Attention: Administrative Services Director
100 Main Street, Suite 200
Menasha, Wisconsin  54952

Email: jjacobs@ci.menasha.wi.us
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

VILLAGE OF SHERWOOD, WISCONSIN

By: _________________________
   Its: President

And: _________________________
   Its: Clerk

ADDRESS:

Village of Sherwood
Attention: Village Administrator
W482 Clifton Road
Sherwood, Wisconsin 54169

Email: administrator.sherwood@newbc.rr.com
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

FOX CITIES AREA ROOM TAX COMMISSION

By: ________________________________
   Its: ______________________________

[And: ______________________________
   Its: ______________________________]

ADDRESS:

Fox Cities Area Room Tax Commission
Attention: Chairperson
c/o Fox Cities Convention & Visitors Bureau
3433 West College Avenue
Appleton, Wisconsin 54914

Email: bruce.sherman@grandchute.net
EXHIBIT B

JOINDER AGREEMENT

AMENDED AND RESTATED
ROOM TAX COMMISSION AND TOURISM ZONE AGREEMENT

The undersigned municipality hereby agrees that it shall be an Additional Municipality as defined in the Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015, among the Fox Cities Area Room Tax Commission and the municipal members of such commission, as amended by a First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of [May 1], 2018 (collectively, the “Agreement”), and hereby agrees to be bound by the terms, conditions, and obligations of the Municipalities under the Agreement, as amended from time to time. On and after the date of this Joinder Agreement, the undersigned shall be deemed a Municipality under the Agreement.

IN WITNESS WHEREOF, the undersigned Municipality has duly executed this Joinder Agreement effective as of ________________, 20__.

__________________ OF ______________, WISCONSIN

By: ________________________________
   Its: ______________________________

And: ________________________________
   Its: ______________________________

ADDRESS:

__________________ of _____________
Attention: ________________________
______________________________
______________________________
______________________________
   , Wisconsin ______

Email: ________________________________
Accepted on behalf of itself and the Municipalities:

**Fox Cities Area Room Tax Commission**

By: __________________________
    Its: ________________________

And: __________________________
    Its: ________________________
Dated as of [May 1], 2018

PLEDGE AND SECURITY AGREEMENT

Relating To:

FOX CITIES EXHIBITION CENTER
PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT, dated as of [May 1], 2018 (this “Agreement”), is made and entered into by and among the CITY OF APPLETON, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Appleton”), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kaukauna”), the CITY OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Neenah”), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kimberly”), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Little Chute”), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin political subdivision (“Grand Chute”), the TOWN OF NEENAH, WISCONSIN, a Wisconsin political subdivision (“Town of Neenah”), the VILLAGE OF FOX CROSSING, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Fox Crossing”), the CITY OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Menasha”), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Sherwood”), collectively with Appleton, Kaukauna, City of Neenah, Kimberly, Little Chute, Grand Chute, Town of Neenah, Fox Crossing, Menasha, and Sherwood (the “Municipalities”), the FOX CITIES AREA ROOM TAX COMMISSION, a Wisconsin intergovernmental commission (the “Room Tax Commission”), and ASSOCIATED TRUST COMPANY, NATIONAL ASSOCIATION, a national bank organized under the laws of the United States of America, as trustee under the Bond Indenture (as defined herein) (together with its successors in such capacity, the “Trustee”).

RECITALS:

WHEREAS, pursuant to Section 66.0615 of the Wisconsin Statutes, as amended (the “Room Tax Act”), each of the Municipalities has imposed a room tax at a percentage rate of 3% (the “Exhibition Center Room Tax”), which the Municipalities have agreed to cause to be collected by the hotelkeepers, motel operators, and other persons furnishing accommodations that are available to the public and obligated to collect the Exhibition Center Room Tax (the “Operators”); and

WHEREAS, the Municipalities, the Room Tax Commission, and the Redevelopment Authority of the City of Appleton, Wisconsin (the “Authority”), are parties to an Amended and Restated Cooperation Agreement for the Fox Cities Exhibition Center, dated as of [May 1], 2018 (the “Cooperation Agreement”); and

WHEREAS, under the terms of the Cooperation Agreement:

(a) Appleton will convey to the Authority the Fox Cities Exhibition Center, a convention center (the “Exhibition Center”) as referenced in the Room Tax Act; and

(b) to assist in the financing of the Exhibition Center, the Authority will issue its Taxable Lease Revenue Bonds, Series 2018 (Fox Cities Exhibition Center Project) (the “Series 2018 Bonds”) the proceeds of which will be
made available to reimburse Appleton for the construction costs of the Exhibition Center; and

(c) the Municipalities and the Room Tax Commission have agreed to the use of the Exhibition Center Room Taxes for the purposes of paying, either directly or indirectly, the costs of the construction of the Exhibition Center, debt service on the Series 2018 Bonds and any additional bonds issued by the Authority for the purpose of refinancing or refunding the Series 2018 Bonds, directly or indirectly through a series of refinancings or refundings (collectively, the “Bonds”), and such other reasonable and customary payments or deposits related to the Bonds as may be provided in the Bond Indenture, such as, but not limited to, costs of issuance and administration of the Bonds, reserve or stabilization funds, capitalized interest payments, if any, and reimbursement of payments made by Appleton or a provider of credit enhancement for the Bonds, all subject to any restrictions related thereto in the Room Tax Act (collectively, the “Purposes of the Exhibition Center Room Taxes”); and

(d) the Municipalities and the Room Tax Commission agree to pledge the Exhibition Center Room Taxes to the Trustee for the Purposes of the Exhibition Center Room Taxes; and

(e) all parties to the Cooperation Agreement found, and reaffirm herein, that the Exhibition Center constitutes a “convention center” and is, and will be, crucial to “tourism promotion and tourism development” within the meaning of the Room Tax Act, and the achievement of a sound and coordinated development and redevelopment of the territory described as the “Tourism Zone” in the Cooperation Agreement and for the promotion and development of tourism activities within the Tourism Zone; and

WHEREAS, the terms and conditions of this Agreement are in compliance with the Room Tax Act; and

WHEREAS, the execution and delivery of this Agreement have been in all respects duly and validly authorized by resolutions of the governing bodies of the Municipalities and the Room Tax Commission; and

WHEREAS, all procedures necessary to constitute this Agreement as a valid pledge and assignment of the Exhibition Center Room Taxes have been done and performed;

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:
ARTICLE I
PLEDGE AND ASSIGNMENT OF PLEDGED ROOM TAXES TO THE TRUSTEE

The Municipalities and the Room Tax Commission do hereby pledge, sell, assign, transfer, and set over unto the Trustee, all their respective right, title, and interest in and to all Exhibition Center Room Taxes, subject to any limitations imposed thereon by the Room Tax Act, for the Purposes of the Exhibition Center Room Taxes. The Exhibition Center Room Taxes shall not be used for any purpose other than the Purposes of the Exhibition Center Room Taxes set forth in the recitals of this Agreement. The pledge and assignment hereunder shall remain in full force and effect until the full discharge of the Indenture of Trust, dated as of [May 1], 2018, from the Authority to the Trustee (the “Bond Indenture”), pursuant to which the Series 2018 Bonds are being issued and pursuant to which additional Bonds may be issued to refinance or refund (i) the Series 2018 Bonds or (ii) any other Bonds.

ARTICLE II
DEPOSIT OF EXHIBITION CENTER ROOM TAXES WITH TRUSTEE

Section 2.01 Deposit of Room Taxes.

The Municipalities, the Room Tax Commission, and the Trustee hereby agree and direct that, in order to effect the pledges of the Exhibition Center Room Taxes hereunder, all Exhibition Center Room Taxes imposed by the Municipalities shall be deposited directly with the Trustee by the Operators, and shall be applied to the Purposes of the Exhibition Center Room Taxes as specified in the Bond Indenture.

The deposit of Exhibition Center Room Taxes with the Trustee shall be in accordance with the following procedure:

(a) Notice to Operators. No later than the 10th day of the month following the end of each calendar quarter, the Trustee shall send a notice in substantially the form attached hereto as Exhibit A (or with such changes as may be necessary or appropriate to reflect changes in room taxes other than the Exhibition Center Room Tax) (a “Room Tax Deposit Notice”) to each Operator to be completed and delivered to the Trustee together with the deposit of the Exhibition Center Room Taxes it has collected during the preceding calendar quarter as described in (b) below.

(b) Room Tax Due Dates. Each Operator shall be directed to deposit with the Trustee, no later than January 31, April 30, July 31, and October 31 of each year, together with a completed Room Tax Deposit Notice as described in (a) above, the Exhibition Center Room Taxes it has collected during the preceding calendar quarter. The Trustee shall accept the Exhibition Center Room Taxes for deposit in accordance with the terms of this Agreement and of the Bond Indenture.
Application of Pledged Room Tax Deposits. The Trustee shall, upon receipt of deposits of the Exhibition Center Room Taxes, allocate such deposits to the Revenue Fund created under the Bond Indenture for the Purposes of the Exhibition Center Room Taxes.

Section 2.02 Trustee Reports.

The Trustee shall (i) not later than the 15th day of each month, send a report as of the last day of the prior month to the Room Tax Commission and to each Municipality, that includes a list of the then current Operators that submit Exhibition Center Room Taxes, and the amount of Exhibition Center Room Taxes received from each Operator, and identifies the Operators that have not paid Exhibition Center Room Taxes then due under Section 2.01(b) (the “Monthly Report”), (ii) not later than the 15th day of the month following the end of each calendar quarter, send a statement of transactions to each Municipality and the Room Tax Commission that includes all financial transactions relating to the Municipality as of the end of the calendar quarter (the “Quarterly Statement”), and (iii) not later than the 15th day of the month following each due date of the Exhibition Center Room Taxes described in Section 2.01(b) hereof, send a list to the Room Tax Commission, with a copy to the related Municipality, of the Operators in each Municipality that have not paid Exhibition Center Room Taxes as of such due date (the “Delinquency Report”).

Section 2.03 Collection of Room Taxes: Late Payments.

(a) Each of the Municipalities agrees to direct all Operators within its jurisdiction to deposit all Exhibition Center Room Taxes with the Trustee pursuant to the terms of this Agreement and the instructions of the Trustee. Each Municipality agrees to forward to the Trustee, immediately upon receipt, any payments of Exhibition Center Room Taxes made by an Operator directly to such Municipality, and the Room Tax Commission agrees to forward to the Trustee, immediately upon receipt, any payments of Exhibition Center Room Taxes made by a Municipality or an Operator directly to the Room Tax Commission or the Fox Cities Convention & Visitors Bureau, Inc. (“CVB”) on behalf of the Room Tax Commission. The Municipality may request from the Trustee the form of Room Tax Deposit Notice as described in Section 2.01(a) hereof to accompany such payments.

(b) If an Operator has not paid Exhibition Center Room Taxes for a period of one calendar quarter or is in arrears by one calendar quarter or more, then an authorized officer of the related Municipality shall, within 30 days after the receipt of the first Monthly Report after a Delinquency Report has been received from the Trustee, commence collection and enforcement action against such Operator; provided that said Monthly Report shows Exhibition Center Room Taxes remain unpaid by such Operator.

(c) Each of the Municipalities agrees to commence such collection and enforcement action as described in (b) above and to take all reasonable action to diligently pursue such action and to collect the Exhibition Center Room Taxes
with any applicable/corresponding forfeiture or interest charge for late payment. Each Municipality agrees to send a written notice to the Room Tax Commission, within 10 days after receipt of a Monthly Report as described in (b) above, describing the status of such action and collection until the Exhibition Center Room Taxes have been collected from the Operator. Upon such collection, the Municipalities shall, within 20 business days, deposit with the Trustee the collected Exhibition Center Room Taxes, subject to the deficient payments allocation described in (e) below, and any applicable/corresponding forfeiture or interest charge; which shall be treated as part of the Exhibition Center Room Taxes. All costs of collection and enforcement actions relating to any such Exhibition Center Room Taxes shall (except to the extent they may be recovered from Operators) be the sole responsibility of the related Municipality.

(d) Notwithstanding (b) and (c) above, the Trustee shall have the right, with the consent of the Room Tax Commission, to demand that any such Exhibition Center Room Taxes paid by the Operators but not deposited with the Trustee be immediately deposited with the Trustee in accordance with this Article II.

(e) Pursuant to the Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015, as amended by a First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of [May 1], 2018 (the “Commission Agreement”) and the ordinances adopted by the Municipalities imposing a 10% room tax (the “Room Taxes”), which includes the Exhibition Center Room Tax, provision was made for delinquent Room Taxes received from the Operators to be allocated in a specific order to the purposes for which the Room Taxes were imposed. Upon receipt of notice from a Municipality, the Room Tax Commission, or the CVB with respect to such allocation of delinquent Room Taxes, the Trustee agrees that it shall cooperate with said parties in the application of delinquent Exhibition Center Room Taxes that it has received to the allocation to the purposes entitled to a payment priority over the Exhibition Center Room Taxes.

Section 2.04 Failure of Operator Not a Default of Municipality.

A failure of an Operator to timely pay Exhibition Center Room Taxes shall not constitute a default of a Municipality hereunder provided that the Municipality, in accordance with Section 2.03 above, promptly undertakes and pursues all reasonable collection actions until such delinquent Exhibition Center Room Taxes are collected and deposited with the Trustee.

Section 2.05 Statutory Obligations of Room Tax Commission.

The Room Tax Commission has determined, and the Municipalities agree, that the actions of the Trustee under this Agreement fulfill the statutory obligations of the Room Tax Commission (i) to monitor the collection of room taxes from each Municipality and (ii) to report any delinquencies or inaccurate reporting to the Municipality that is due the tax, as such obligations relate to the Exhibition Center Room Tax.
ARTICLE III

REPRESENTATIONS, WARRANTIES, AND COVENANTS

Each of the Municipalities and the Room Tax Commission hereby represents and warrants to the Trustee that it has good right and authority to enter into this Agreement; that as of the date of this Agreement it has not alienated, assigned, pledged, or otherwise disposed of or encumbered any of the Exhibition Center Room Taxes, and that it has not performed any acts or executed any other instruments which might prevent the Trustee from receiving any Exhibition Center Room Taxes under any of the terms and conditions of this Agreement or which would limit the Trustee in such receipt.

Each of the Municipalities and the Room Tax Commission hereby covenants and agrees:

(a) to observe, perform, and discharge, duly and punctually, all and singular, the obligations, terms, covenants, conditions, and warranties of this Agreement on its part to be kept, observed, and performed;

(b) that it will, upon the request of the Trustee, execute and deliver to the Trustee such further instruments and do and perform such other acts and procedures as the Trustee may deem necessary or appropriate to make effective this Agreement and its various covenants herein contained and to more effectively vest in and secure to the Trustee the Exhibition Center Room Taxes, including without limitation, the execution of such additional assignments as shall be deemed necessary by the Trustee to effectively vest in and secure the Exhibition Center Room Taxes;

(c) that it will take any and all action reasonably necessary to enforce its room tax levies and collect all room taxes from the Operators within its jurisdiction, which actions shall include, if necessary, commencing suit or other action to recover delinquent room taxes; and

(d) that it will not repeal any or all of the Exhibition Center Room Tax or amend the Commission Agreement in any manner that affects the Trustee’s right to receive the Exhibition Center Room Tax.

ARTICLE IV

MISCELLANEOUS

Section 4.01 Counterparts.

This Agreement may be executed, acknowledged, and delivered in any number of counterparts, each of which shall constitute an original, but all together only one, instrument. The laws of the State of Wisconsin shall govern this Agreement.
Section 4.02  Severability.

If any term, covenant, or condition of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement and the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law. In the event of any ambiguity in any terms or provisions of this Agreement, such ambiguity shall be construed in favor of the Trustee, notwithstanding any rules of construction to the contrary.

Nothing contained in this Agreement, the Cooperation Agreement, or the Bond Indenture shall in any manner be construed as making the parties hereto and thereto or their assignees partners.

Section 4.03  Additional Parties to this Agreement.

Any municipal government that hereafter becomes an additional member of the Room Tax Commission (an “Additional Municipality”) pursuant to the Commission Agreement shall, as a condition of such membership under the Commission Agreement, become an additional party to this Agreement. Each Additional Municipality shall be bound to the terms, conditions, and obligations of the Municipalities under this Agreement by execution and delivery to the Trustee of a joinder agreement in substantially the form attached hereto as Exhibit B, and a copy of the executed joinder agreement shall be delivered by the Trustee to the other then-current parties to this Agreement. Acceptance by the Trustee of such joinder agreement shall, without further action or approval of the parties to this Agreement, be deemed an approval of such Additional Municipality as an additional party to this Agreement by the then-current parties to this Agreement.

Section 4.04  Amendments to this Agreement.

This Agreement may be amended from time to time by a written instrument for any purpose not inconsistent with the terms of the Bond Indenture or to cure any ambiguity or to correct or supplement any provision contained in this Agreement which may be defective or inconsistent with any other provision contained in this Agreement or to make such other provisions as shall not be inconsistent with the provisions of the Bond Indenture and shall not, in the judgment of the Trustee, adversely affect the interests of the owners of the Bonds.

Section 4.05  Termination.

This Agreement shall terminate upon the discharge and termination of the Bond Indenture. The Trustee shall notify the Room Tax Commission and each Municipality of such termination and discharge.
Section 4.06  Notices.

Any notice, request, report, statement, or other communication to be given pursuant to this Agreement, shall be sufficiently given, and shall be deemed given, when hand delivered or sent by first class mail, email, or overnight delivery service as follows:

If to the Room Tax Commission at:

Fox Cities Area Room Tax Commission  
Attention: Chairperson  
c/o Fox Cities Convention & Visitors Bureau  
3433 West College Avenue  
Appleton, Wisconsin 54914  
Phone:  (800) 236-6673  
Email:  bruce.sherman@grandchute.net

If to the Trustee at:

Associated Trust Company, National Association  
Attention: Corporate Trust Department  
200 North Adams Street  
Green Bay, Wisconsin 54301  
Phone:  (920) 433-3275  
Email:  eric.wied@associatedbank.com

If to a Municipality, at the address indicated beneath the signature to this Agreement of such Municipality.

Any party may, by written notice to the other parties, designate a change of address for the purposes aforesaid.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties have caused this Pledge and Security Agreement to be duly executed and delivered as of the date first written above.

FOX CITIES AREA ROOM TAX COMMISSION

By: ______________________________
    Its Chairperson

And: ______________________________
    Its Secretary

ASSOCIATED TRUST COMPANY, NATIONAL ASSOCIATION, as trustee

By: ______________________________
    Its ______________________________

And: ______________________________
    Its ______________________________
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

CITY OF APPLETON, WISCONSIN

By: ________________________________  
   Its: Mayor

And: ________________________________  
   Its: Clerk

ADDRESS:

City of Appleton  
Attention: Director of Finance  
100 North Appleton Street  
Appleton, Wisconsin 54911

Email: tony.saucerman@appleton.org
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

CITY OF KAUKAUNA, WISCONSIN

By: ______________________________
   Its: Mayor

And: ______________________________
   Its: Clerk

ADDRESS:

City of Kaukauna
Attention: Clerk-Treasurer
201 West Second Street
Kaukauna, Wisconsin 54130

Email: clerk-treasurer@kaukauna.org
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

CITY OF NEENAH, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Neenah
Attention: Finance Director
211 Walnut Street
Neenah, Wisconsin 54956

Email: measker@ci.neenah.wi.us
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

VILLAGE OF KIMBERLY, WISCONSIN

By: __________________________
    Its: President

And: __________________________
    Its: Clerk

ADDRESS:

Village of Kimberly
Attention: Village Administrator
515 West Kimberly Avenue
Kimberly, Wisconsin 54136

Email: dblock@vokimberly.org

[Signature Page to Pledge and Security Agreement – Kimberly]
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

VILLAGE OF LITTLE CHUTE, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Little Chute
Attention: Village Administrator
108 West Main Street
Little Chute, Wisconsin 54140

Email: jfenlon@littlechutewi.org
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

TOWN OF GRAND CHUTE, WISCONSIN

By: ________________________________
   Its: Chairperson

And: ________________________________
   Its: Clerk

ADDRESS:

Town of Grand Chute
Attention: Town Administrator
1900 West Grand Chute Boulevard
Grand Chute, Wisconsin 54913

Email: jim.march@grandchute.net
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

TOWN OF NEENAH, WISCONSIN

By: ________________________________
   Its: Chairperson

And: ________________________________
   Its: Clerk

ADDRESS:

Town of Neenah
Attention: Clerk-Treasurer
1600 Breezewood Lane
Neenah, Wisconsin 54956

Email: ellen@townofneenah.com
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

VILLAGE OF FOX CROSSING, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Fox Crossing
Attention: Village Administrator
2000 Municipal Drive
Neenah, Wisconsin 54956

Email: jsturgell@foxcrossingwi.gov
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

CITY OF MENASHA, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Menasha
Attention: Administrative Services Director
100 Main Street, Suite 200
Menasha, Wisconsin 54952

Email: jjacobs@ci.menasha.wi.us
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

VILLAGE OF SHERWOOD, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Sherwood
Attention: Village Administrator
W482 Clifton Road
Sherwood, Wisconsin  54169

Email: administrator.sherwood@newbc.rr.com
EXHIBIT A

ROOM TAX DEPOSIT NOTICE

FOR THE CALENDAR QUARTER ENDING ____________________________, 20_____

Date:_________________, 20_____

Associated Trust Company, National Association
Attention:  Corporate Trust Operations
2985 South Ridge Road, Suite C
Green Bay, Wisconsin  54304

[[Enclosed are]] the Exhibition Center Room Taxes from ________________ for the above referenced calendar quarter.

Total 10% Room Tax Receipts For Quarter: $_______________

Distribution of 10% Room Tax:

3% Room Tax (Exhibition Center Room Tax) — Amount $_______________
[Enclosed]
Balance Paid Directly to Municipality $_______________

If you have any questions, please feel free to contact me at ________________.

Sincerely,

[Name of Hotel/Motel or other lodging facility]
EXHIBIT B

JOINDER AGREEMENT TO

PLEDGE AND SECURITY AGREEMENT

The undersigned municipality hereby agrees that it shall be an Additional Municipality as defined in the Pledge and Security Agreement, dated as of [May 1], 2018 (the “Agreement”), among the Fox Cities Area Room Tax Commission, the municipal members of such commission and Associated Trust Company, National Association, as trustee, and hereby agrees to be bound by the terms, conditions, and obligations of the Municipalities under the Agreement, as amended from time to time. On and after the date of this Joinder Agreement, the undersigned shall be deemed a Municipality under the Agreement.

IN WITNESS WHEREOF, the undersigned Municipality has duly executed this Joinder Agreement effective as of ________________, 20____.

_____________ OF ______________, WISCONSIN

By: ________________________________
   Its: ____________________________

And: ________________________________
   Its: ____________________________

ADDRESS:
   _______________ of ______________
   Attention: _______________________
   ________________________________
   _______________, Wisconsin ______

Email: ________________________________
Accepted on behalf of itself, the Room Tax Commission, and the Municipalities:

ASSOCIATED TRUST COMPANY, NATIONAL ASSOCIATION, as trustee

By ______________________________

Its: ______________________________
Dated as of [AprilMay 1], 2018

PLEDGE AND SECURITY AGREEMENT

Relating To:

FOX CITIES EXHIBITION CENTER
PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT, dated as of [AprilMay 1], 2018 (this “Agreement”), is made and entered into by and among the CITY OF APPLETON, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Appleton”), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kaukauna”), the CITY OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Neenah”), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kimberly”), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Little Chute”), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Grand Chute”), the TOWN OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Town of Neenah”), the VILLAGE OF FOX CROSSING, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Fox Crossing”), the CITY OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Menasha”), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Sherwood”), collectively with Appleton, Kaukauna, City of Neenah, Kimberly, Little Chute, Grand Chute, Town of Neenah, Fox Crossing, Menasha, and Sherwood (the “Municipalities”), the FOX CITIES AREA ROOM TAX COMMISSION, a Wisconsin intergovernmental commission (the “Room Tax Commission”), and ASSOCIATED TRUST COMPANY, NATIONAL ASSOCIATION, a national bank organized under the laws of the United States of America, as trustee under the Bond Indenture (as defined herein) (together with its successors in such capacity, the “Trustee”).

RECITALS:

WHEREAS, pursuant to Section 66.0615 of the Wisconsin Statutes, as amended (the “Room Tax Act”), each of the Municipalities has imposed a room tax at a percentage rate of 3% (the “Exhibition Center Room Tax”), which the Municipalities have agreed to cause to be collected by the hotelkeepers, motel operators, and other persons furnishing accommodations that are available to the public and obligated to collect the Exhibition Center Room Tax (the “Operators”); and

WHEREAS, the Municipalities, the Room Tax Commission, and the Redevelopment Authority of the City of Appleton, Wisconsin (the “Authority”), are parties to an Amended and Restated Cooperation Agreement for the Fox Cities Exhibition Center, dated as of [AprilMay 1], 2018 (the “Cooperation Agreement”); and

WHEREAS, under the terms of the Cooperation Agreement:

(a) Appleton will convey to the Authority the Fox Cities Exhibition Center, a convention center (the “Exhibition Center”) as referenced in the Room Tax Act; and

(b) to assist in the financing of the Exhibition Center, the Authority will issue its Taxable Lease Revenue Bonds, Series 2018 (Fox Cities Exhibition
Center Project) (the “Series 2018 Bonds”) the proceeds of which will be
made available to pay, or reimburse Appleton for, the construction costs of
the Exhibition Center; and

(c) the Municipalities and the Room Tax Commission have agreed to the use
of the Exhibition Center Room Taxes for the purposes of paying, either
directly or indirectly, the costs of the construction of the Exhibition
Center, debt service on the Series 2018 Bonds and any additional bonds
issued by the Authority for the purpose of refinancing or refunding the
Series 2018 Bonds, directly or indirectly through a series of refinancings
or refundings (collectively, the “Bonds”), and such other reasonable or
customary payments or deposits related to the Bonds as may be provided
in the Bond Indenture, such as, but not limited to, costs of issuance and
administration of the Bonds, reserve or stabilization funds, capitalized
interest payments, if any, and reimbursement of payments made by
Appleton or a provider of credit enhancement for the Bonds, all subject to
any restrictions related thereto in the Room Tax Act (collectively, the
“Purposes of the Exhibition Center Room Taxes”); and

(d) the Municipalities and the Room Tax Commission agree to pledge the
Exhibition Center Room Taxes to the Trustee for the Purposes of the
Exhibition Center Room Taxes; and

(e) all parties to the Cooperation Agreement found, and reaffirm herein, that
the Exhibition Center constitutes a “convention center” and is, and will be,
crucial to “tourism promotion and tourism development” within the
meaning of the Room Tax Act, and the achievement of a sound and
coordinated development and redevelopment of the territory described as
the “Tourism Zone” in the Cooperation Agreement and for the promotion
and development of tourism activities within the Tourism Zone; and

WHEREAS, the terms and conditions of this Agreement are in compliance with the
Room Tax Act; and

WHEREAS, the execution and delivery of this Agreement have been in all respects
duly and validly authorized by resolutions of the governing bodies of the Municipalities and the
Room Tax Commission; and

WHEREAS, all procedures necessary to constitute this Agreement as a valid pledge
and assignment of the Exhibition Center Room Taxes have been done and performed;

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:
ARTICLE I

PLEDGE AND ASSIGNMENT OF PLEDGED ROOM TAXES TO THE TRUSTEE

The Municipalities and the Room Tax Commission do hereby pledge, sell, assign, transfer, and set over unto the Trustee, all their respective right, title, and interest in and to all Exhibition Center Room Taxes, subject to any limitations imposed thereon by the Room Tax Act, for the Purposes of the Exhibition Center Room Taxes. The Exhibition Center Room Taxes shall not be used for any purpose other than the Purposes of the Exhibition Center Room Taxes set forth in the recitals of this Agreement. The pledge and assignment hereunder shall remain in full force and effect until the full discharge of the Indenture of Trust, dated as of [April May 1], 2018, from the Authority to the Trustee (the “Bond Indenture”), pursuant to which the Series 2018 Bonds are being issued and pursuant to which additional Bonds may be issued to refinance or refund (i) the Series 2018 Bonds or (ii) any other Bonds.

ARTICLE II

DEPOSIT OF EXHIBITION CENTER ROOM TAXES WITH TRUSTEE

Section 2.01 Deposit of Room Taxes.

The Municipalities, the Room Tax Commission, and the Trustee hereby agree and direct that, in order to effect the pledges of the Exhibition Center Room Taxes hereunder, all Exhibition Center Room Taxes imposed by the Municipalities shall be deposited directly with the Trustee by the Operators, and shall be applied to the Purposes of the Exhibition Center Room Taxes as specified in the Bond Indenture.

The deposit of Exhibition Center Room Taxes with the Trustee shall be in accordance with the following procedure:

(a) Notice to Operators. No later than the 10th day of the month following the end of each calendar quarter, the Trustee shall send a notice in substantially the form attached hereto as Exhibit A (or with such changes as may be necessary or appropriate to reflect changes in room taxes other than the Exhibition Center Room Tax) (a “Room Tax Deposit Notice”) to each Operator to be completed and delivered to the Trustee together with the deposit of the Exhibition Center Room Taxes it has collected during the preceding calendar quarter as described in (b) below.

(b) Room Tax Due Dates. Each Operator shall be directed to deposit with the Trustee, no later than January 31, April 30, July 31, and October 31 of each year, together with a completed Room Tax Deposit Notice as described in (a) above, the Exhibition Center Room Taxes it has collected during the preceding calendar quarter. The Trustee shall accept the Exhibition Center Room Taxes for deposit in accordance with the terms of this Agreement and of the Bond Indenture.
Application of Pledged Room Tax Deposits. The Trustee shall, upon receipt of deposits of the Exhibition Center Room Taxes, allocate such deposits to the Revenue Fund created under the Bond Indenture for the Purposes of the Exhibition Center Room Taxes.

Section 2.02 Trustee Reports.

The Trustee shall (i) not later than the 15th day of each month, send a report as of the last day of the prior month to the Room Tax Commission and to each Municipality, that includes a list of the then current Operators that submit Exhibition Center Room Taxes, and the amount of Exhibition Center Room Taxes received from each Operator, and identifies the Operators that have not paid Exhibition Center Room Taxes then due under Section 2.01(b) (the “Monthly Report”), (ii) not later than the 15th day of the month following the end of each calendar quarter, send a statement of transactions to each Municipality and the Room Tax Commission that includes all financial transactions relating to the Municipality as of the end of the calendar quarter (the “Quarterly Statement”), and (iii) not later than the 15th day of the month following each due date of the Exhibition Center Room Taxes described in Section 2.01(b) hereof, send a list to the Room Tax Commission, with a copy to the related Municipality, of the Operators in each Municipality that have not paid Exhibition Center Room Taxes as of such due date (the “Delinquency Report”).

Section 2.03 Collection of Room Taxes; Late Payments.

(a) Each of the Municipalities agrees to direct all Operators within its jurisdiction to deposit all Exhibition Center Room Taxes with the Trustee pursuant to the terms of this Agreement and the instructions of the Trustee. Each Municipality agrees to forward to the Trustee, immediately upon receipt, any payments of Exhibition Center Room Taxes made by an Operator directly to such Municipality, and the Room Tax Commission agrees to forward to the Trustee, immediately upon receipt, any payments of Exhibition Center Room Taxes made by a Municipality or an Operator directly to the Room Tax Commission or the Fox Cities Convention & Visitors Bureau, Inc. (“CVB”) on behalf of the Room Tax Commission. The Municipality may request from the Trustee the form of Room Tax Deposit Notice as described in Section 2.01(a) hereof to accompany such payments.

(b) If an Operator has not paid Exhibition Center Room Taxes for a period of one calendar quarter or is in arrears by one calendar quarter or more, then an authorized officer of the related Municipality shall, within 30 days after the receipt of the first Monthly Report after a Delinquency Report has been received from the Trustee, commence collection and enforcement action against such Operator; provided that said Monthly Report shows Exhibition Center Room Taxes remain unpaid by such Operator.

(c) Each of the Municipalities agrees to commence such collection and enforcement action as described in (b) above and to take all reasonable action to diligently pursue such action and to collect the Exhibition Center Room Taxes
with any applicable/corresponding forfeiture or interest charge for late payment. Each Municipality agrees to send a written notice to the Room Tax Commission, within 10 days after receipt of a Monthly Report as described in (b) above, describing the status of such action and collection until the Exhibition Center Room Taxes have been collected from the Operator. Upon such collection, the Municipalities shall, within 20 business days, deposit with the Trustee the collected Exhibition Center Room Taxes, subject to the deficient payments allocation described in (e) below, and any applicable/corresponding forfeiture or interest charge; which shall be treated as part of the Exhibition Center Room Taxes. All costs of collection and enforcement actions relating to any such Exhibition Center Room Taxes shall (except to the extent they may be recovered from Operators) be the sole responsibility of the related Municipality.

(d) Notwithstanding (b) and (c) above, the Trustee shall have the right, with the consent of the Room Tax Commission, to demand that any such Exhibition Center Room Taxes paid by the Operators but not deposited with the Trustee be immediately deposited with the Trustee in accordance with this Article II.

(e) Pursuant to the Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015, as amended by a First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of [April 1], 2018 (the “Commission Agreement”) and the ordinances adopted by the Municipalities imposing a 10% room tax (the “Room Taxes”), which includes the Exhibition Center Room Tax, provision was made for delinquent Room Taxes received from the Operators to be allocated in a specific order to the purposes for which the Room Taxes were imposed. Upon receipt of notice from a Municipality, the Room Tax Commission, or the CVB with respect to such allocation of delinquent Room Taxes, the Trustee agrees that it shall cooperate with said parties in the application of delinquent Exhibition Center Room Taxes that it has received to the allocation to the purposes entitled to a payment priority over the Exhibition Center Room Taxes.

Section 2.04 Failure of Operator Not a Default of Municipality.

A failure of an Operator to timely pay Exhibition Center Room Taxes shall not constitute a default of a Municipality hereunder provided that the Municipality, in accordance with Section 2.03 above, promptly undertakes and pursues all reasonable collection actions until such delinquent Exhibition Center Room Taxes are collected and deposited with the Trustee.

Section 2.05 Statutory Obligations of Room Tax Commission.

The Room Tax Commission has determined, and the Municipalities agree, that the actions of the Trustee under this Agreement fulfill the statutory obligations of the Room Tax Commission (i) to monitor the collection of room taxes from each Municipality and (ii) to report any delinquencies or inaccurate reporting to the Municipality that is due the tax, as such obligations relate to the Exhibition Center Room Tax.
ARTICLE III

REPRESENTATIONS, WARRANTIES, AND COVENANTS

Each of the Municipalities and the Room Tax Commission hereby represents and warrants to the Trustee that it has good right and authority to enter into this Agreement; that as of the date of this Agreement it has not alienated, assigned, pledged, or otherwise disposed of or encumbered any of the Exhibition Center Room Taxes, and that it has not performed any acts or executed any other instruments which might prevent the Trustee from receiving any Exhibition Center Room Taxes under any of the terms and conditions of this Agreement or which would limit the Trustee in such receipt.

Each of the Municipalities and the Room Tax Commission hereby covenants and agrees:

(a) to observe, perform, and discharge, duly and punctually, all and singular, the obligations, terms, covenants, conditions, and warranties of this Agreement on its part to be kept, observed, and performed;

(b) that it will, upon the request of the Trustee, execute and deliver to the Trustee such further instruments and do and perform such other acts and procedures as the Trustee may deem necessary or appropriate to make effective this Agreement and its various covenants herein contained and to more effectively vest in and secure to the Trustee the Exhibition Center Room Taxes, including without limitation, the execution of such additional assignments as shall be deemed necessary by the Trustee to effectively vest in and secure the Exhibition Center Room Taxes;

(c) that it will take any and all action reasonably necessary to enforce its room tax levies and collect all room taxes from the Operators within its jurisdiction. Such actions shall include, if necessary, commencing suit or other action to recover delinquent room taxes; and

(d) that it will not repeal any or all of the Exhibition Center Room Tax or amend the Commission Agreement in any manner that affects the Trustee’s right to receive the Exhibition Center Room Tax.

ARTICLE IV

MISCELLANEOUS

Section 4.01 Counterparts.

This Agreement may be executed, acknowledged, and delivered in any number of counterparts, each of which shall constitute an original, but all together only one, instrument. The laws of the State of Wisconsin shall govern this Agreement.
Section 4.02 Severability.

If any term, covenant, or condition of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement and the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law. In the event of any ambiguity in any terms or provisions of this Agreement, such ambiguity shall be construed in favor of the Trustee, notwithstanding any rules of construction to the contrary.

Nothing contained in this Agreement, the Cooperation Agreement, or the Bond Indenture shall in any manner be construed as making the parties hereto and thereto or their assignees partners.

Section 4.03 Additional Parties to this Agreement.

Any municipal government that hereafter becomes an additional member of the Room Tax Commission (an “Additional Municipality”) pursuant to the Commission Agreement shall, as a condition of such membership under the Commission Agreement, become an additional party to this Agreement. Each Additional Municipality shall be bound to the terms, conditions, and obligations of the Municipalities under this Agreement by execution and delivery to the Trustee of a joinder agreement in substantially the form attached hereto as Exhibit B, and a copy of the executed joinder agreement shall be delivered by the Trustee to the other then-current parties to this Agreement. Acceptance by the Trustee of such joinder agreement shall, without further action or approval of the parties to this Agreement, be deemed an approval of such Additional Municipality as an additional party to this Agreement by the then-current parties to this Agreement.

Section 4.04 Amendments to this Agreement.

This Agreement may be amended from time to time by a written instrument for any purpose not inconsistent with the terms of the Bond Indenture or to cure any ambiguity or to correct or supplement any provision contained in this Agreement which may be defective or inconsistent with any other provision contained in this Agreement or to make such other provisions as shall not be inconsistent with the provisions of the Bond Indenture and shall not, in the judgment of the Trustee, adversely affect the interests of the owners of the Bonds.

Section 4.05 Termination.

This Agreement shall terminate upon the discharge and termination of the Bond Indenture. The Trustee shall notify the Room Tax Commission and each Municipality of such termination and discharge.
Section 4.06 Notices.

Any notice, request, report, statement, or other communication to be given pursuant to this Agreement, shall be sufficiently given, and shall be deemed given, when hand delivered or sent by first class mail, email, or overnight delivery service as follows:

If to the Room Tax Commission at:

Fox Cities Area Room Tax Commission
Attention: Chairperson
c/o Fox Cities Convention & Visitors Bureau
3433 West College Avenue
Appleton, Wisconsin 54914
Phone: (800) 236-6673
Email: bruce.sherman@grandchute.net

If to the Trustee at:

Associated Trust Company, National Association
Attention: Corporate Trust Department
200 North Adams Street
Green Bay, Wisconsin 54301
Phone: (920) 433-3275
Email: eric.wied@associatedbank.com

If to a Municipality, at the address indicated beneath the signature to this Agreement of such Municipality.

Any party may, by written notice to the other parties, designate a change of address for the purposes aforesaid.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties have caused this Pledge and Security Agreement to be duly executed and delivered as of the date first written above.

FOX CITIES AREA ROOM TAX COMMISSION

By: ___________________________
   Its Chairperson

And: ___________________________
    Its Secretary

ASSOCIATED TRUST COMPANY, NATIONAL ASSOCIATION, as trustee

By: ___________________________
   Its __________________________

And: ___________________________
    Its __________________________

[Signature Page to Pledge and Security Agreement]
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

CITY OF APPLETON, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Appleton
Attention: Director of Finance
100 North Appleton Street
Appleton, Wisconsin  54911

Email: tony.saucerman@appleton.org
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

CITY OF KAUKAUNA, WISCONSIN

By: ______________________________
   Its: Mayor

And: ______________________________
    Its: Clerk

ADDRESS:

City of Kaukauna
Attention: Clerk-Treasurer
201 West Second Street
Kaukauna, Wisconsin 54130

Email: clerk-treasurer@kaukauna.org

[Signature Page to Pledge and Security Agreement – Kaukauna]
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

CITY OF NEENAH, WISCONSIN

By: _______________________________
    Its: Mayor

And: _______________________________
    Its: Clerk

ADDRESS:

City of Neenah
Attention: Finance Director
211 Walnut Street
Neenah, Wisconsin 54956

Email: measker@ci.neenah.wi.us
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

VILLAGE OF KIMBERLY, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Kimberly
Attention: Village Administrator
515 West Kimberly Avenue
Kimberly, Wisconsin 54136

Email: dblock@vokimberly.org
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

VILLAGE OF LITTLE CHUTE, WISCONSIN

By: ________________________________  
Its: President

And: ________________________________  
Its: Clerk

ADDRESS:

Village of Little Chute  
Attention: Village Administrator  
108 West Main Street  
Little Chute, Wisconsin 54140

Email: jfenlon@littlechutewi.org
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

TOWN OF GRAND CHUTE, WISCONSIN

By: ________________________________
   Its: Chairperson

And: ________________________________
    Its: Clerk

ADDRESS:

Town of Grand Chute
Attention: Town Administrator
1900 West Grand Chute Boulevard
Grand Chute, Wisconsin 54913

Email: jim.march@grandchute.net
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

TOWN OF NEENAH, WISCONSIN

By: ________________________________
   Its: Chairperson

And: ________________________________
   Its: Clerk

ADDRESS:

Town of Neenah
Attention: Clerk-Treasurer
1600 Breezewood Lane
Neenah, Wisconsin 54956

Email: ellen@townofneenah.com

[Signature Page to Pledge and Security Agreement – Town of Neenah]
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

VILLAGE OF FOX CROSSING, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:
Village of Fox Crossing
Attention: Village Administrator
2000 Municipal Drive
Neenah, Wisconsin 54956

Email: jsturgell@foxcrossingwi.gov

[Signature Page to Pledge and Security Agreement – Fox Crossing]
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

CITY OF MENASHA, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Menasha
Attention: Administrative Services Director
100 Main Street, Suite 200
Menasha, Wisconsin 54952

Email: jjacobs@ci.menasha.wi.us
IN WITNESS WHEREOF, the parties have executed this Pledge and Security Agreement as of the date first written above.

VILLAGE OF SHERWOOD, WISCONSIN

By: __________________________
   Its: President

And: __________________________
   Its: Clerk

ADDRESS:

Village of Sherwood
Attention: Village Administrator
W482 Clifton Road
Sherwood, Wisconsin  54169

Email: administrator.sherwood@newbc.rr.com
EXHIBIT A

ROOM TAX DEPOSIT NOTICE

FOR THE CALENDAR QUARTER ENDING ________________________, 20____

Date:_________________, 20____

Associated Trust Company, National Association
Attention: Corporate Trust Operations
2985 South Ridge Road, Suite C
Green Bay, Wisconsin  54304

[[Enclosed are]] the Exhibition Center Room Taxes from
______________________________ for the above referenced calendar quarter.

Total 10% Room Tax Receipts For Quarter: $________________

Distribution of 10% Room Tax:

  3% Room Tax (Exhibition Center Room Tax) — Amount $________________
     [Enclosed]
  Balance Paid Directly to Municipality $________________

If you have any questions, please feel free to contact me at ________________.

Sincerely,

[Name of Hotel/Motel or other lodging facility]
EXHIBIT B

JOINDER AGREEMENT TO

PLEDGE AND SECURITY AGREEMENT

The undersigned municipality hereby agrees that it shall be an Additional Municipality as defined in the Pledge and Security Agreement, dated as of [April May 1], 2018 (the “Agreement”), among the Fox Cities Area Room Tax Commission, the municipal members of such commission and Associated Trust Company, National Association, as trustee, and hereby agrees to be bound by the terms, conditions, and obligations of the Municipalities under the Agreement, as amended from time to time. On and after the date of this Joinder Agreement, the undersigned shall be deemed a Municipality under the Agreement.

IN WITNESS WHEREOF, the undersigned Municipality has duly executed this Joinder Agreement effective as of ________________, 20__.

[Signature]

__________________________, WISCONSIN

By: ________________________________

Its: ________________________________

And: ________________________________

Its: ________________________________

ADDRESS:

__________________________, of ______________

Attention: ________________________________

__________________________, Wisconsin __________

Email: ________________________________
Accepted on behalf of itself, the Room Tax Commission, and the Municipalities:

ASSOCIATED TRUST COMPANY, NATIONAL ASSOCIATION, as trustee

By ______________________________ 
   Its: ___________________________
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FIRST AMENDMENT TO

AMENDED AND RESTATED
ROOM TAX COMMISSION AND TOURISM ZONE AGREEMENT

Dated as of [April/May 1], 2018

by and among

THE MUNICIPALITIES NAMED HEREIN

and the

FOX CITIES AREA ROOM TAX COMMISSION
This First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of [AprilMay 1], 2018 (this “First Amendment”), by and among the City of Appleton, Wisconsin, a Wisconsin municipal corporation and political subdivision (“Appleton”), the City of Kaukauna, Wisconsin, a Wisconsin municipal corporation and political subdivision (“Kaukauna”), the City of Neenah, Wisconsin, a Wisconsin municipal corporation and political subdivision (“City of Neenah”), the Village of Kimberly, Wisconsin, a Wisconsin municipal corporation and political subdivision (“Kimberly”), the Village of Little Chute, Wisconsin, a Wisconsin municipal corporation and political subdivision (“Little Chute”), the Town of Grand Chute, Wisconsin, a Wisconsin political subdivision (“Grand Chute”), the Town of Neenah, Wisconsin, a Wisconsin political subdivision (“Town of Neenah”), the Village of Fox Crossing, Wisconsin, a Wisconsin municipal corporation and political subdivision (“Fox Crossing”), the City of Menasha, Wisconsin, a Wisconsin municipal corporation and political subdivision (“Menasha”), and the Village of Sherwood, Wisconsin, a Wisconsin municipal corporation and political subdivision (“Sherwood” and, collectively with Appleton, Kaukauna, City of Neenah, Kimberly, Little Chute, Town of Neenah, Fox Crossing, and Menasha, the “Municipalities”), and the Fox Cities Area Room Tax Commission, an authority formed pursuant to the powers provided in Section 66.0615 of the Wisconsin Statutes (the “Commission”), is an amendment to the Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015, by and among the Municipalities and the Commission (the “Commission Agreement”). Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Commission Agreement.

RECITALS

WHEREAS, the Municipalities (including the Town of Menasha, Wisconsin as the predecessor to Fox Crossing) and the Commission have entered into the Commission Agreement; and

WHEREAS, subsequent to the date of the Commission Agreement, certain facts and assumptions contemplated in the Commission Agreement have changed, including that the bonds contemplated to be issued (the “Exhibition Center Bonds”) to finance the Fox Cities Exhibition Center (the “Exhibition Center”) have not yet been issued, Appleton has constructed the Exhibition Center with its own funds, the PAC Bonds have been paid in full and the Amended and Restated Pledge and Security Agreement relating to the PAC Bonds has been terminated, the Room Tax Act has been amended, and the Town of Menasha, Wisconsin, a party to the Commission Agreement, has been incorporated as the Village of Fox Crossing, Wisconsin; and

WHEREAS, each Municipality has adopted an ordinance imposing a 10% Room Tax, allocated as described in the Commission Agreement; and

WHEREAS, the Commission has contracted with the Fox Cities Convention & Visitors Bureau, Inc. (the “CVB”), as a tourism entity, to obtain staff, support services and
assistance in developing and implementing programs to promote the zone to visitors and to receive and administer certain of the 10% Room Taxes on behalf of the Room Tax Commission pursuant to the Amended and Restated Tourism Entity Agreement, dated as of December 31, 2018, by and between the CVB and the Room Tax Commission, as amended by a First Amendment to Tourism Entity Agreement, dated as of [April 1], 2018 (the “Tourism Entity Agreement”).

WHEREAS, the Municipalities, the Commission, and Redevelopment Authority of the City of Appleton, Wisconsin (the “Authority”) have entered into an Amended and Restated Cooperation Agreement for the Fox Cities Exhibition Center, dated as of [April 1], 2018 (the “Amended and Restated Exhibition Center Cooperation Agreement”), which amends and restates the Exhibition Center Cooperation Agreement, dated as of November 24, 2015, in its entirety; and

WHEREAS, the Municipalities and the Commission have entered into a Pledge and Security Agreement, dated as of [April 1], 2018 (the “Pledge and Security Agreement”), with Associated Trust Company, National Association, as trustee (the “Trustee”), pursuant to which the 3% Room Tax imposed for the payment of the Exhibition Center Bonds shall be forwarded directly to the Trustee by the Operators; and

WHEREAS, the Exhibition Center Bonds are being issued contemporaneously with the execution and delivery of this First Amendment; and

WHEREAS, the Municipalities and the Commission desire that the Commission Agreement be amended to reflect current facts, circumstances, and documents;

NOW, THEREFORE in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1. References to Certain Terms.

Certain terms in the Commission Agreement shall be revised as follows:

(a) References in the Commission Agreement to “this Amended and Restated Room Tax Commission and Tourism Zone Agreement” or “this Agreement” shall be deemed to refer to the Commission Agreement as amended by this First Amendment.

(b) References in the Commission Agreement, including as amended hereby, to the “Exhibition Center Cooperation Agreement dated of even date herewith” or to the “Exhibition Center Cooperation Agreement” shall be deemed to refer to the Amended and Restated Exhibition Center Cooperation Agreement.

Section 2. Amendments to Agreement.

(a) Section 5 is amended in its entirety to read as follows:
Imposition of Room Tax. Pursuant to the Room Tax Act, each municipality that imposes a Room Tax in the Fox Cities Tourism Zone shall levy the same percentage of Room Tax. If the Municipalities are unable to agree on the percentage of tax to be levied in the Fox Cities Tourism Zone, then the Fox Cities Room Tax Commission shall set the percentage. The Municipalities have each adopted an ordinance that imposed a 10% Room Tax. Pursuant to subsection (1m)(am)(3) of the Room Tax Act, the parties hereto find and agree that (i) each Municipality is located in a county or counties having a population of less than 380,000, (ii) the counties in which the Municipalities are located are not located adjacent to any county with a population of over 380,000, and (iii) the Municipalities have worked cooperatively to construct and finance the Exhibition Center.

(b) Section 7 is amended in its entirety to read as follows:

Collection of Room Tax. Each Municipality shall cause each Operator within its jurisdiction to collect the 10% Room Tax imposed by such Municipality pursuant to its ordinance (the “Ordinance”). The 10% Room Tax is comprised of (i) a 3% Room Tax collected for the support of the CVB (the “CVB Room Tax”), (ii) the 2% PAC Room Tax for the development and support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone, (iii) a 3% Room Tax collected for the direct or indirect payment of the costs of construction of the Exhibition Center or debt service on bonds (the “Exhibition Center Bonds”) issued to finance or refinance the Exhibition Center (the “Exhibition Center Room Tax”), (iv) a 1% Room Tax collected for general purposes, including, but not limited to tourism support and development in the Municipality (the “Municipal Room Tax”), and (v) 1% Room Tax collected for the development and support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone (the “Tourism Facilities Room Tax”). Pursuant to the Ordinances, the Exhibition Center Room Tax shall sunset upon payment in full of all outstanding Exhibition Center Bonds and thereafter the 10% Room Tax shall be reduced by 3%, with such reduction being deemed to be the share of the Room Tax allocated to the Exhibition Center Room Tax. The Municipalities acknowledge that, because the PAC Bonds have been paid in full, the PAC Room Tax and the Tourism Facilities Room Tax are dedicated to the same purposes; however they are assigned separate payment priorities in Section 9 hereof and in the Ordinances.

The Municipalities shall cause each Operator to forward the Exhibition Center Room Tax directly to Associated Trust Company, National Association, or its successor as trustee for the Exhibition Center Bonds (the “Trustee”), quarterly no later than each January 31, April 30, July 31, and October 31 pursuant to the Pledge and Security Agreement, dated as of [April 1], 2018 (the “Pledge and Security Agreement”), entered into by and among the Municipalities, the Fox Cities Room Tax Commission, and the Trustee.

Each Municipality shall distribute the remaining 7% Room Tax collected as follows:
a. 95% of the 3% CVB Room Tax shall be forwarded by the Municipality to the CVB on behalf of the Fox Cities Room Tax Commission;

b. 5% of the 3% CVB Room Tax may be retained by the Municipality for general purposes, including, but not limited to tourism support and development in the Municipality in accordance with the requirements of the Room Tax Act;

c. the 2% PAC Room Tax shall be forwarded by the Municipality to the CVB on behalf of the Fox Cities Room Tax Commission;

d. the 1% Municipal Room Tax shall be retained the Municipality; and

e. the 1% Tourism Facilities Room Tax shall be forwarded by the Municipality to the CVB on behalf of the Fox Cities Room Tax Commission.

(c) **Section 8 is amended in its entirety to read as follows:**

Use of Room Tax. The 95% portion of the CVB Room Tax, the PAC Room Tax, and the Tourism Facilities Room Tax received by the Fox Cities Room Tax Commission shall be utilized as described in Section 7.a., c., and e. The 5% portion of the CVB Room Tax and the Municipal Room Tax retained by the Municipalities shall be utilized as described in Section 7.b. and d. The Exhibition Center Room Tax shall be utilized as described in the Pledge and Security Agreement.

Notwithstanding the foregoing, the parties agree that (i) the Exhibition Center Room Tax received by the CVB on behalf of the Fox Cities Room Tax Commission, or by the Fox Cities Room Tax Commission or any Municipality received from January 1, 2016 through [__________, 2018] [the Effective Date of the First Amendment] shall be applied as provided in the Exhibition Center Cooperation Agreement, (ii) funds held by the trustee for the PAC Bonds in the amount of $750,000 shall also be applied as provided in the Exhibition Center Cooperation Agreement, and all remaining funds held by such trustee shall be applied to the purposes for which the PAC Room Tax is to be applied, and (iii) at the time all outstanding Exhibition Center Bonds are fully satisfied, any excess Exhibition Center Room Tax collected but not needed for the payment of the Exhibition Center Bonds or any reimbursement due to Appleton or to a Bond Guarantor, as defined in and pursuant to the Exhibition Center Cooperation Agreement, shall be reallocated to [_____________ Room Tax Clearing Account] (the “Tourism Development Fund”) for use of tourism promotion and tourism development in the Fox Cities Tourism Zone.

(d) **Section 9 is amended in its entirety to read as follows:**

Priority of Payment. In the event any Operator fails to remit to the Trustee or to the Municipality the Room Tax for a period of one calendar quarter, or is in arrears by one calendar quarter or more after any January 31, April 30, July 31, or October 31 quarterly payment date, or in the event the Municipality fails to remit to the CVB on behalf of the Room Tax Commission, the applicable remaining Room Tax described in Section 7 within [10 business days] after receipt of such quarterly payment (a “Deficient
Payment") under this Agreement, the Pledge and Security Agreement, and the ordinances imposing the Room Tax, the Deficient Payment amounts actually received by the Municipality, the Trustee, or the CVB on behalf of the Fox Cities Room Tax Commission shall be applied in the following priority order:

a. First, toward the payment of the 3% CVB Room Tax;

b. Second, toward the payment of the 2% PAC Room Tax;

c. Third, toward the payment of the 3% Exhibition Center Room Tax (for so long as it is being collected);

d. Fourth, toward the payment of the 1% Municipal Room Tax; and

e. Fifth, toward the payment of the 1% Tourism Facilities Room Tax.

(e) The introduction to Section 12 is amended to read as follows:

Powers and Duties. The Fox Cities Room Tax Commission shall have the powers, rights, and duties as provided for a “commission” in the Room Tax Act, including:

(f) Subsection 12(c) is amended to read as follows:

c. To report, or cause the CVB to report, no less than annually to each Municipality from which it received Room Taxes, the purposes for which the revenues were spent and the information required to be reported to the Wisconsin Department of Revenue (the “DOR”) under subsection (4) of the Room Tax Act; provided, however, that such report shall be delivered to each Municipality so that it may timely comply with its required annual certification to the DOR due on or before each May 1.

(g) Section 13 is amended in its entirety to read as follows:

Additional Municipalities. It is anticipated that from time to time the geographic area comprising the Fox Cities Tourism Zone may change such that additional municipalities not party to this Agreement may become part of the Fox Cities Tourism Zone. The Fox Cities Room Tax Commission shall use its best efforts to encourage and accept such additional municipalities (each, an “Additional Municipality”) to become a member of the Fox Cities Room Tax Commission. Each Additional Municipality shall be required, as a condition to becoming a member of the Fox Cities Room Tax Commission, to impose by ordinance the 10% Room Tax as described in Sections 7 and 9 hereof (or, after the termination of the Exhibition Center Room Tax, a 7% Room Tax), and for so long as the Exhibition Center Bonds remain outstanding, to become a party to the Pledge and Security Agreement and the Exhibition Center Cooperation Agreement. Each Additional Municipality shall become bound to the terms, conditions, and obligations of the Municipalities hereunder by execution of a joinder agreement, in substantially the form attached hereto as Exhibit B, accepted by the Fox Cities Room Tax Commission, which shall provide a copy of such joinder agreement to the other then-current parties to this Agreement.
(h) **Section 14 is amended in its entirety to read as follows:**

Municipal Action. The Municipalities shall enact such ordinances and/or resolutions as are necessary to satisfy the terms of this Agreement and to effect any provisions of this Agreement.

(i) **Exhibit B is added to the Commission Agreement, to read as set forth in Exhibit A to this First Amendment.**

**Section 3. Effective Date; Ratification of Agreement.**

The amendment to the Commission Agreement contained herein shall be effective as of the date of this First Amendment. Except as expressly provided in this First Amendment, the provisions of the Commission Agreement shall remain in full force and effect.

**Section 4. Counterparts; Headings.**

This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The section headings in this First Amendment are for convenience only and in no way define, limit or describe the scope or intent of any provision of this First Amendment.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

CITY OF APPLETON, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Appleton
Attention: Director of Finance
100 North Appleton Street
Appleton, Wisconsin 54911

Email: tony.saucerman@appleton.org
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

CITY OF KAUKAUNA, WISCONSIN

By: _______________________________
   Its: Mayor

And: _______________________________
   Its: Clerk

ADDRESS:

City of Kaukauna
Attention: Clerk-Treasurer
201 West Second Street
Kaukauna, Wisconsin  54130

Email: clerk-treasurer@kaukauna.org
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

CITY OF NEENAH, WISCONSIN

By: ______________________________
   Its: Mayor

And: ______________________________
   Its: Clerk

ADDRESS:

City of Neenah
Attention: Finance Director
211 Walnut Street
Neenah, Wisconsin 54956

Email: measker@ci.neenah.wi.us
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

VILLAGE OF KIMBERLY, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Kimberly
Attention: Village Administrator
515 West Kimberly Avenue
Kimberly, Wisconsin 54136

Email: dblock@vokimberly.org
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

VILLAGE OF LITTLE CHUTE, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Little Chute
Attention: Village Administrator
108 West Main Street
Little Chute, Wisconsin 54140

Email: jfenlon@littlechutewi.org
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

TOWN OF GRAND CHUTE, WISCONSIN

By: ________________________________
   Its: Chairperson

And: ________________________________
   Its: Clerk

ADDRESS:

Town of Grand Chute
Attention: Town Administrator
1900 West Grand Chute Boulevard
Grand Chute, Wisconsin 54913

Email: jim.march@grandchute.net
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

TOWN OF NEENAH, WISCONSIN

By: _________________________________
   Its: Chairperson

And: _________________________________
   Its: Clerk

ADDRESS:

Town of Neenah
Attention: Clerk-Treasurer
1600 Breezewood Lane
Neenah, Wisconsin 54956

Email: ellen@townofneenah.com
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

VILLAGE OF FOX CROSSING, WISCONSIN

By: ______________________________________
   Its: President

And: ______________________________________
   Its: Clerk

ADDRESS:

Village of Fox Crossing
Attention: Village Administrator
2000 Municipal Drive
Neenah, Wisconsin 54956

Email: jsturgell@foxcrossingwi.gov
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

CITY OF MENASHA, WISCONSIN

By: ________________________________
    Its: Mayor

And: ________________________________
    Its: Clerk

ADDRESS:

City of Menasha
Attention: Administrative Services Director
100 Main Street, Suite 200
Menasha, Wisconsin  54952

Email: jjacobs@ci.menasha.wi.us
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

VILLAGE OF SHERWOOD, WISCONSIN

By: ________________________________
   Its: President

And: ________________________________
   Its: Clerk

ADDRESS:

Village of Sherwood
Attention: Village Administrator
W482 Clifton Road
Sherwood, Wisconsin  54169

Email: administrator.sherwood@newbc.rr.com
IN WITNESS WHEREOF, the parties have executed this First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement as of the date first written above.

FOX CITIES AREA ROOM TAX COMMISSION

By: ____________________________
   Its: __________________________

[And: ____________________________
   Its: __________________________]

ADDRESS:

Fox Cities Area Room Tax Commission
Attention: Chairperson
c/o Fox Cities Convention & Visitors Bureau
3433 West College Avenue
Appleton, Wisconsin 54914

Email: bruce.sherman@grandchute.net
JOINDER AGREEMENT

AMENDED AND RESTATED
ROOM TAX COMMISSION AND TOURISM ZONE AGREEMENT

The undersigned municipality hereby agrees that it shall be an Additional Municipality as defined in the Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015, among the Fox Cities Area Room Tax Commission and the municipal members of such commission, as amended by a First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of [April/May 1], 2018 (collectively, the “Agreement”), and hereby agrees to be bound by the terms, conditions, and obligations of the Municipalities under the Agreement, as amended from time to time. On and after the date of this Joinder Agreement, the undersigned shall be deemed a Municipality under the Agreement.

IN WITNESS WHEREOF, the undersigned Municipality has duly executed this Joinder Agreement effective as of ________________, 20____.

______________ OF _________________, WISCONSIN

By: ____________________________________________
   Its: ____________________________________________

And: ____________________________________________
   Its: ____________________________________________

ADDRESS:

_________________ of _________________
Attention: ____________________________
_________________, Wisconsin _________

Email: _________________________________________
Accepted on behalf of itself and the Municipalities:

FOX CITIES AREA ROOM TAX COMMISSION

By: ____________________________
Its: ____________________________

And: ____________________________
Its: ____________________________
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AMENDED AND RESTATED COOPERATION AGREEMENT
FOR THE FOX CITIES EXHIBITION CENTER

Dated as of [AprilMay 1], 2018

Amending and Restating in its entirety the Exhibition Center Cooperation Agreement, dated as of November 24, 2015

by and among

THE MUNICIPALITIES NAMED HEREIN

the

REDEVELOPMENT AUTHORITY OF THE CITY OF APPLETON, WISCONSIN

and the

FOX CITIES AREA ROOM TAX COMMISSION
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EXHIBIT A - Exhibition Center Project
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AMENDED AND RESTATED
COOPERATION AGREEMENT
FOR THE
FOX CITIES EXHIBITION CENTER

This AMENDED AND RESTATED COOPERATION AGREEMENT (this “Agreement”), is made as of [April 1, 2018], by and among the CITY OF APPLETON, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Appleton”), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kaukauna”), the CITY OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Neenah”), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kimberly”), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Little Chute”), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin political subdivision (“Grand Chute”), the TOWN OF NEENAH, WISCONSIN, a Wisconsin political subdivision (“Town of Neenah”), the VILLAGE OF FOX CROSSING, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Fox Crossing”), the CITY OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Menasha”), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Sherwood” and, collectively with Appleton, Kaukauna, City of Neenah, Kimberly, Little Chute, Grand Chute, Town of Neenah, Fox Crossing, and Menasha, the “Municipalities”), the REDEVELOPMENT AUTHORITY OF THE CITY OF APPLETON, WISCONSIN, a Wisconsin body corporate and politic (the “ARA”), and the FOX CITIES AREA ROOM TAX COMMISSION, a Wisconsin intergovernmental commission (the “Room Tax Commission”), to amend and restate in its entirety the Exhibition Center Cooperation Agreement, dated as of November 24, 2015 (the “Original Agreement”), entered into by and among the above parties and the Fox Cities Performing Arts Center, Inc. (the “PAC”), as a result of certain changes in facts and assumptions that have occurred subsequent to the execution of the Original Agreement.

ARTICLE I
DEFINITIONS

In addition to those terms defined throughout this Agreement, the following terms shall have the following meanings ascribed to them:

“Additional Bonds” means such revenue bonds in such series and in such principal amounts as the ARA may issue from time to time pursuant to a supplement to the Indenture for the purpose of refinancing or refunding then-outstanding Bonds.

“Additional Municipality” means any municipality within the Tourism Zone which, subsequent to the date of this Agreement, becomes a member of the Room Tax Commission and which, pursuant to Section 5.02, becomes a party to this Agreement.

“Bonds” means, collectively, the Series 2018 Bonds and any Additional Bonds issued by the ARA for the purposes set forth in this Agreement.
“Commission Agreement” means the Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of November 24, 2015, by and between the Municipalities and the Room Tax Commission, as amended by a First Amendment to Amended and Restated Room Tax Commission and Tourism Zone Agreement, dated as of [April May 1], 2018, and as further amended from time to time.

“Credit Enhancement” means a policy of bond insurance, a letter of credit, a guaranty, or another form of credit enhancement as security for payment of debt service on the Bonds.

“CVB” shall mean the Fox Cities Convention & Visitors Bureau, Inc., a Wisconsin nonprofit corporation, or its successors and assigns pursuant to the Tourism Entity Agreement.

“Exhibition Center” means the Fox Cities Exhibition Center, a convention center as referenced in the Room Tax Act, more specifically described in Exhibit A hereto and situated on the Exhibition Center Property.

“Exhibition Center Property” means [the real property legally described in Exhibit B hereto.]

“Exhibition Center Room Tax” means the 3% Room Tax levied by each Municipality pursuant to the Room Tax Act and the Commission Agreement for purposes of paying, directly or indirectly, [the costs of construction of the Exhibition Center and debt service on the Bonds and/or such other reasonable and customary payments or deposits related to the Bonds as may be provided in the Indenture, such as, but not limited to, costs of issuance and administration, Credit Enhancement, debt service reserve and room tax stabilization funds, and capitalized interest, if any ]-related purposes.

“Governing Body” means, when used with reference to a Municipality, the Common Council, Village Board, or Town Board, as applicable, of such Municipality.

“Governing Body Authorizations” means (i) the Ordinances, (ii) the resolutions titled [“Resolution Authorizing the Execution and Delivery of Documents relating to the Fox Cities Exhibition Center Project”] adopted by the Governing Bodies of: (a) Appleton on ______________ March 7, 2018, (b) Grand Chute on ______________, 2018 (c) Kaukauna on ______________, 2018, (d) Kimberly on ______________, 2018, (e) Little Chute on ______________, 2018, (f) City of Menasha on ______________, 2018, (g) Town of Menasha on ______________, 2018, (h) City of Neenah on ______________, 2018, (i) Town of Neenah on ______________, 2018, and (j) Sherwood on ______________February 26, 2018, (iii) the resolution of the Room Tax Commission adopted on ______________ [March 19], 2018 relating to the Exhibition Center, and (iv) the additional resolutions of Appleton on [March 21], 2018, and (v) the resolutions of the ARA adopted on [February 16, 2018 and March 4 on [April 11], 2018, each] relating to the Exhibition Center.

“Indenture” means the Indenture of Trust, dated as of [April May 1], 2018, by and between the ARA and the Trustee with respect to the Series 2018 Bonds as supplemented or amended from time to time pursuant to the terms thereof, including pursuant to which Additional Bonds are issued.
“Lease” means the instrument of lease between the ARA and Appleton described in Section 3.05 hereof, as amended from time to time pursuant to the terms thereof, including in connection with the issuance of Additional Bonds.

“Management Agreement” means the Management Agreement dated November 18, 2015 entered into by Appleton Holdings, LLC, as owner and operator of the Paper Valley Hotel, and [______________], a single purpose entity owned by Appleton Holdings, LLC, as amended from time to time.

“Mortgages” means, collectively, any and all mortgages and assignments of leases, security agreements or other agreements or instruments entered into by the ARA and delivered to the Trustee for the purpose of granting the Trustee a mortgage lien on the Exhibition Center Property and all improvements located thereon, including the Exhibition Center[, and a security interest in the personal property described therein,] as collateral security for the payment of the Bonds, in each case as amended from time to time pursuant to the terms thereof.

“Municipality” means each of: Appleton, Kaukauna, City of Neenah, Kimberly, Little Chute, Grand Chute, Town of Neenah, Fox Crossing, Menasha, Sherwood, and any Additional Municipality.

“Operators” means any hotelkeepers, motel operators, and other persons that furnish accommodations that are available to the public and are obligated to collect the Room Tax.

“Ordinances” means the room tax ordinances adopted in November, 2015 by each Municipality’s Governing Body pursuant to the Room Tax Act, which levied a 10% Room Tax, including the Exhibition Center Room Tax.

“Pledge and Security Agreement” means the Pledge and Security Agreement, dated as of [April/May 1], 2018, by and among the Municipalities, the Room Tax Commission, and the Trustee, incorporating the pledge of Exhibition Center Room Taxes to the payment, directly or indirectly, of the costs of construction of the Exhibition Center and debt service on the Bonds and related purposes, or such other reasonable and customary payments or deposits related to the Bonds as may be provided in the Indenture, such as, but not limited to, costs of issuance and administration, Credit Enhancement, debt service reserve and room tax stabilization funds, and capitalized interest, if any, as amended from time to time pursuant to the terms thereof.

“Redevelopment Act” means Section 66.1333 of the Wisconsin Statutes, as amended.

“Room Tax” means a tax levied pursuant to the Room Tax Act.

“Room Tax Act” means Section 66.0615 of the Wisconsin Statutes, as amended.

“Room Tax Commission” means the Fox Cities Area Room Tax Commission created by the Municipalities for the purpose of coordinating tourism promotion and tourism development in the Tourism Zone, the membership of which shall be established as set forth in the Commission Agreement and subsection (1m)(c)(2) of the Room Tax Act.
“Series 2018 Bonds” means the ARA’s Taxable Lease Revenue Bonds, Series 2018 (Fox Cities Exhibition Center Project), dated their date of initial delivery, issued in the aggregate principal amount of $______________ pursuant to the Indenture.

“Tourism Entity Agreement” means the Amended and Restated Tourism Entity Agreement, dated as of December 31[May 1], 20152018, by and between the CVB and the Room Tax Commission, as amended by a First Amendment to Tourism Entity Agreement, dated as of [April 1], 2018, and as further amended from time to time.

“Tourism Zone” as means the Fox Cities Tourism Zone, established pursuant to the Commission Agreement and the Room Tax Act, encompassing the Municipalities and any neighboring municipalities.

“Trustee” means Associated Trust Company, National Association, as trustee under the Indenture, and its successors in such capacity.

ARTICLE II

FACTS AND RECITALS

Section 2.01  Governing Body Authorizations.

The execution, delivery and performance of this Agreement by the Municipalities, the Room Tax Commission, and the ARA have been authorized by the respective Governing Body Authorizations and pursuant to Section 66.0301 of the Wisconsin Statutes, the Room Tax Act and the Redevelopment Act.

Section 2.02  Tourism Zone Objectives.

The Municipalities, the Room Tax Commission and the ARA have identified the development and redevelopment of the Tourism Zone and the promotion and development of tourism within the Tourism Zone as matters of group interest.

Section 2.03  Importance of Exhibition Center.

The Municipalities, the Room Tax Commission and the ARA have found and determined:

(a) that (i) each Municipality is located in a county or counties with a population of less than 380,000; (ii) the counties in which the Municipalities are located are not located adjacent to any county with a population of over 380,000; and (iii) the Municipalities have worked cooperatively together to construct and finance the Exhibition Center, as contemplated by subsection (1m)(am)(3) of the Room Tax Act; and

(b) that the control, disposition, and use of the Exhibition Center is crucial to the achievement of a sound and coordinated development of the Tourism Zone and for the promotion and development of tourism activities within the Tourism Zone.
Section 2.04 Construction of Exhibition Center.

Since the date of the Original Agreement, the Exhibition Center project has been undertaken and completed by Appleton on behalf of the Municipalities, the Room Tax Commission, and the ARA. Appleton has acquired the Exhibition Center Property within the Tourism Zone and has completed the construction of the Exhibition Center as described in Exhibit A hereto. The Exhibition Center project involved the construction, installation, and improvement of real property within the Tourism Zone, which improvements and interrelated facilities constitute a “convention center” within the meaning of the Room Tax Act.

Section 2.05 Levy and Importance of Room Tax Revenues.

The Municipalities have enacted the Ordinances to levy, and authorize the collection and enforcement of, a 10% Room Tax, which includes the Exhibition Center Room Tax, as permitted in the Room Tax Act. The Exhibition Center Room Tax revenues, as pledged and utilized pursuant to this Agreement and the Pledge and Security Agreement, will assist in the financing of the Exhibition Center.

Section 2.06 Contract with CVB.

The Room Tax Commission has entered into the Tourism Entity Agreement with the CVB, as a tourism entity, to obtain staff, support services, and assistance in developing and implementing programs to promote the Tourism Zone to visitors, and to receive and administer certain of the Room Taxes on behalf of the Room Tax Commission.

Section 2.07 Management Agreement.

Appleton has entered into the Management Agreement, providing for the operation and management of the Exhibition Center in such a manner as to promote and develop tourism within the Tourism Zone.

Section 2.08 Termination of PAC Cooperation Agreement; Application of Remaining Funds.

The Cooperation Agreement dated June 1, 2000 (the “PAC Cooperation Agreement”), in which the Municipalities (excluding the City of Menasha and Sherwood, but including Fox Crossing, into which the Town of Menasha was incorporated, and Little Chute, which was added as a party after the initial execution) agreed to impose a Room Tax at the rate of two percent (2%) (the “PAC Room Tax”) and pledged certain revenues thereof to the payment of bonds (the “PAC Bonds”) which were issued to pay the costs associated with the construction of the Fox Cities Performing Arts Center has been terminated, and the PAC Bonds have been paid in full. The continued imposition and collection of the PAC Room Tax was authorized by the Ordinances. The Municipalities, the ARA, and the Room Tax Commission agree that all PAC Room Taxes not applied to the payment of the PAC Bonds, and all other amounts held by the trustee for the PAC Bonds, shall be applied as follows:
ARTICLE III
FINANCING OF THE EXHIBITION CENTER PROJECT

Section 3.01 Contribution of Exhibition Center Property to ARA.

Acting pursuant to Sections 6(f) and 13 of the Redevelopment Act, to provide general support and assistance to the ARA in carrying out redevelopment as provided in the Redevelopment Act, Appleton shall contribute to the ARA, all Appleton’s right, title, and interest in and to the Exhibition Center and the Exhibition Center Property. Appleton shall execute and deliver to the ARA such deeds, bills of sale, and other instruments as the ARA may reasonably request to evidence and perfect such contribution from Appleton.

Section 3.02 Acceptance of Appleton Contribution.

The ARA agrees to accept ownership of the Exhibition Center and the Exhibition Center Property from Appleton pursuant to Section 3.01 hereof. The ARA shall accept said ownership at any time as deemed appropriate by Appleton and the ARA.

Section 3.03 Total Costs of Construction; Reimbursement to Appleton.

The amounts spent by Appleton on the costs of the Exhibition Center project are set forth in Exhibit A. The Municipalities hereby agree that the following amounts shall be paid to Appleton to reimburse it for such project costs:

(a) net proceeds of the Series 2018 Bonds, after payment of costs of issuance and funding of debt service reserve and stabilization funds as provided in the Indenture;

(b) all Exhibition Center Room Taxes collected from January 1, 2016 through [__________] [the date of issuance of the Series 2018 Bonds], which are held by the CVB in the [Room Tax Clearing Account] established pursuant to the Tourism Entity Agreement; and

(c) $750,000 of funds held by the trustee for the PAC Bonds and remaining after payment of the PAC Bonds.

The Municipalities acknowledge that the application of the funds described in (b) and (c) above will reduce the principal amount of the Series 2018 Bonds necessary to finance the Exhibition
Center project. The Room Tax Commission shall direct the CVB to apply the funds described in (b) above to such reimbursement, and the ARA shall direct the trustee for the PAC Bonds to apply the funds described in (c) above to such reimbursement.

Section 3.04 Issuance of Bonds.

(a) The ARA shall issue and sell the Series 2018 Bonds upon terms acceptable to Appleton. Appleton’s acceptance shall be conclusively evidenced by its execution of the Lease as provided in Section 3.05.

(b) The ARA may, from time to time, issue and sell Additional Bonds upon terms acceptable to Appleton. Appleton’s acceptance shall be conclusively evidenced by its execution of an amendment to the Lease with respect to Additional Bonds pursuant to the terms thereof.

(c) The Bonds will be limited obligations of the ARA and shall not constitute a debt or obligation of the ARA, Appleton, or the other Municipalities and shall not be a charge against the general credit or taxing powers of the ARA or any Municipality except for and limited to the Exhibition Center Room Tax revenues pursuant to the Pledge and Security Agreement. Each series of Additional Bonds shall be payable by the ARA solely from revenues derived by the ARA from the Lease, the Pledge and Security Agreement, amounts recovered by recourse to any Mortgage or any Credit Enhancement pursuant to Sections 3.07 or 3.08, and cash and securities held from time to time in certain trust funds held by the Trustee under the Indenture and the investment earnings thereon.

Section 3.05 Lease of Exhibition Center Property.

The ARA agrees to lease to Appleton the Exhibition Center and the Exhibition Center Property contributed to the ARA. The Lease shall contain restrictions on the use of the Exhibition Center Property consistent with the restrictions on the use of the Exhibition Center and the Exhibition Center Property as a “convention center” within the meaning of the Room Tax Act and otherwise consistent with the terms hereof. The Lease shall be a “triple net lease” and shall provide for rents payable on such dates and in such amounts as shall be sufficient to make all payments of principal of and premium, if any, and interest on the Bonds. The obligation of Appleton to pay rents or other amounts due under the Lease shall be conditioned upon Appleton’s “quiet enjoyment” of the Exhibition Center Property. The ARA shall waive any rights it may have to reenter or retake possession of the premises or accelerate the payment of rents or other amounts due under the Lease in the event of a default by Appleton under the Lease. The Lease will also grant to Appleton an option to purchase all of the ARA’s right, title, and interest in and to the Exhibition Center Property for a price of $100, which may be exercised at any time after the date of the full and final retirement of all outstanding Bonds (or provision therefor in accordance with the Indenture), except in the event of a termination of the Lease as provided therein.

The Lease shall provide for a credit against the rents due from Appleton for all Exhibition Center Room Taxes then on deposit with the Trustee and available for payment of...
debt service on the Bonds. The ARA and Appleton anticipate that the Exhibition Center Room Taxes will be sufficient to make all payments of debt service on the Bonds; however, in the event that such Exhibition Center Room Taxes are insufficient to make such payments, Appleton will agree, subject to the terms of the Lease, to fund such payments then due and payable under the Lease.

To the extent that Appleton is required to fund such payments under the Lease, or in the event Appleton is required to pay the Trustee’s fees and expenses or any arbitrage rebate amounts with respect to Additional Bonds or to replenish the Debt Service Reserve Fund held under the Indenture, such payments shall be considered a loan or advance to the Room Tax Commission to be reimbursed from future Exhibition Center Room Taxes, together with interest at a rate equal to the rate of interest established by the Local Government Investment Pool of the State of Wisconsin on the date of such loan or advance; such reimbursement to occur as soon as reasonably practicable and to the extent that the Room Tax Commission has received Exhibition Center Room Taxes have been collected in excess of that amount required for payment of principal, interest and premium, if any, on the Bonds, the payment of the Trustee’s fees and expenses or any arbitrage rebate amounts with respect to Additional Bonds, and the replenishment of the Debt Service Reserve Fund.

Section 3.06 Municipalities to Pledge the Exhibition Center Room Tax.

The Municipalities and the Room Tax Commission shall enter into the Pledge and Security Agreement setting forth the terms and conditions of the pledge of Exhibition Center Room Taxes, which pledge shall terminate upon payment in full of all outstanding Bonds.

Section 3.07 Mortgage of the Exhibition Center Property.

The ARA may grant to the Trustee, as security for the payment of the Bonds, a Mortgage. Any Mortgage will be subordinate to the Lease and will not give the Trustee any right to evict Appleton or retake possession of the Exhibition Center Property or to accelerate the payment of rents under the Lease.

Section 3.08 Credit Enhancement.

As further security for any Additional Bonds, the ARA may provide or cause to be provided Credit Enhancement with respect to the Bonds. Any premium or other fees payable to the issuer of a policy of bonds insurance or a letter of credit or any other guarantor of the Bonds (such issuer or other guarantor, a “Bond Guarantor”) may be paid from Exhibition Center Room Tax revenues or other funds as provided in the Indenture. In the event a Bond Guarantor is required to make debt service payments, Exhibition Center Room Tax revenues may be used to reimburse the Bond Guarantor for all payments of debt service on the Bonds.
ARTICLE IV

OPERATION OF THE CONVENTION CENTER

Section 4.01  Appleton to Provide Administrative Support to ARA.

Appleton agrees to provide the necessary administrative support to enable the ARA to achieve the objectives set forth herein. Administrative support may include services such as the provision of office space and the provision of financial, accounting, legal and engineering consultation in connection with the financing and operation of the Exhibition Center.

Section 4.02  Advisory Committee.

During the term of this Agreement, the ARA shall provide an opportunity for reasonable participation of the Municipalities in decisions relating to the operation of the Exhibition Center through the creation of an advisory committee which is intended to provide counsel to the ARA and to assist in program development and operations for the Exhibition Center (the “Advisory Committee”). The membership of the Advisory Committee shall include the following: one representative from each Municipality (appointed by the Municipality); two Operators collecting Room Taxes (appointed by the ARA Chairperson and approved by ARA), two community members residing within a Municipality (appointed by the ARA Chairperson and approved by ARA), one member of the ARA (appointed by the ARA Chairperson); and the Executive Director of the CVB, or his/her designee. The Appleton Community and Economic Development Director, or a designee thereof, shall also be a non-voting, advisory member of the Committee. The Chair and Vice-Chair of the Committee shall be designated by ARA and shall serve one-year terms that may be renewed at the discretion of ARA. Committee members, with the exception of the Executive Director of the CVB and Appleton Community and Economic Development Director, or designees thereof, shall serve terms of two years and may serve up to three consecutive terms. However, upon establishment of the Advisory Committee, the following shall serve an initial term of three years: one half of the participating Municipalities chosen by random selection, one of the hotelier representatives, and one of the community members, chosen by the ARA Chairperson.

The roles and responsibilities and general operating rules of the Advisory Committee shall be as passed and approved by the Advisory Committee from time to time.

Section 4.03  Municipalities to Plan to Promote Private Development.

The Municipalities agree to continue to work with the Room Tax Commission and the CVB to develop plans for the use of the Exhibition Center property in a manner that will promote and assist the future private development of the Tourism Zone and that will promote and develop tourism and redevelopment.

Section 4.04  Municipalities to Participate in the Room Tax Commission.

The Municipalities agree to continue the existence of, and to participate in, the Room Tax Commission as provided by the Room Tax Act until payment in full of all outstanding Bonds.
Section 4.05  Nondiscrimination.

Each party agrees that the Exhibition Center shall not be operated in a manner to permit discrimination or restriction on the basis of race, color, ancestry, religion, national origin, political affiliation (except to members of political groups or parties who advocate the overthrow of the United States government), sex, gender identity, gender expression, age, disability, marital status, arrest or conviction record, sexual orientation, disabled veteran or a covered veteran status and that the Exhibition Center shall be operated in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

ARTICLE V

MISCELLANEOUS

Section 5.01  Amendment and Restatement of Original Agreement.

This Agreement amends and restates the Original Agreement and shall become effective as of the date of this Agreement, on which date the Original Agreement shall be superseded in its entirety. The PAC has executed and delivered this Agreement solely to acknowledge and agree that its rights and obligations under the Original Agreement have been terminated by this Agreement.

Section 5.02  Additional Municipalities.

Any Additional Municipality that becomes an additional member of the Room Tax Commission pursuant to the Commission Agreement shall, as a condition of such membership under said agreement, become an additional party to this Agreement. Each Additional Municipality shall be bound to the terms, conditions, and obligations of the Municipalities under this Agreement by execution and delivery to the Room Tax Commission of a joinder agreement in substantially the form attached hereto as Exhibit C. A copy of the executed joinder agreement shall be delivered by the Room Tax Commission to the other then-current parties to this Agreement. Acceptance by the Room Tax Commission of such joinder agreement shall, without further action or approval of the parties to this Agreement, be deemed an approval of such Additional Municipality as an additional party to this Agreement by the then-current parties to this Agreement.

Any Additional Municipalities to hereafter become a party to this Agreement agree to enact governing body authorizations to effect the same as the Governing Body Authorizations.

Section 5.03  Assignment of Rights Under this Agreement.

No party may assign its rights under this Agreement without the written consent of all the other parties, except in the case of a Municipality’s assignment to a successor municipality that has complied with the requirements of an Additional Municipality under Section 5.02 hereof.
Section 5.04  **No Personal Liability.**

Under no circumstances shall any officer, official, director, member or employee of the Municipalities, the Room Tax Commission or the ARA have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

Section 5.05  **Parties and Interests.**

This Agreement is made solely for the benefit of the parties hereto, the Trustee and the owners of the Bonds and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof.

Section 5.06  **Notices.**

All notices, demands, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when hand delivered, or when sent by first class mail, email, or overnight delivery service, with proper address as indicated in each party’s address indicated beneath the signature(s) of such party to this Agreement. Any party may, by written notice to the other parties, designate a change of address for the purposes aforesaid.

Section 5.07  **Amendment.**

No modification, alteration or amendment to this Agreement shall be binding upon any party hereto until such modification, alteration or amendment is agreed upon in writing and executed by all parties hereto.

Section 5.08  **Termination of Agreement; Sunset of Exhibition Center Room Tax.**

This Agreement and the terms and obligations hereunder shall terminate upon payment in full of all outstanding Bonds, and discharge of the Indenture, and upon any reimbursement to (i) Appleton, in accordance with the Lease or (ii) any Bond Guarantor for any debt service payments made and other amounts due to such Bond Guarantor pursuant to Section 3.08 hereof. Pursuant to the Ordinances, the Exhibition Center Room Tax shall sunset upon payment in full of all outstanding Bonds and thereafter the Room Tax shall be reduced by 3%, with such reduction being deemed to be the share of the Room Tax allocated to the Exhibition Center Room Tax. At the time all outstanding Bonds are fully satisfied, any excess Exhibition Center Room Tax collected but not needed for the payment of the Bonds or any reimbursement due to Appleton or a Bond Guarantor shall be reallocated to [________] (the “[Room Tax Clearing Account] held by the CVB accordance with the Tourism Development Fund”) Entity Agreement for use of tourism promotion and tourism development in the Fox Cities Tourism Zone. [Notwithstanding the forgoing, Operators shall continue to collect Exhibition Center Room Tax until the respective Municipality has given notice of the termination of the Exhibition Center Room Tax.]
Section 5.09  Governing Law

The laws of the State of Wisconsin shall govern this Agreement.

Section 5.10  Captions.

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

Section 5.11  Counterparts.

This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 5.12  Severability.

If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

CITY OF APPLETON, WISCONSIN

By:__________________________
   Its: Mayor

And:__________________________
   Its: Clerk

ADDRESS:

City of Appleton
Attention: Director of Finance
100 North Appleton Street
Appleton, Wisconsin 54911

Email: tony.saucerman@appleton.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

CITY OF KAUKAUNA, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Kaukauna
Attention: Clerk-Treasurer
201 West Second Street
Kaukauna, Wisconsin 54130

Email: clerk-treasurer@kaukauna.org

[Signature Page to Cooperation Agreement – Kaukauna]
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

CITY OF NEENAH, WISCONSIN

By: _________________________________
   Its: Mayor

And: _________________________________
   Its: Clerk

ADDRESS:

City of Neenah
Attention: Finance Director
211 Walnut Street
Neenah, Wisconsin 54956

Email: measker@ci.neenah.wi.us
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

VILLAGE OF KIMBERLY, WISCONSIN

By: _____________________________
   Its: President

And: _____________________________
   Its: Clerk

ADDRESS:

Village of Kimberly
Attention: Village Administrator
515 West Kimberly Avenue
Kimberly, Wisconsin 54136

Email: dblock@vokimberly.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

VILLAGE OF LITTLE CHUTE, WISCONSIN

By: _________________________________
   Its: President

And: _________________________________
   Its: Clerk

ADDRESS:

Village of Little Chute
Attention: Village Administrator
108 West Main Street
Little Chute, Wisconsin  54140

Email: jfenlon@littlechutewi.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

TOWN OF GRAND CHUTE, WISCONSIN

By: _____________________________________________
   Its: Chairperson

And: _____________________________________________
   Its: Clerk

ADDRESS:

Town of Grand Chute
Attention: Town Administrator
1900 West Grand Chute Boulevard
Grand Chute, Wisconsin  54913

Email: jim.march@grandchute.net

[Signature Page to Cooperation Agreement – Grand Chute]
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

TOWN OF NEENAH, WISCONSIN

By: ________________________________
    Its: Chairperson

And: ________________________________
    Its: Clerk

ADDRESS:

Town of Neenah
Attention: Clerk-Treasurer
1600 Breezewood Lane
Neenah, Wisconsin 54956

Email: ellen@townofneenah.com
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

VILLAGE OF FOX CROSSING, WISCONSIN

By: ______________________________
   Its: President

And: ______________________________
   Its: Clerk

ADDRESS:

Village of Fox Crossing
Attention: Village Administrator
2000 Municipal Drive
Neenah, Wisconsin 54956

Email: jsturgell@foxcrossingwi.gov

[Signature Page to Cooperation Agreement – Fox Crossing]
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

CITY OF MENASHA, WISCONSIN

By: ________________________________
   Its: Mayor

And: ________________________________
   Its: Clerk

ADDRESS:

City of Menasha
Attention: Administrative Services Director
100 Main Street, Suite 200
Menasha, Wisconsin  54952

Email: jjacobs@ci.menasha.wi.us
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

VILLAGE OF SHERWOOD, WISCONSIN

By: ____________________________________________
   Its: President

And: ____________________________________________
   Its: Clerk

ADDRESS:

Village of Sherwood
Attention: Village Administrator
W482 Clifton Road
Sherwood, Wisconsin 54169

Email: administrator.sherwood@newbc.rr.com
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

REDEVELOPMENT AUTHORITY OF THE CITY OF APPLETON, WISCONSIN

By:____________________________________
    Its: Executive Director

ADDRESS:

Appleton Redevelopment Authority
Attention: Executive Director
100 North Appleton Street
Appleton, Wisconsin 54911

Email: karen.harkness@appleton.org
IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the date first written above.

FOX CITIES AREA ROOM TAX COMMISSION

By: ________________________________
Its: ______________________________

And: ______________________________
Its: ______________________________

ADDRESS:

Fox Cities Area Room Tax Commission
Attention: Chairperson
c/o Fox Cities Convention & Visitors Bureau
3433 West College Avenue
Appleton, Wisconsin 54914

Email: bruce.sherman@grandchute.net
ACKNOWLEDGEMENT OF AMENDED AND RESTATED COOPERATION AGREEMENT

The undersigned hereby acknowledges that it is a party to the Exhibition Center Cooperation Agreement, dated as of November 24, 2015, by and among certain Municipalities in the Fox Cities area, the Redevelopment Authority of the City of Appleton, Wisconsin, and the Fox Cities Area Room Tax Commission (the “Original Agreement”) and that the Original Agreement has been amended and restated by the foregoing Amended and Restated Cooperation Agreement, dated as of [AprilMay 1], 2018, to which the undersigned is not a party. The undersigned further acknowledges that it has no further rights or obligations under the Original Agreement.

FOX CITIES PERFORMING ARTS CENTER, INC.

By ______________________________________
Title: _____________________________________
The Fox Cities Exhibition Center ("FCEC") is an approximately 30,000 square foot facility with an iconic spire and glass façade overlooking Jones Park located at 355 West Lawrence Street, Appleton, Wisconsin, includes exhibition, trade show, and meeting space with state of the art technical capabilities. The exhibition space can be divided into three 10,000 square foot sections and features a pre-function space and dedicated meeting space. The FCEC also has 17,000 square feet of outdoor exhibition space that can be rented. The FCEC is connected to the Radisson Paper Valley Hotel, which offers an additional 40,000 square feet of meeting, banquet and break-out space and 390 sleeping rooms.

Costs Paid by the City of Appleton:

- **Design Costs**: $1,823,078
- **Site Development**: 338,273
- **Construction Costs**: 28,985,083
- **Debt Issuance Costs - Private - Phase III only**: 33,055
- **Accrued Lost Interest Costs**: 285,130
- **Total Project Costs**: $31,464,619
- **Less: Prior Reimbursements Received by City**: (1,153,566)
- **Reimbursement Amount to City of Appleton**: 30,311,053
EXHIBIT B

Exhibition Center Property Description

[Legal Description Attached]
Legal Description

Parcel No. 312011600

CSM 5460 Lot 1 Vol 31 Doc 1726114 being all of Lots 1,2,3,4,5,8,9,10, 11 & 12 Blk 8 Appleton Plat and Prt of Vac Eighth St

Parcel No. 312012601

CSM 5460 Lot 2 Vol 31 Doc 1726114 being all of Lots 1,2,3,4,5,8,9,10, 11 & 12 Blk 8 Appleton Plat and Prt of Vac Eighth St

Parcel No. 312012600

CSM 5460 Lot 3 Vol 31 Doc 1726114 being all of Lots 1,2,3,4,5,8,9,10, 11 & 12 Blk 8 Appleton Plat and Prt of Vac Eighth St
EXHIBIT C

JOINDER AGREEMENT TO

AMENDED AND RESTATED COOPERATION AGREEMENT

The undersigned municipality hereby agrees that it shall be an Additional Municipality as defined in the Amended and Restated Cooperation Agreement, dated as of [April May 1], 2018 (the “Agreement”), and hereby agrees to enter into and be bound by the terms, conditions, and obligations of the Municipalities under the Agreement, as amended from time to time. On and after the date of this Joinder Agreement, the undersigned shall be deemed a Municipality under the Agreement.

IN WITNESS WHEREOF, the undersigned Municipality has duly executed this Joinder Agreement effective as of ________________, 20___.

__________________, WISCONSIN

By: ____________________________
    Its: _________________________

And: ____________________________
    Its: _________________________

ADDRESS:

__________________, WISCONSIN

Attention: ______________________

______________________________

Email: __________________________
Accepted on behalf of itself, the Municipalities, and the Redevelopment Authority of the City of Appleton, Wisconsin:

**FOX CITIES AREA ROOM TAX COMMISSION**

By: ____________________________
Its: ____________________________

And: ____________________________
Its: ____________________________
**Summary report:**
Litéra® Change-Pro TDC 10.1.0.300 Document comparison done on 3/9/2018 12:54:08 PM

**Style name:** Default Style  
**Intelligent Table Comparison:** Active

**Original filename:** Appleton RDA 2018 Fox Cities Exhibition Center - Amended and Restated Cooperation Agreement.docx  
**Modified filename:** Appleton RDA 2018 Fox Cities Exhibition Center - Amended and Restated Cooperation Agreement(1).docx

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MEMORANDUM

To: Common Council
From: Community Development Department/SS
Date: March 19, 2018
Re: 87 Racine St – Offer to Purchase

This past Fall, the Common Council approved a listing agreement with Newmark Grubb Pfefferle to market all of our City owned lots that are available for development. Included within this contract was the vacant lot across the street from the Post Office, better referred to as 87 Racine Street. The listing price for this property was set at $75,000 with a restriction that the parcel shall not be sold exclusively for the use as a parking lot.

Since listing this property, staff has worked with a couple of interested parties. I am happy to bring forward to the Common Council an offer to purchase said property by Scott Chitko representing Summit Combined Properties, LLC for the full asking price of $75,000. The Buyers contingencies include the following:

- that ingress/egress access onto Racine Street is approved;
- that the Buyer can secure final approvals from the Corporate Officials;
- that the City Plan Commission approve the site plan with the drive thru; and
- that the Buyer can secure the needed financing

Staff has added the provision that construction on the site must commence within 12 months from the closing date of the real estate transaction.

Enclosed is a copy of the signed offer to purchase as well as the preliminary working draft of a site plan.

Staff is recommending that the Common Council move to accept the offer to purchase with Scott Chitko representing Summit Combined Properties, LLC for the property of 87 Racine Street as presented.
Newmark Grubb Pfefferle
WISCONSIN REALTORS® ASSOCIATION
4801 Forest Run Road
Madison, Wisconsin 53704
Page 1 of 9, WB-15

WB-15 COMMERCIAL OFFER TO PURCHASE

1 LICENSEE DRAFTING THIS OFFER ON: March 2, 2018 [DATE] IS (AGENT OF BUYER)
2 (AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) STRIKE THOSE NOT APPLICABLE
3
4 GENERAL PROVISIONS: The Buyer, Summit Combined Properties, LLC
5 offers to purchase the Property known as [Street Address] 87 Racine Street
6 City of Menasha, County of Winnebago, Wisconsin
7 (Insert additional description, if any, at lines 109-115 or 277-286 or attach as an addendum per line 479), on the following terms:
8 PURCHASE PRICE: Seventy-Five Thousand Dollars ($75,000.00 ).
9 EARNEST MONEY of $ ___________ accompanies this Offer and earnest money of $ 2,500.00 will be
10 mailed, or commercially or personally delivered within 5 days of acceptance to listing broker or
11
12 THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.
13 INCLUDED IN PURCHASE PRICE: Seller is including in the purchase price the Property, all Fixtures on the Property on the date of this Offer
14 not excluded at lines 20-22, and the following additional items: N/A
15
16 All personal property included in purchase price will be transferred by bill of sale or N/A.
17
18 NOT INCLUDED IN PURCHASE PRICE: N/A
19
20 CAUTION: Identify trade fixtures owned by tenant, if applicable, and Fixtures that are on the Property (see lines 303-310) to be excluded
21 by Seller or which are rented and will continue to be owned by the lessor.
22 NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included/excluded.
23 ACCEPTANCE: Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.
24 CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines running from
25 acceptance provide adequate time for both binding acceptance and performance.
26 BINDING ACCEPTANCE: This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before
27 March 23, 2018 . Seller may keep the Property on the market and accept
28 secondary offers after binding acceptance of this Offer.
29 CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.
30 OPTIONAL PROVISIONS: TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (□) ARE PART OF THIS OFFER ONLY IF
31 THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A" OR ARE LEFT BLANK.
32 DELIVERY OF DOCUMENTS AND WRITTEN NOTICES: Unless otherwise stated in this Offer, delivery of documents and written notices to a
33 Party shall be effective only when accomplished by one of the methods specified at lines 37-54.
34 (1) Personal Delivery: giving the document or written notice personally to the Party, or the Party’s recipient for delivery if named at line 38 or 39.
35 (2) Fax: fax transmission of the document or written notice to the following telephone number:
36 Buyer’s recipient for delivery (optional): 
37 Buyer’s recipient for delivery (optional): 
38 Seller’s recipient for delivery (optional): 
39 Buyer’s recipient for delivery (optional): 
40 Buyer’s recipient for delivery (optional): 
41 Buyer’s recipient for delivery (optional): 
42 Buyer’s recipient for delivery (optional): 
43 Buyer’s recipient for delivery (optional): 
44 Buyer’s recipient for delivery (optional): 
45 Buyer’s recipient for delivery (optional): 
46 Buyer’s recipient for delivery (optional): 
47 Deliver service for Buyer: 
48 Delivery service for Buyer: 
49 (x) Commercial Delivery: depositing the document or written notice into an account with a commercial delivery service, addressed either to the Party, or to the Party’s recipient for delivery if named at line 38 or 39, for delivery to the Party’s delivery address at line 47 or 48.
50 (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party, or to the Party’s recipient for delivery if named at line 38 or 39, for delivery to the Party’s delivery address at line 47 or 48.
51 Delivery service for Seller: 
52 Delivery service for Buyer: 
53 (3) E-Mail: electronically transmitting the document or written notice to the Party’s e-mail address, if given below at line 53 or 54. If this is a
54 consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or household purposes,
55 each consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and
56 electronic signatures in the transaction, as required by federal law.
57 E-Mail address for Seller (optional): sacbroeder@ci.menasha.wi.us
58 E-Mail address for Buyer (optional): eleanorngw@gmail.com
59 PERSONAL DELIVERY/ACTUAL RECEIPT: Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes personal delivery
60 to, or Actual Receipt by, all Buyers or Sellers.
PROPERTY CONDITION REPRESENTATIONS. Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge of Conditions Affecting the Property or Transaction (lines 181-215) other than those identified in Seller's disclosure report dated ____________ and Real Estate Condition Report, if applicable, dated ____________, which was/were received by Buyer prior to Buyer signing this Offer and which is/are made a part of this offer by reference ____________ COMPLETE DATES OR STRIKE AS APPLICABLE and ____________.

[INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S)].

CAUTION: If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in Wis. Stat. § 709.03 may be required. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, for example, personal representatives who have never occupied the Property. Buyer may have rescission rights per Wis. Stat. § 709.05.

CLOSING. This transaction is to be closed no later than ____________ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

CLOSING PRORATIONS. The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners association assessments, fuel and

CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.

Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

Real estate taxes shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:

☐ The net general real estate taxes for the preceding year, or the current year if available (Net general real estate taxes are defined as general property taxes after state tax credits and lottery credits are deducted) (NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED)

☐ Current assessment times current mill rate (current means as of the date of closing)

☐ Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or current year if known, multiplied by current mill rate (current means as of the date of closing)

CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be substantially different than the amount used for proration especially in transactions involving new construction, extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local assessor regarding possible tax changes.

Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree that is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real estate brokers in this transaction.

OCCUPANCY. Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 109-115 or 277-286 or in an addendum attached per line 479. At time of Buyer's occupancy, Property shall be in broom sweep condition and free of all debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent. Occupancy shall be subject to tenant's rights, if any.

LEASED PROPERTY. If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) (oral) [STRIKE ONE] lease(s), if any, are ____________.

ESTOPPEL LETTERS. Seller shall deliver to Buyer no later than ____________ days before closing, estoppel letters dated within ____________ days before closing, from each non-residential tenant, confirming the lease term, rent installment amounts, amount of security deposit, and disclosing any defaults, claims or litigation with regard to the lease or tenancy.

RENTAL WEATHERIZATION. This transaction(s) is (are) [STRIKE ONE] exempt from Wisconsin Rental Weatherization Standards (Wis. Admin. Code Ch. CPG 367). If not exempt, (Buyer) (Seller) [STRIKE ONE] ("Buyer" if neither is stricken) shall be responsible for compliance, including all costs, with Wisconsin Rental Weatherization Standards. If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at closing.

TIME OF THE ESSENCE. *Time of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy; (4) date of closing; (5) contingency Deadlines [STRIKE AS APPLICABLE] and all other dates and Deadlines in this Offer except: ____________.

If "Time of the Essence" applies to a date or Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time of the Essence" does not apply to a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

ADDITIONAL PROVISIONS/CONTINGENCIES. Buyers would like to have an ingress and/or egress onto Racine Street.

Also Buyers will need to have final approvals from Corporate Officials.

Produced with zioForm® by zioLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026  www.zioLogix.com  Racine Street offer
x PROPOSED USE CONTINGENCIES: Buyer is purchasing the Property for the purpose of: multi tenant retail center. approved

with the City of Menasha Planning Council with drive thru

[insert proposed use and type and size of building, if applicable; e.g. restaurant/tavern with capacity of 350 and 3 second floor dwelling units]. The optional provisions checked on lines 123-133 shall be deemed satisfied unless Buyer delivers to Seller by the deadline(s) set forth on lines 123-133 written notice specifying those items which cannot be satisfied and written evidence substantiating why each specific item included in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice, this Offer shall be null and void. Seller agrees to cooperate with Buyer as necessary to satisfy the contingencies checked at lines 123-139.

☐ EASEMENTS AND RESTRICTIONS: This Offer is contingent upon Buyer obtaining, within ____________ days of acceptance, at (Buyer's) (Seller's) [STRIKE ONE] "(Buyer's) if neither is stricken) expense, copies of all public and private easements, covenants and restrictions affecting the Property and a written determination by a qualified independent third party that none of these prohibit or significantly delay or increase the costs of the proposed use or development identified at lines 116 to 118.

☐ APPROVALS: This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) [STRIKE ONE] "(Buyer's) if neither is stricken) expense, all applicable governmental permits, approvals and licenses, as necessary and appropriate, or the final discretionary action by the granting authority prior to the issuance of such permits, approvals and licenses, for the following items related to Buyer's proposed use:

or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which significantly increase the cost of Buyer's proposed use, all within ____________ days of acceptance of this Offer.

☐ ACCESS TO PROPERTY: This Offer is contingent upon Buyer obtaining, within ____________ days of acceptance, at (Buyer's) (Seller's) [STRIKE ONE] "(Buyer's) if neither is stricken) expense, written verification that there is legal vehicular access to the Property from public roads.

☐ LAND USE APPROVAL: This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) [STRIKE ONE] "(Buyer's) if neither is stricken) expense, a [ ] rezoning; [ ] conditional use permit; [ ] license; [ ] variance; [ ] building permit; [ ] occupancy permit; [ ] other ____________ CHECK ALL THAT APPLY for the Property for its proposed use described at lines 116-118 or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which significantly increase the cost of Buyer's proposed use, all within ____________ days of acceptance.

☐ MAP OF THE PROPERTY: This Offer is contingent upon (Buyer obtaining) (Seller providing) [STRIKE ONE] "(Seller providing if neither is stricken) a ____________ survey (ALTA/ACSM Land Title Survey if survey type is not specified) dated subsequent to the date of acceptance of this Offer and prepared by a registered land surveyor, within ____________ days of acceptance, at (Buyer's) (Seller's) [STRIKE ONE] "(Seller's) if neither is stricken) expense. The map shall show minimum of ____________ acres, maximum of ____________ acres, the legal description of the Property, the Property's boundaries and dimensions, visible encroachments upon the Property, the location of improvements, if any, and: ____________ STRIKE AND COMPLETE AS APPLICABLE. Additional map features which may be added include, but are not limited to: staking of all corners of the Property; identifying dedicated and apparent streets; lot dimensions; total acreage or square footage; utility installations; easements or rights-of-way. Such survey shall be in satisfactory form and accompanied by any required surveyor's certificate sufficient to enable Buyer to obtain removal of the standard survey exception on the title policy.

CAUTION: Consider the cost and the need for map features before selecting them. Also consider the time required to obtain the map when setting the deadline.

This contingency shall be deemed satisfied unless Buyer, within (5) days of the earlier of: (1) Buyer's receipt of the map; or (2) the deadline for delivery of said map, delivers to Seller a copy of the map and a written notice which identifies: (1) a significant encroachment; (2) information materially inconsistent with prior representations; (3) failure to meet requirements stated within this contingency; or (4) the existence of conditions that would prohibit the Buyer's intended use of the Property described at lines 116-118. Upon delivery of Buyer's notice, this Offer shall be null and void.

☐ DOCUMENT REVIEW CONTINGENCY: This Offer is contingent upon Seller delivering the following documents to Buyer within ____________ days of acceptance: ____________ CHECK THOSE THAT APPLY, STRIKE AS APPROPRIATE

☐ Documents evidencing that the sale of the Property has been properly authorized, if Seller is a business entity.

☐ A complete inventory of all furniture, fixtures, equipment and other personal property included in this transaction which is consistent with representations made prior to and in this Offer.

☐ Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property to be free and clear of all liens, other than liens to be released prior to or at closing.

☐ Rent roll.

☐ Other ____________

Additional items which may be added include, but are not limited to: building, construction or component warranties, previous environmental site assessments, surveys, title commitments and policies, maintenance agreements, other contracts relating to the Property, existing permits and licenses, recent financial operating statements, current and future rental agreements, notices of termination and non-renewal, and assessment notices.

All documents Seller delivers to Buyer shall be true, accurate, current and complete. Buyer shall keep all such documents confidential and disclose them to third parties only to the extent necessary to implement other provisions of this Offer. Buyer shall return all documents (originals and any reproductions) to Seller if this Offer is terminated.

CONTINGENCY SATISFACTION: This contingency shall be deemed satisfied unless Buyer, within ____________ days of receipt of the final document to be delivered or the deadline for delivery of the documents, delivers to Seller a written notice indicating that this

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contingency has not been satisfied. Such notice shall identify which document(s) have not been timely delivered or do not meet the standard set forth for the document(s). Upon delivery of such notice, this Offer shall be null and void.

**DEFINITIONS**

- **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or written notice physically in the Party's possession, regardless of the method of delivery.

- **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION:** "Conditions Affecting the Property or Transaction" are defined to include:
  
  a. Defects in structural components, e.g., roof, foundation, basement or other walls.
  b. Defects in mechanical systems, e.g., HVAC, electrical, plumbing, septic, well, fire safety, security or lighting.
  c. Underground or aboveground storage tanks presently or previously on the Property for storage of flammable or combustible liquids, including but not limited to gasoline and heating oil.
  d. Defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, lead paint, asbestos, radon, radium in water supplies, mold, pesticides or other potentially hazardous or toxic substances on the premises.
  e. Production or spillage of methamphetamine (meth) or other hazardous or toxic substances on the Property.
  f. Zoning or building code violations, any land division involving the Property for which required state or local permits had not been obtained, nonconforming structures or uses, conservation easements, rights-of-way.
  g. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to impose assessments against the real property located within the district.
  h. Proposed, planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property or the present use of the Property.
  i. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.
  j. Flooding, standing water, drainage problems or other water problems on or affecting the Property.
  k. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides.
  l. Near airports, freeways, railroads or landfills, or significant odor, noise, water intrusion or other irritants emanating from neighboring property.
  m. Portion of the Property in a floodplain, wetland or shoreline zoning area under local, state or federal regulations.
  n. Property is subject to a mitigation plan required under administrative rules of the Department of Natural Resources related to county shoreline zoning ordinances, which obligates the owner of the Property to establish or maintain certain measures related to shoreline conditions which is enforceable by the county.
  o. Encroachments; easements, other than recorded utility easements; access restrictions; covenants, conditions and restrictions; shared fences, walls, wells, driveways, signage or other shared usages; or leased parking.
  p. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.
  q. Structure on the Property designated as a historic building, any part of the Property located in a historic district, or burial sites or archeological artifacts on the Property.
  r. All or part of the land has been assessed as agricultural land, the owner has been assessed a use-value conversion charge or the payment of a use-value conversion charge has been deferred.
  s. All or part of the Property is subject to, enrolled in or in violation of a certified farmland preservation zoning district or a farmland preservation agreement, or a Forest Crop, Managed Forest (see disclosure requirements in Wis. Stat. § 710.12), Conservation Reserve or comparable program.
  t. A pier is attached to the Property that is not in compliance with state or local pier regulations.
  u. Government investigation or private assessment/audit (of environmental matters) conducted.
  v. Other Defects affecting the Property.

- **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and other day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at midnight of that day.

- **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

*(Definitions Continued on page 6)*
FINANCING CONTINGENCY: This Offer is contingent upon Buyer being able to obtain a written

[INSERT LOAN PROGRAM OR SOURCE] first mortgage loan commitment as described below, within 30 days of acceptance of this

Offer. The financing selected shall be in an amount of not less than $ 525,000.00 for a term of not less than 5 years,

amortized over not less than 20 years. Initial monthly payments of principal and interest shall not exceed $ 3,611.41. Monthly

payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance

premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination fee in an amount

not to exceed __________ % of the loan. If the purchase price under this Offer is modified, the financed amount, unless otherwise provided, shall

be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to

maintain the term and amortization stated above.

CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 238 or 239.

☐ FIXED RATE FINANCING: The annual rate of interest shall not exceed __________ %.

☒ ADJUSTABLE RATE FINANCING: The initial annual interest rate shall not exceed 5.500 %. The initial interest rate shall be

fixed for 60 months, at which time the interest rate may be increased not more than __________ % per year. The maximum

interest rate during the mortgage term shall not exceed 7.500 %. Monthly payments of principal and interest may be adjusted to

reflect interest changes.

If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 109-115 or 277-286

or in an addendum attached per line 478.

NOTE: If purchase is conditioned on buyer obtaining financing for operations or development consider adding a contingency for that

purpose.

☒ BUYER'S LOAN COMMITMENT: Buyer agrees to pay all customary loan and closing costs, to promptly apply for a mortgage loan, and to

provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to

Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line 229. Buyer and Seller agree that

delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if,

after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall

accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability.

CAUTION: The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. BUYER,

BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN COMMITMENT TO SELLER OR SELLER'S

AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

☒ SELLER'S TERMINATION RIGHTS: If Buyer does not make timely delivery of said commitment; Seller may terminate this Offer if Seller delivers

a written notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written loan commitment.

☒ FINANCING UNAVAILABILITY: If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an

acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of

lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is named in this Offer, Seller shall then have 10 days

to deliver to Buyer written notice of Seller's decision to finance this transaction on the same terms set forth in this Offer, and this Offer shall remain

in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer

authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

☒ IF THIS OFFER IS NOT CONTINGENT ON FINANCING: Within 7 days of acceptance, a financial institution or third party in control of Buyer's

funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close. If such written

verification is not provided, Seller has the right to terminate this Offer by delivering written notice to Buyer. Buyer may or may not obtain mortgage

financing but does not need the protection of a financing contingency. Seller agrees to allow Buyer's appraiser access to the Property for

purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this

Offer is subject to an appraiser contingency, nor does the right of access for an appraisal constitute a financing contingency.

☒ APPRAISAL CONTINGENCY: This Offer is contingent upon the Buyer or Buyer's lender having the Property appraised at Buyer's expense

by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent to the date of this Offer indicating an

appraised value for the Property equal to or greater than the agreed upon purchase price. This contingency shall be deemed satisfied unless

Buyer, within __________ days of acceptance, delivers to Seller a copy of the appraisal report which indicates that the appraised value is not

equal to or greater than the agreed upon purchase price, accompanied by a written notice of termination.

CAUTION: An appraisal ordered by Buyer's lender may not be received until shortly before closing. Consider whether deadlines provide

adequate time for performance.

ADDITIONAL PROVISIONS/CONTINGENCIES: Buyer to commence construction prior to 12 months from Closing of

the real estate transaction.
[DEFINITIONS CONTINUED FROM PAGE 4]

- **ENVIRONMENTAL SITE ASSESSMENT:** An "Environmental Site Assessment" (also known as a "Phase I Site Assessment") (see lines 379-395) may include, but is not limited to: (1) an inspection of the Property; (2) a review of the ownership and use history of the Property, including a search of title records showing private ownership of the Property for a period of 80 years prior to the visual inspection; (3) a review of historic and recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property; (5) an evaluation of results of any environmental sampling and analysis that has been conducted on the Property; and (6) a review to determine if the Property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment, including the National Priorities List, the Department of Nature Resources' (DNR) Registry of Waste Disposal Sites, the DNR's Contaminated Lands Environmental Action Network, and the DNR's Remediation and Redevelopment (RR) Sites Map including the Geographical Information System (GIS) Registry and related resources. Any Environmental Site Assessment performed under this Offer shall comply with generally recognized industry standards (e.g. current American Society of Testing and Materials "Standard Practice for Environmental Site Assessments"), and state and federal guidelines, as applicable.

**CAUTION:** Unless otherwise agreed an Environmental Site Assessment does not include subsurface testing of the soil or groundwater or other testing of the Property for environmental pollution. If further investigation is required, insert provisions for a Phase II Site Assessment (collection and analysis of samples), Phase III Environmental Site Assessment (evaluation of remediation alternatives) or other site evaluation at lines 109-115 or 277-286 or attach as an addendum per line 479.

- **FIXTURE:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached antennas; garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent foundations and docks/piers on permanent foundations. A Fixture does not include trade fixtures owned by tenants of the Property.

**CAUTION:** Exclude Fixtures not owned by Seller such as rented fixtures. See lines 20-22.

- **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-7.

- **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; and (iii) provide active listing, pending sale, closed sale and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry.

- **EARNEST MONEY**

- **HELD BY:** Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker (Buyer's agent if Property is not listed or Seller's account if no broker is involved), until applied to purchase price or otherwise disbursed as provided in the Offer.

**CAUTION:** Should persons other than a broker hold earnest money, an escrow agreement should be drafted by the Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special disbursement agreement.

- **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed $250, prior to disbursement.

- **LEGAL RIGHTS/ACTION:** Broker's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earn money cannot be determined by broker. At least 30 days prior to disbursement per (1) or (4) above, broker shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or Seller disagree with broker's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with 1-4 dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the broker harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations concerning earnest money. See Ws. Admin. Code Ch. REEB 18.
TITLE EVIDENCE

CONVEYANCE OF TITLE: Upon payment of the purchase price, Seller shall convey the Property by warranty deed (trustee’s deed if Seller is a trust, personal representative’s deed if Seller is an estate or other conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller’s disclosure report, and Real Estate Condition Report, if applicable, and in this Offer, general taxes levied in the year of closing and necessary to record the conveyance at Seller’s cost and pay the Wisconsin Real Estate Transfer Fee.

WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making improvements to Property or use other than the current use.

TITLE EVIDENCE: Seller shall give evidence of title in the form of an owner’s policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all costs of providing title evidence to Buyer. Buyer shall pay all costs of providing title evidence required by Buyer’s lender.

GAP ENDORSEMENT: Seller shall provide a ‘gap’ endorsement or equivalent gap coverage at (Seller’s) [(Buyer’s) STRIKE ONE (“Seller’s” if neither stricken)] cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 365-371).

PROVISION OF MERCHANTABLE TITLE: For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to Buyer’s attorney or Buyer not more than __________ days after acceptance (*15* if left blank), showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 341-348, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title within __________ days (*15* if left blank) after delivery of the title commitment to Buyer or Buyer’s attorney. In such event, Seller shall have a reasonable time, but not exceeding __________ days (*5* if left blank), from Buyer’s delivery of the notice stating title objections, to deliver notice to Buyer stating Seller’s election to remove the objections by the time set for closing. In the event that Seller is unable to remove said objections, Buyer may deliver to Seller written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, Buyer shall deliver written notice of termination and this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller’s obligations to give merchantable title to Buyer.

SPECIAL ASSESSMENTS/OTHER EXPENSES: Special assessments, if any, levied or for work actually commenced prior to the date of this Offer shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer.

CAUTION: Consider a special agreement if area assessments, property owners association assessments, special charges for current services under Wis. Stat. § 66.0827 or other expenses are contemplated. “Other expenses” are one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments) relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all sewer mains and hook-up connection and interceptor charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. § 66.0171(1)(f).

ENVIRONMENTAL EVALUATION CONCURRENCY: This Offer is contingent upon a qualified independent environmental consultant of Buyer’s choice conducting an Environmental Site Assessment of the Property (see lines 288-302), at (Buyer’s) [(Seller’s) STRIKE ONE (“Buyer’s” if neither stricken), which discloses no Defects. For the purpose of this concurrency, a Defect (see lines 223-225) is defined to also include a material violation of environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of contaminating the Property due to future migration from other properties. Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer.

CONTINGENCY SATISFACTION: This contingency shall be deemed satisfied unless Buyer, within __________ days of acceptance, delivers to Seller a copy of the Environmental Site Assessment report and a written notice listing the Defect(s) identified in the Environmental Site Assessment report to which Buyer objects (Notice of Defects).

CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.

RIGHT TO CURE: Seller (shall) (shall not) STRIKE ONE (“shall” if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of Buyer’s delivery of the Notice of Defects stating Seller’s election to cure Defects, (2) curing the Defects in a good and workmanlike manner and (3) delivering to Buyer a written report detailing the work done within 3 days prior to closing. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written Environmental Site Assessment report and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.
Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions of this Offer. A material failure to perform any obligation under this Offer is a default which may subject the defaulting party to liability for damages or other legal remedies.

If Buyer defaults, Seller may:
1. Sue for specific performance and request the earnest money as partial payment of the purchase price; or
2. Terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual damages.

If Seller defaults, Buyer may:
1. Sue for specific performance; or
2. Terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

In addition, the Parties may seek any other remedies available in law or equity.

The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement.

NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

ENTIRE CONTRACT This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and inures to the benefit of the Parties to this Offer and their successors in interest.

PROPERTY DIMENSIONS AND SURVEYS Buyer acknowledges that any land, building or room dimensions, or total acreage or building square footage figures, provided to Buyer by Seller or by a broker, may be approximate because of rounding, formulas used or other reasons, unless verified by survey or other means.

CAUTION: Buyer should verify total square footage or acreage figures and land, building or room dimensions, if material to Buyer’s decision to purchase.

BUYER’S PRE-CLOSING WALK-THROUGH Within 3 days prior to closing, at a reasonable time pre-approved by Seller or Seller’s agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any Defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING Seller shall maintain the Property until the earlier of closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior to closing, the Property is damaged in an amount of not more than five percent (5%) of the selling price, Seller shall be obligated to repair the Property and restore it to the same condition that it was on the day of this Offer. No later than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller’s deductible or such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring the Property.

NOTICE ABOUT SEX OFFENDER REGISTRY You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at http://www.widocoffenders.org or by telephone at (608) 240-5830.

INSPECTIONS AND TESTING Buyer may only conduct inspections or tests if specific contingencies are included as a part of this Offer. An “inspection” is defined as an observation of the Property which does not include an appraisal or testing of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. A “test” is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer’s inspectors, testers, appraisers and qualified third parties reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in this Offer. Buyer and licensees may be present at all inspections and testing. Except as otherwise provided, Seller’s authorization for inspections does not authorize Buyer to conduct testing of the Property.

NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the test, (e.g., to determine if environmental contamination is present), any limitations on Buyer’s testing and any other material terms of the contingency.

Buyer agrees to promptly restore the Property to its original condition after Buyer’s inspections and testing are completed unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller. Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.
Property Address: 87 Racine, Menasha, WI

__INSPECTION CONTINGENCY: This contingency only authorizes inspections, not testing (see lines 437-449). This Offer is contingent upon a qualified independent inspector(s) conducting an inspection(e) of the Property which discloses no Defects. This Offer is further contingent upon a qualified independent inspector or qualified independent third party performing an inspection of _______________ (list any Property feature(s) to be separately inspected, e.g., dumpsite, etc.) which discloses no Defects. Buyer shall order the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection performed prior to the deadline specified at line 461. Each inspection shall be performed by a qualified independent inspector or qualified independent third party.

__CAUTION: Buyer should provide sufficient time for the primary inspection and/or any specialized inspection(s), as well as any follow-up inspection(s).

For the purpose of this contingency, Defects (see lines 223-225) do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer.

__CONTINGENCY SATISFACTION: This contingency shall be deemed satisfied unless Buyer, within _______________ days of acceptance, delivers to Seller a copy of the inspection report(s) and a written notice listing the Defect(s) identified in the inspection report(s) to which Buyer objects (Notice of Defects).

__CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.

__RIGHT TO CURE: Seller (shall)(shall not) __STRIKE ONE: "shall" if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects, (2) curing the Defects in a good and workmanlike manner and (3) delivering to Buyer a written report detailing the work done within 3 days prior to closing. This Offer shall be null and void if Buyer fails to timely deliver the Notice of Defects and written Inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller fails to deliver written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

__CLOSING OF BUYER'S PROPERTY CONTINGENCY: This Offer is contingent upon the closing of the sale of Buyer's property located at _______________, no later than _______________. If Buyer accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written waiver of the Closing of Buyer's Property Contingency and _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, _______________, 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MEMORANDUM

TO: Common Council
FROM: Donald Merkes, Mayor
DATE: 15 March 2018
RE: Protocol Committee

Background

The City has used an Ad-hoc Protocol Committee to review policies and procedures relating to the rules of the Common Council, conduct at meetings, and ethics. Over the past six months the committee has met discussing Code of Conduct, Rules of the Common Council, Code of Ethics, and Penalties/Sanctions.

Most elected bodies operate based on rules approved at the beginning of each session; in the past Menasha has operated based on ordinance and Roberts Rules. Attached you will find the draft Rules of the Common Council and Mayor, incorporating items discussed as well as items in current ordinance.

Recommendation

Recommendation that the 2018/19 Common Council consider the Rules of the Common Council and Mayor as drafted by the Ad hoc Protocol Committee as its rules of order for the session.
RULES OF THE COMMON COUNCIL AND MAYOR

1.01 MEETINGS

1) The meetings of the City of Menasha Common Council shall be held at Menasha City Center, 100 Main Street, rooms 132,133,134 at 6PM on the first and third Monday of the month, excluding the organizational meeting. If the regularly scheduled meeting falls on a holiday the meeting shall be held on the next regular business day.
2) The organizational meeting shall be held the third Tuesday of April or as regulated by state statutes.
   1) Prior to the organizational meeting, each newly elected alderperson shall receive copies of the City's policies regarding ethics and code of conduct; as well as the proposed rules of the Common Council and Mayor.
   2) Following calling the meeting to order, it shall be the duty of the clerk to swear in all new members of the common council before calling roll
   3) A quorum being present the Common Council shall proceed
   4) The rules of the Common Council and Mayor for the one year term of the body shall be presented and adopted by a majority vote of the Common Council and Mayor.
   5) Council members shall occupy the respective seats upon the dais by district from right to left as viewed from the gallery with the Mayor, Clerk, and Attorney at the center.
   6) The rules of the Common Council and Mayor shall be amended during the one-year period only by a two-thirds vote of the membership of the Common Council and Mayor.
   7) Election of the common council president shall be by majority vote. Ballots shall be cast by voice vote, in the event that no alderperson gain a majority vote of those present the lowest vote getter shall be deleted from each subsequent ballot until only two candidates remain on the ballot. In the event of a tie vote, the mayor shall not have the ability to break any tie, and the common council will vote again. If there are three subsequent tie votes the two candidates’ names will be placed in a hat and the winner drawn.
   8) The common council shall recess to standing committees to select chairpersons
   9) The common council shall make their representative appointments to: Plan Commission and Neenah-Menasha Fire Rescue Joint Finance and Personnel Committee
   3) Budget Review Sessions shall be on the first Wednesday and first Thursday in November, and the second Wednesday in November of each year. Such review session shall start at 5:00 PM; the Mayor shall distribute a listing of the individual budgets to be reviewed on each date. The Mayor will prepare and submit a proposed budget to the Common Council on or before October 15 of each year.
   4) Special meetings may be called by the Mayor or Council President by notifying members in a manner likely to give each member notice of the meeting and providing the notice at least 24 hours, and a minimum of 6 hours for emergency meetings, before the meeting. The notice shall specify the time, place, and purpose of the meeting.
   5) The Common Council shall be in continuous session from day to day until adjournment to a day certain or sine die.
1.02 CALL TO ORDER

The Mayor or Council President shall call the meeting to order. The Council members will indicate their attendance by pressing the attendance button on their control console or through a voice roll call. If a quorum is present (Wisconsin Statutes quorum is two-thirds of Council membership) the Council shall proceed to business; if there is no quorum present the members present may compel the attendance of absent members or adjourn. In the absence of the Mayor or Council President any member may call the Common Council to order, and thereupon the Common Council shall appoint one of its members to preside at such meeting.

1.03 NOTIFICATION OF ABBSENCE OF MEMBERS

Any Alderman who cannot attend a Council meeting or Committee meeting shall notify the Mayor, City Clerk, President of the Council, or Committee Chair in advance if he/she is unable to attend such meeting except in the case of an emergency. Aldermen shall be recorded present or absent on the official minutes. If an Alderman enters a meeting after it convenes or leaves before it adjourns the time shall be noted in the official minutes.

1.035 QUORUM

A two-thirds (2/3) majority of the members-elect of the Common Council shall constitute a quorum. A less number may compel the attendance of absent members and adjourn. The Mayor shall not be counted in computing a quorum. No action shall be taken unless a quorum is present. A majority of all the members shall be necessary to a confirmation. In case of a tie the Mayor shall have a casting vote as in other cases.

1.04 ORDER OF BUSINESS

At all regular meetings, the order of business shall be according to the tentative agenda prepared by the City Clerk and provided to the Mayor and each member of the Common Council no later than the Friday preceding the regular meeting.

The order of business of Council meetings shall be as follows:

Without objection, the presiding officer may re-order any agenda item within the prescribed order of business or may temporarily set aside an agenda item for action later in the meeting for the convenience of the City Council.

1) Call to order.
2) Pledge of Allegiance.
3) Roll Call/Excused Absences.
4) Public Hearing
5) Public Comment on any matters of concern to the City (five (5) minute time limit for each person).
6) Report of Department Heads/Staff/Consultants (Minutes to receive and Communications)
7) Consent Agenda
8) Items Removed from Consent Agenda
9) Action Items
10) Ordinances and resolutions.
11) Appointments.
12) Held Over Business
13) Claims against the City
14) Citizen Reprise (people from the gallery to be heard, only pertaining to matters on the agenda; five (5) minute time limit for each person).
15) Items for next meeting agenda (by majority vote)
16) Adjournment

1.05 SPECIAL RECOGNITION

The City of Menasha will consider requests for moments of silence at the beginning of Common Council meetings that relate to persons or events of community-wide, state-wide, or national significance involving Menasha residents. All requests should be made to the chair prior to the meeting and the Alderman making the request shall be recognized at the appropriate point within the agenda.

1.06 INTRODUCTION OF BUSINESS

1) No items may be removed from an agenda without approval from the chairperson after the initial approval of the agenda by the chairperson

2) Ordinances can only be introduced by the request of the Mayor, any Alderman, standing or special committees of the Common Council. All ordinances submitted to the Council shall be in writing and shall begin with a brief statement of the subject matter, a title and the name of the Alderman or Mayor introducing the same. Any written material introduced may be referred to the appropriate committee pursuant to Section 2-2-5. Any member of the Council may require the reading in full of any ordinance or resolution at any time it is before the Council.

3) The Mayor or any Alderman may introduce an ordinance at any Council meeting simply by stating, "I desire to introduce the following ordinance." An ordinance may also be introduced by the Mayor or an Alderman directing the City Attorney to draft such ordinance and file it with the Clerk to be placed on the next Council agenda. The Clerk shall cause such proposed ordinance to be printed in the official City newspaper if any Alderman so requests. Such notice shall state the date the proposed ordinance will be considered by the Council or any committee. The public will be permitted to address the Council or any committee when the Council or committee considers any such ordinance. A specific public hearing shall be scheduled to consider any such ordinance upon request of any Council member. No second is required to introduce any ordinance, to request its publication, or to request a public hearing.

4) Each ordinance shall be related to no more than one (1) subject. Amendment or repeal of ordinances shall only be accomplished if the amending or repealing ordinance contains the number and title of the ordinance to be amended or repealed, and title of amending and repealing ordinances shall reflect their purpose to amend or repeal.
5) The Common Council may take action on an ordinance only if it appears on the written agenda for the meeting at which action is requested. No ordinance may be passed by the Common Council until the next Council meeting following its introduction at either a Committee or Council level. When said ordinance on its face does not adequately advise the public of its contents, the City Attorney shall add a brief note of explanation.

1.07 PRESIDING OFFICER TO PRESERVE ORDER

It shall be the duty of the presiding officer to preserve decorum; and if any member transgresses the rules of the Common Council, the presiding officer shall, on his or her own or at any members’ request, call such offending member to order. The Common Council if appealed to shall decide the matter.

1) When a question is pending, a member can condemn the nature of likely consequences of the proposed measure in strong terms, but the member must avoid personalities and under no circumstances can the member attack or question the motives of another member or the entire Common Council.

2) Points of Order may be used to draw attention to a breach in rules, an irregularity in procedure, the irrelevance or continued repetition of a speaker, the breaching of established practices, or contradiction of previous decision. The chair shall immediately acknowledge the Point of Order and rule on it. A Point of Order is non-debatable, however, may be overruled by a two-thirds vote of the body. Points of Order which are recognized shall be recorded in the official minutes.

1.08 MOTIONS

1) When a motion is made and seconded it shall be deemed to be in possession of the Common Council, and shall be stated by the presiding officer

2) After a motion is stated by the presiding officer it shall not be withdrawn except by the consent of the Common Council

1.09 MOTION TO RECESS

Any member or the chair may recess at any point during the meeting with a majority vote.

1.10 MOTION TO ADJOURN

A motion to adjourn shall always be in order unless the Common Council is engaged in voting and shall be decided without debate, pursuant to Roberts Rules of Order.

1.11 CALLING THE QUESTION

Any member wishing to terminate the debate may move the previous question as “shall the question before us now be put?” If two-thirds of the members present vote in the affirmative the question before the council shall be taken without further debate.
1.12 DIVISION OF QUESTION

Any member may call for a division of the question when the question is one that may be divided.

1.13 DEBATE

1) In the debate, each member has the right to speak unlimited times for an unlimited length of time.

2) Upon the request of a member of the Common Council or Committee for any staff member to supply the body such information as requested the member must first be recognized by the presiding officer for that person to speak.

3) No officer, elected official or staff member may distribute, hold a loft, or place on the dais for public view additional information during or immediately before a Common Council meeting.

1.15 PRESENCE REQUIRED AT MEETINGS; ELECTRONOMIC COMMUNICATIONS

1) No member shall be allowed to vote by proxy, nor shall meetings be conducted telephonically or electronically.

2) No member of the Council or Committee shall communicate electronically with another member of the Council or Committee or member of the public during a meeting on any matter on the meeting agenda, unless the electronic communication is saved and available under the Public Records Law.

1.21 RECONSIDERATION OF THE QUESTION

1) A motion for reconsideration can be made on any matter before the Common Council by a member who voted with the prevailing side. It must be made on the day the Common Council acted or at the next regular meeting. It does not require a second.

2) When a member who voted with the prevailing side moves to reconsider, such matter is automatically placed at the head of the calendar at the next Council meeting. This is a non-debatable motion and requires a two-thirds (2/3) vote of the members present. The effect of a motion to reconsider shall be to put the matter back in its original condition or status before the main motion was voted upon.

3) Reconsideration cannot be held, whenever the Council takes an action and something is done which cannot be undone by a motion to reconsider, such as a property right or where money has exchanged hands or other consideration given, such a motion is invalid.
1.29 CITIZENS RIGHT TO ADDRESS THE COMMON COUNCIL

1) The agenda for regular Common Council meetings shall include items “Public Comment on any matters of concern to the City (five minute time limit for each person)” and “Citizen Reprise (people from the gallery to be heard, only pertaining to matters on the agenda (five minute time limit for each person)”.

2) The agenda for special Common Council meetings shall include an item on the agenda “People from the gallery to be heard on matters pertaining to this agenda (five minute time limit for each person)”.  

3) Persons addressing the Common council during the two public participation forums shall be required to state their name and address before addressing the Common Council or Committee. A sign-up sheet will also be provided for those persons who do speak to sign in.

1.30 WRITTEN COMMUNICATIONS TO THE COMMON COUNCIL

1) Written communications to individual Common Council members may be mailed to the member’s home address as listed in the City Directory or delivered to City Hall. Items received at City Hall will be forwarded to the appropriate Common Council member with their next Common Council packet.

2) All communications to Common Council members are considered open records and shall be maintained by the guardian and made available by request.

1.31 PUBLIC HEARINGS

The appropriate Department Head will draft an explanation sheet that shall accompany any required notice to residents of any Public Hearing. The explanation sheet shall also be attached to the Public Hearing agenda. A brief explanation of the requested action shall be made by the appropriate Department Head at the Public Hearing. An explanation sheet as to the rules for any Public Hearing will be attached to the Public Hearing notice.

Persons addressing the Common council during a public hearing shall be required to state their name and address before addressing the Common Council. A sign-up sheet will also be provided for those persons who do speak to sign in.

1.32 ROBERTS RULES OF ORDER TO GOVERN COUNCIL

In the absence of a standing rule, ordinance, or statute, the Common Council shall be governed by Roberts Rules of Order
1.33 CONFIDENTIAL INFORMATION

No official may use or disclose confidential information, including knowledge imparted orally, recordings, and written documents or records, concerning the property, government or affairs of the City gained in the course of or by reason of such official position or activities unless the release is ordered by a court or the informed consent of the subject, as applicable; or authorized by the legal custodian or other proper legal authorization is given. This includes confidential information received in a closed session of the governmental body. Inappropriate disclosure of such confidential information may subject the official to penalties including a fine or public censure. Other potential consequences for violating this restriction is criminal prosecution under §946.12, Wis. Stats., misconduct in public office or removal from office under Chapter 17 of the Wisconsin Statutes for cause.
1.34 SUSPENSION OF RULES

Whenever the Common Council decides to waive a rule as provided within, it may do so by a suspension if its rules requiring a two-thirds vote of all the alderpersons
RESOLUTION R-06-18

MEMORANDUM OF AGREEMENT FOR STORMWATER DETENTION POND CONSTRUCTION AND MAINTENANCE BETWEEN VILLAGE OF FOX CROSSING, CITY OF MENASHA, WINNEBAGO COUNTY AND WISCONSIN DOT (RACINE POND)

Introduced by Alderman Taylor

WHEREAS, pursuant to Wisconsin Administrative Code NR 216 of the Wisconsin Department of Natural Resources, the City of Menasha maintains a municipal separate storm sewer system (MS-4) permit to reduce urban non-point source pollution; and

WHEREAS, the Wisconsin Department of Transportation (DOT) is presently conducting the US 10/WIS 441 Tri-County Expansion project and must construct stormwater facilities in order to meet their particulate reduction requirements for the project; and

WHEREAS, the City of Menasha, Village of Fox Crossing, and Winnebago County have negotiated an agreement with the DOT in which the DOT agrees to construct and provide daily maintenance of a stormwater detention pond known as Racine Road pond, entirely at the DOT’s cost, and then the Village, City, and County agree to share in the costs of the regular future dredging of the pond; and

NOW, THEREFORE BE IT RESOLVED, that the City of Menasha Common Council hereby authorizes its Director of Public Works, as the authorized representative of the City of Menasha, to act on its behalf to approve the Memorandum of Agreement for Stormwater Detention Pond Construction and Maintenance between Village of Fox Crossing, Winnebago County, and Wisconsin DOT.

Passed and approved this ____ day of __________, 2018.

______________________________
Donald Merkes, Mayor

ATTEST:

_____________________________
Deborah A. Galeazzi, City Clerk
RESOLUTION R-07-18

MEMORANDUM OF AGREEMENT FOR STORMWATER DETENTION POND CONSTRUCTION AND MAINTENANCE BETWEEN VILLAGE OF FOX CROSSING, CITY OF MENASHA, WINNEBAGO COUNTY AND WISCONSIN DOT (MIDWAY POND)

Introduced by Alderman Taylor

WHEREAS, pursuant to Wisconsin Administrative Code NR 216 of the Wisconsin Department of Natural Resources, the City of Menasha maintains a municipal separate storm sewer system (MS-4) permit to reduce urban non-point source pollution; and

WHEREAS, the Wisconsin Department of Transportation (DOT) is presently conducting the US 10/WIS 441 Tri-County Expansion project and must construct stormwater facilities in order to meet their particulate reduction requirements for the project; and

WHEREAS, the City of Menasha, Village of Fox Crossing, and Winnebago County have negotiated an agreement with the DOT in which the DOT agrees to construct a stormwater detention pond known as Midway Road pond, entirely at the DOT’s cost, and then the Village, City, and County agree to conduct the regular future maintenance of the pond; and

WHEREAS, a separate side agreement was approved by the Common Council and signed by the Mayor on January 15, 2018 outlining the decisions and responsibilities agreed upon by the City of Menasha, the Village of Fox Crossing, and Winnebago County, regarding the future maintenance responsibilities for the Midway Road pond.

NOW, THEREFORE BE IT RESOLVED, that the City of Menasha Common Council hereby authorizes its Director of Public Works, as the authorized representative of the City of Menasha, to act on its behalf to approve the Memorandum of Agreement for Stormwater Detention Pond Construction and Maintenance between Village of Fox Crossing, Winnebago County, and Wisconsin DOT.

Passed and approved this ____ day of __________, 2018.

Recommended by:
______________________________

Motion/Second:
______________________________

Vote: __________________________

Pass/Fail: ________________

Requires: __ Majority Vote
          __ 2/3 Vote

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk
RESOLUTION R-08-18

A PRELIMINARY RESOLUTION DECLARING INTENT TO EXERCISE SPECIAL ASSESSMENT POWERS UNDER SECTION 66.0703, WISCONSIN STATUTES

Introduced by Board of Public Works

RESOLVED, by the Common Council of the City of Menasha, Wisconsin:

1. The Common Council hereby declares its intention to exercise its powers under Section 66.0703, Wisconsin Statutes, to levy special assessments upon property within the following described area for benefits conferred upon such property by improvement of the following:

   A. Improvements
      1. Concrete Curb & Gutter Construction
      2. 4” Asphaltic Concrete Pavement Construction
      3. Various Associated Items

   B. Location of Improvements
      1. The Ponds of Menasha – Phase 1
      2. The Cottages at Lake Park Condominiums

2. The total amount assessed against such improvements shall not exceed the total cost of the improvements. The Common Council determines that such improvements shall be made under the police power, and the amount assessed against each parcel shall be on a cost per front foot, area, or unit cost basis.

3. That the assessment against any parcel shall be paid in accordance with Section 3-2-14 of the Menasha Municipal Code.

4. The Board of Public Works is directed to compile a report consisting of:

   A. Plans and Specifications of said improvements.
   B. A summary of the allotted cost of the said improvements.
   C. A schedule of proposed assessments showing the properties which are benefited by the improvement.

Upon completing such report, the Board of Public Works is directed to file a copy thereof in the City Clerk’s Office for public inspection.
5. Upon receiving the report of the Board of Public Works, the City Clerk is directed to give notice of a public hearing on such report as specified in Section 66.0703(7)(a), Wisconsin Statutes. The hearing shall be held in the Council Chambers at the City Hall at a time set by the City Clerk in accordance with Section 66.0703(7)(a), Wisconsin Statutes.

6. The notice and hearing requirements under paragraph 5 do not apply if they are waived, in writing, by all the owners of property affected by the special assessment, as specified in Section 66.0703(7)(b), Wisconsin Statutes.

Passed and approved this ___ day of __________, 2018.

________________________________________
Donald Merkes, Mayor

ATTEST:

_____________________________________
Deborah A. Galeazzi, City Clerk

Recommended by:

_____________________________________

Motion/Second:

_____________________________________

Vote: ________________________________

Pass/Fail: ____________________________

Requires:   __Majority Vote
              __ 2/3 Vote
Memorandum

To: Mayor Merkes and Common Council

Date: March 14, 2018

From: Vince Maas, Superintendent of Parks

Subject: 2018 Baylake Regional Planning Commission Grant

As you may recall, in 2017 the Parks Department received a grant from Baylake Regional Planning Commission to plant trees where the city has Ash trees that may be affected by Emerald Ash Borer (EAB). We planted 40 trees throughout the city including some on Arbor Day. Also in 2017, the Parks Department received an urban forestry grant from the Wisconsin Department of Natural Resources to update the city’s tree inventory and plant trees.

The Parks Department will again be applying for a grant from Baylake Regional Planning Commission this year. This grant will focus on additional tree planting in areas where new streets were constructed over the past years. In addition, this grant would go towards re-planting a diverse number of species based on our existing inventory.

This is a 75/25 matching grant. The deadline for the application is April 1st. Normal Forestry operating budget funds will be used for our 25% match. The city’s share of the grant will be labor cost to plant the trees. The city will be requesting $5,400 to purchase trees.

We appreciate your past support of the city’s urban forestry program, including our status as a Tree City, USA. Your positive consideration of our current request would be appreciated.
RESOLUTION R-9-18

A RESOLUTION TO AUTHORIZE THE APPLICATION FOR A COST-SHARE GRANT FROM BAY LAKE REGIONAL PLANNING COMMISSION

Introduced by Mayor Merkes

WHEREAS, the applicant, City of Menasha, is interested in obtaining a cost-share grant from the Bay-Lake Regional Planning Commission for the purpose of funding Emerald Ash Borer mitigation projects under funding originating from the U.S. Forest Service, Great Lakes Restoration Initiative;

WHEREAS, the applicant attests to the validity and veracity of the statements and representations contained in the grant application; and

WHEREAS, the applicant requests a grant agreement to carry out the project;

NOW, THEREFORE, BE IT RESOLVED, the applicant, City of Menasha, will comply with all local, state, and federal rules, regulations, and ordinances relating to the project and the cost-share agreement;

BE IT FURTHER RESOLVED, the applicant will budget a sum sufficient to fully and satisfactorily complete the project and hereby authorizes and empowers the Superintendent of Parks, Forestry and Cemeteries its official or employee, to act on its behalf to:

1. Sign and submit the grant application.
2. Sign a grant agreement between applicant and the Bay-Lake Regional Planning Commission.
3. Submit interim and/or final reports to the Bay-Lake Regional Planning Commission to satisfy the grant agreement.
4. Submit reimbursement requests and, if applicable, contractor invoices to the Bay-Lake Regional Planning Commission.
5. Sign and submit other required documentation.
Passed and approved this ___ day of ___________, 2018.

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I hereby certify that the foregoing resolution was duly adopted by The City of Menasha Common Council at a legal meeting on the _____day of _____________. 20__.

Authorized Signature _______________________ Title ______________________ Date Certified ___________________