

**AGENDA**  
**VILLAGE OF PLEASANT PRAIRIE**  
**PLEASANT PRAIRIE VILLAGE BOARD**  
**PLEASANT PRAIRIE WATER UTILITY**  
**PLEASANT PRAIRIE SEWER UTILITY**  
**Village Hall Auditorium**  
**9915 – 39<sup>th</sup> Avenue**  
**Pleasant Prairie, WI**  
**June 20, 2011**  
**6:00 p.m.**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Minutes of Meetings – June 6, 2011
5. Public Hearings – **will be continued on July 18, 2011**
  - A. Consider Meadowdale Estates Addition #1 concrete paving project.
    - 1) Resolution #11-10- Final Resolution Authorizing Construction of Public Improvements and Levying Special Assessments against benefited property with the construction of a concrete paving project on 97<sup>th</sup> Street, 98<sup>th</sup> Street, Meadowdale Lane, 43<sup>rd</sup> Avenue and 96<sup>th</sup> Place in Meadowdale Estates Addition No. 1.
  - B. Consider Meadowdale Estates Addition #1 street and cul-de-sac landscaping project.
    - 1) Resolution #11-11 – Final Resolution Authorizing Construction of Public Improvements and Levying Special Assessments against benefited property with the construction of a street and cul-de-sac landscaping project on 97<sup>th</sup> Street, 98<sup>th</sup> Street, Meadowdale Lane, 43<sup>rd</sup> Avenue and 96<sup>th</sup> Place in Meadowdale Estates Addition No. 1.
6. Citizen Comments (Please be advised per State Statute Section 19.84(2), information will be received from the public and there may be limited discussion on the information received. However, no action will be taken under public comments.)
7. Administrator's Report

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8. New Business

- A. Consider Resolution #11-17 congratulating Jelly Belly Candy Company on the 10<sup>th</sup> Anniversary of the Wisconsin Jelly Belly Visitor Center.
- B. Consider the request of New Cingular Wireless PCS, LLC (d/b/a AT & T) to extend the time to execute an Option and Lease Agreement for a cell tower facility at Prairie Springs Park.
- C. Consider a Facility Use Agreement for the EMCO Chemical Distributors rail spur located at 8601 95<sup>th</sup> Street.
- D. Consider Resolution #11-16 to approve a renewal of the Village's ACH Agreement with Talmer Bank & Trust.
- E. Consider an award of contract to install fencing at Prairie Farms Trail.
- F. Consider Ordinance #11-16 to amend Chapter 355 of the Municipal Code relating to cross-connection control.
- G. Consider Resolution #11-19 certifying the creation, review and adoption of the Compliance Maintenance Annual Report for the Village's wastewater collection system.
- H. Consider Resolution #11-18 – Preliminary resolution declaring intent to exercise special assessment police powers in connection with the construction of public storm water improvements located in the right-of-way at 11606 47<sup>th</sup> Avenue.
- I. Consider denial of an operator's license for Harmony Groth-Grigaitis.
- J. Consent Agenda (All items listed under the Consent Agenda are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a Board member so requests, in which event the item will be removed from the General Order of Business and considered at this point on the agenda.)
  - 1) Approve Operator License applications on file.
  - 2) Approve Operator License renewal applications – July 1, 2011 – June 30, 2013.

9. Village Board Comments

10. Adjournment

The Village Hall is handicapped accessible. If you have other special needs, please contact the Village Clerk, 9915 – 39<sup>th</sup> Avenue, Pleasant Prairie, WI (262) 694-1400

**VILLAGE OF PLEASANT PRAIRIE  
PLEASANT PRAIRIE VILLAGE BOARD  
PLEASANT PRAIRIE WATER UTILITY  
PLEASANT PRAIRIE SEWER UTILITY**

**9915 39th Avenue  
Pleasant Prairie, WI  
June 6, 2011  
6:00 p.m.**

A Regular Meeting of the Pleasant Prairie Village Board was held on Monday, June 6, 2011. Meeting called to order at 6:00 p.m. Present were Village Board members John Steinbrink, Monica Yuhas, Steve Kumorkiewicz, Clyde Allen and Mike Serpe. Also present were Michael Pollocoff, Village Administrator; Tom Shircel, Asst. Village Administrator; Jean Werbie-Harris, Community Development Director; Mike Spence, Village Engineer; John Steinbrink Jr., Public Works Director; and Jane Romanowski, Village Clerk. Two citizens attended the meeting.

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. MINUTES OF MEETINGS - MAY 16, 2011**

Monica Yuhas:

Motion to approve.

Steve Kumorkiewicz:

Second.

John Steinbrink:

Motion by Monica, second by Steve. Any discussion?

**YUHAS MOVED TO APPROVE THE MINUTES OF THE MAY 16, 2011 VILLAGE BOARD MEETING AS PRESENTED IN THEIR WRITTEN FORM; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 5-0.**

- 5. CITIZEN COMMENTS**

Jane Romanowski:

There were no sign ups tonight, Mr. President.

John Steinbrink:

Anybody wishing to speak under citizens' comments?

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**6. ADMINISTRATOR'S REPORT**

Mike Pollocoff:

Nothing tonight, Mr. President.

**7. NEW BUSINESS**

**A. Consider Engineering Services Agreement - Amendment No. 2 - for CDBG-EAP Funded Flood Recovery projects.**

Mike Spence:

Mr. President and members of the Board, back in July of last year a contract for engineering services was approved with Crispell-Snyder to do engineering design. The Village received a community development block grant to address storm water issues in the south Kenosha area. Recently the engineering department requested a proposal from Crispell-Snyder to complete a design bidding package for to design a swale on the Manutronics property. This particular swale would replace an underground culvert that's currently there, and that's been a bottleneck causing flooding issues.

Originally the Village's public works department was going to perform this work, but because of scheduling issues and availability of equipment bidding the work right now is the most feasible option. So we've asked Crispell-Snyder for an amendment to include this. This scope would be put together plans for bidding and construction or bidding for construction of the swale on the Manutronics property. They've actually completed a part of it as part of the overall storm water.

This amendment includes the design activities and also construction services as needed. I recommend that this contract be approved. There is a typo in the memo there. It should be not for sustainable Village Green design. It should be for the Amendment 2 to the CDBG engineering contract. So I recommend approval.

Michael Serpe:

Mike, before Crispell-Snyder gave the bid for the construction of the swale what was the estimate cost for public works to do it?

Mike Spence:

I'm trying to remember if we actually--John, did you ever give us an estimate?

John Steinbrink, Jr.:

I don't believe that we actually completed an estimate. It's something that we were working towards, but because of the time restraints we just decided to pull back and bid the project. So we do not have an estimate at this time.

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Michael Serpe:

In your opinion, John, is this a reasonable estimate on work?

Mike Spence:

I should point out, Mike, this is just for the design. The construction services you lose a little bit of economy of scale because it's not a real big project. But I need to mention that we do monitor any kind of construction activities so that the Crispell-Snyder will only spend what's needed. If we don't need them out there inspecting when we do get a contractor we'll hold back on that. We set it up as an hourly so if they don't spend it they don't get paid for it.

Mike Pollocoff:

With respect to the construction, the proposed legislation this would be a project that would probably be in the \$250,000 to \$300,000 range. And under proposed legislation from the Governor and Joint Finance we wouldn't be able to do this one anyway. So rather than have us take bids and compare our price that's gone and everything goes out to public bid.

John Steinbrink:

Other comments or questions? Hearing none, we need a motion.

Michael Serpe:

Move approval.

Clyde Allen:

Second.

John Steinbrink:

Motion by Mike, second by Clyde. Any further additional comments?

**SERPE MOVED TO APPROVE A PROFESSIONAL ENGINEERING SERVICES AGREEMENT - AMENDMENT NO. 2 - FOR CDBG-EAP FUNDED FLOOD RECOVERY PROJECTS WITH CRISPELL-SNYDER AS PRESENTED; SECONDED BY ALLEN; MOTION CARRIED 5-0.**

**B. Consider Professional Construction Engineering Services Agreement for the 2011 Paving Program.**

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Mike Spence:

Mr. President and members of the Board, recently the Board approved the contract for Payne & Dolan to undertake the 2011 paving program. What you have before you tonight is a construction agreement with Crispell-Snyder to, again, assist the Village in the construction management of the program. Crispell-Snyder successfully did the management last year, and they become our eyes and ears when we can't be out there all the time.

The particular items they broke it up by segment and, again, the way this is set up if they don't spend it they don't get paid. So if there's a particular section of the paving that I can handle with my staff I will. But depending on their schedule and all that it's good to have them on retainer so we can have them inspect if we need it. So I believe, again, the costs are reasonable, and I would ask that the Board execute the contract.

Monica Yuhas:

I'll make a motion to approve the engineering service agreement for the 2011 paving program.

Steve Kumorkiewicz:

Second.

John Steinbrink:

Motion by Monica, second by Steve. Further discussion?

**YUHAS MOVED TO APPROVE A PROFESSIONAL CONSTRUCTION ENGINEERING SERVICES AGREEMENT FOR THE 2011 PAVING PROGRAM WITH CRISPELL-SNYDER AS PRESENTED; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 5-0.**

**C. Consider Resolution #11-14 - Authorizing Stover Development, LLC to complete grading improvements in the Devonshire Subdivision.**

Mike Spence:

Mr. President and members of the Board, this particular resolution addresses the need to do some final grading in the Devonshire portion of the Village Green Park which is just west of where we are now. In the resolution it gives the history of what's transpired on this project, but originally there was a development agreement with Regency Hills-Devonshire for the development of the public improvements for this project.

Back in 2010 the Regency Hills Development breached its obligations and were unable to cure the breach. At that time we did demand a letter of credit from the bank, so we did get the money that was associated with this. And the original contractor, O & M, was supposed to do the drainage for this, but however they have restructured and reorganized to avoid bankruptcy. The members of O & M have resurfaced as Stover Construction, and they have agreed to perform the

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grading work for the Village Green Park for the amount that's left on the cash on deposit for the Village.

It should be pointed out that the original estimate was \$57,800 to complete this. In order to complete this plan for the \$20,000 that we have left, we've entered into an agreement with Land and Lakes to provide the topsoil at no charge from a pile of topsoil that is not too far from the vicinity of the park. So that will help to reduce the cost. So they're ready to go, and actually Stove has other material that they can bring to the site for the grading. It would be good to get this development because the costs are only going to go up if we don't get it done now and we have the ability to use the funds that we have. So I recommend that this resolution be adopted to allow the Village to work with Stover Development to complete this grading.

Michael Serpe:

I move approval, Mr. Chairman.

Monica Yuhas:

Second.

John Steinbrink:

Motion by Mike, second by Monica. Any discussion?

Steve Kumorkiewicz:

Yes, I'm lost here. They're talking about . . . of O & M . . . . Now, I see part of it here it is Stover Development?

Mike Pollocoff:

It's not the developer. Stove is the contractor.

Mike Spence:

It's the contractor. I'm sorry.

Steve Kumorkiewicz:

Because here on the second page it says Stover Development . . . .

Mike Pollocoff:

Stover, LLC is a contractor that since their developer has gone out of business and the developer's contractor has gone out of business, Stover who is composed of some of the original contractor's employees they're basically looking at this is a way to be able to get back some of

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the money that still exists in the letter of credit that the Village holds to get this done. But they need as a new entity, an LLC, need to get permission to go back onto the site to do the work because there's no contract. The Village doesn't hold a contract and there's no contract through the developer because the original developer is gone. It's not the developer's property to enter into an agreement. So that's why the permission is needed.

Steve Kumorkiewicz:

So actually the Stover Development and Stover Construction is the same company?

Mike Spence:

Yes.

Steve Kumorkiewicz:

It's the same?

Mike Spence:

Yes. It's one entity. I don't know if they were referred to two different ways. That's not the intention, but it is one contractor.

Steve Kumorkiewicz:

Yes, because it's confusing reading this. One is a developer and the other one is a contractor. So both are Stover.

Jean Werbie-Harris:

Stover Development is the contractor. That is not the developer.

Mike Spence:

Stover Development is the contractor, Steve, not the developer.

Steve Kumorkiewicz:

Okay.

John Steinbrink:

We had a motion and a second. Further discussion?



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**SERPE MOVED TO ADOPT RESOLUTION #11-14 - AUTHORIZING STOVER DEVELOPMENT, LLC TO COMPLETE GRADING IMPROVEMENTS IN THE DEVONSHIRE SUBDIVISION; SECONDED BY YUHAS; MOTION CARRIED 5-0.**

**D. Consider Beverage Agreement for Pepsi Beverages Company as the sole beverage distributor at Village owned and operated locations.**

Monica Yuhas:

Mr. President, I'd like to recuse myself from Item 7D due to the fact that I have an immediate family member employed through Pepsi.

John Steinbrink:

Okay, that will be noted.

Mike Pollocoff:

Mr. President, RecPlex has maintained beverage agreements. We've had them with Coke. Most recently we've had them with Pepsi Cola General Bottles, Pepsi Beverages Company. The previous agreement was for five years, and the pending agreement is also for five years. We've reviewed the proposed agreement. Pepsi submitted the better package from a standpoint, significantly better. And, as such, RecPlex and myself are recommending that a five year contract be granted to Pepsi for the beverage contract at RecPlex along with the other Village facilities which would be the fire station, Village Hall and public works similar to the last two beverage agreements we've had.

Michael Serpe:

Mike, you said this was put out?

Mike Pollocoff:

Yeah, this was put out to competitive bid. The two respondents were Coke and Pepsi.

Steve Kumorkiewicz:

I move to approve the agreement. I see in five years we're going to get \$45,000?

Mike Pollocoff:

Correct.

Michael Serpe:

I'll second his motion.

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John Steinbrink:

Motion by Steve, second by Mike. Further discussion?

**KUMORKIEWICZ MOVED TO APPROVE A BEVERAGE AGREEMENT FOR PEPSI BEVERAGES COMPANY AS THE SOLE BEVERAGE DISTRIBUTOR AT VILLAGE OWNED AND OPERATED LOCATIONS; SECONDED BY SERPE; MOTION CARRIED 4-0 WITH YUHAS RECUSING HERSELF FROM A VOTE AS A FAMILY MEMBER IS EMPLOYED BY PEPSI BEVERAGES COMPANY.**

**E. Consider award of contract for mowing noxious weeds in various vacant lots within the Village.**

John Steinbrink, Jr.:

Mr. President and members of the Board, May 18, 2011 a bid announcement for mowing noxious weeds was posted. We received three bids on May 31<sup>st</sup>. We did have an attached bid tab located on there, and we actually broke it down to a fixed cost per lot and then a cost of hourly labor for a push mower and weed whacker, an hourly rate for a 36 and 72 inch lawn mowing operation, and then a couple other larger operations.

After going through and comparing the three bids that we received, Kenosha Grounds Care came in with the lowest bid per hour if you go down and tally all those up. With the noxious weed season in full bloom right now, I do recommend Kenosha Grounds Care for the mowing of noxious weeds for the Village of Pleasant Prairie this year under the amounts listed in the bid tab.

John Steinbrink:

Does this include the foreclosed properties that we get complaints on then, too?

John Steinbrink, Jr.:

Yes, it does.

Mike Pollocoff:

Public Works would send the contractor to go mow.

Clyde Allen:

John, can you tell me first are we still mowing what the State is not paying us for?

John Steinbrink, Jr.:

Yes, we are.

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Clyde Allen:

Secondly, these charges all go onto the tax rolls then, correct, they're billed to the customer?

John Steinbrink, Jr.:

Yes, through the bill it goes directly to the property owner with an administrative cost for our time to process the paperwork.

Clyde Allen:

Okay, thank you. I guess with that I make a motion to approve.

Michael Serpe:

Second.

John Steinbrink:

Motion by Clyde, second by Mike for approval. Further discussion?

Steve Kumorkiewicz:

I've got a question. I see properties that are vacant for years never built, just a lot. And they've got trees that dies years and years ago. I'm afraid they're going to fall in the road. Right on the corner of 41<sup>st</sup> and 122<sup>nd</sup> is a typical example. What do we do with those?

John Steinbrink, Jr.:

Any trees that are dying in the right of way public works will go through and remove them. Any trees that are on private property it would be the property owner's responsibility to maintain and remove those trees at their expense.

Steve Kumorkiewicz:

They're out of the right of way.

John Steinbrink, Jr.:

They're out of the right of way you had said?

Steve Kumorkiewicz:

Yes.

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John Steinbrink, Jr.:

Then it would be the property owner's responsibility to have that tree removed if it is a danger.

Steve Kumorkiewicz:

I will file a complaint then. Thank you.

John Steinbrink:

We had a motion and a second. No further discussion.

**ALLEN MOVED TO AWARD A CONTRACT TO KENOSHA GROUNDS CARE FOR MOWING NOXIOUS WEEDS IN VARIOUS VACANT LOTS WITHIN THE VILLAGE AS PRESENTED; SECONDED BY SERPE; MOTION CARRIED 5-0.**

**F. Consider award of contract for underground utility locating services.**

John Steinbrink, Jr.:

Mr. President and members of the Board, on May 5, 2011 a bid announcement for underground utility locating services was posted. On the 20<sup>th</sup> Public Works received bids for a two year contract for underground utility locating services and we did receive three bids with that. The Village is responsible to locate any underground utilities which we do own and operate which would be the sewer, the water, the storm, any street lights that the Village has ownership of and a small amount of fiber optic.

Over the past year the Village spent about just over \$80,000 in labor and vehicle expense in locating services and paying administrative costs to complete this process. We were able to get a bid of just under \$60,000 to have this contracted out. Then any utility staff that was working on the locates would be reassigned to a budgeted vacant position within the utility department. So we do recommend moving forward and contracting out locating services with Precise Engineering.

John Steinbrink:

Do they then assume the liability if they were in error when they mark them?

John Steinbrink, Jr.:

Yes, they do. They do receive any liability as written in the contract.

John Steinbrink:

And it would only be for our sewer, water, storm sewers?

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John Steinbrink, Jr:

Right, that is correct. We Energies is responsible for marking the gas and electric and the telephone company is AT&T responsible for marking their own lines.

Michael Serpe:

Move approval.

Monica Yuhas:

Second.

John Steinbrink:

Motion by Mike, second by Monica. Further discussion?

**SERPE MOVED TO AWARD OF CONTRACT FOR UNDERGROUND UTILITY LOCATING SERVICES TO PRECISE ENGINEERING AS PRESENTED; SECONDED BY YUHAS; MOTION CARRIED 5-0.**

**G. Receive Park Commission recommendation and consider an award of contract to prepare a Master Park Plan.**

John Steinbrink, Jr.:

Mr. President and members of the Board, on March 18<sup>th</sup> a bid announcement for improvements and updates to the Master Park Plan was posted. We did receive eight bids as identified on your memo with the lowest being Public Research Group. Public Research Group is also completing the master recreation plan for the RecPlex, and I believe that's probably why we got such a good price from them, because they are able to go through and duplicate a lot of the work as far as the survey and the other work. They had done some work for the RecPlex in the past, and I know that we've been very happy with a lot of the work that they have done for us so I do recommend it.

The upgrades that we're looking to do are plans for three locations within Pleasant Prairie. One would be the Sewer D area. Another one would be development of the area just north of Prairie Springs Park. And the final component would be a development plan for the Lake Michigan Parkland. So we do recommend award of contract to Public Research Group in the amount not to exceed \$11,500 to Public Research Group.

Steve Kumorkiewicz:

So moved.

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Michael Serpe:

Second.

John Steinbrink:

Motion by Steve, second by Mike. A question why there's a \$200,000 spread up there?

Michael Serpe:

Yes, exactly. Where is Teng & Associates from?

John Steinbrink, Jr.:

I'm not really sure. I really didn't do a lot of research or call them once I saw the bid. All the companies that I had contacted myself came in at just under \$20,000 and they really got a good feel what we were looking for. I would guess that some of the ones that bid a little bit more took out of context what some of the survey work was. I would assume that they planned on going through and actually doing the survey work themselves with their own equipment versus just using the County data information.

Steve Kumorkiewicz:

What a difference.

John Steinbrink, Jr.:

But they're not being considered for the award this evening.

John Steinbrink:

We have a motion and a second. Any further discussion?

**KUMORKIEWICZ MOVED TO CONCUR WITH THE PARK COMMISSION RECOMMENDATION AND AWARD A CONTRACT TO PUBLIC RESEARCH GROUP TO PREPARE A MASTER PARK PLAN AS PRESENTED; SECONDED BY SERPE; MOTION CARRIED 5-0.**

**H. Consider accepted offer to purchase 4.3 acres of land located at 3803 Springbrook Road from the Federal Deposit Insurance Corporation.**

Mike Pollocoff:

Mr. President, representatives of FDIC recently made the 4.3 parcel which is directly adjacent to the Village Hall to the north as you can see on the map on the overhead available. It was originally owned by First Banking Center. And with the failure of that bank FDIC ends up with

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possession of it. We tried to acquire that property about 20 years ago through eminent domain and the price was about a million dollars at that point. And I think that was probably overpriced at that time. We decided not to proceed with it.

And the reason for looking to acquire it back then and the reason for acquiring it now is not that we'd be engaging any immediate building plans. I mean the only thing we could really use in the short term would be some additional parking space in this lot. But it preserves the option for future Village Boards to have this land available if some kind of modifications or additions are needed somewhere down the road and still have this all be at one campus. In the interim I spoke with public works and they're going to maintain it as parkland and clean it up a little bit and keep it mowed and keep it as open space and keep our options available.

FDIC was asking for \$268,000. I made an initial offer of \$250,000 which was accepted contingent on Village Board approval. If the Board grants approval tonight we would set up a closing for the 10<sup>th</sup> to be transferred to the Village. The financing of this, we've had one project, the sanitary sewer extension to vacate Sewer D which has come in under budget, so I'd be looking to transfer that capital from the Sewer Utility to the general fund in order to finance this improvement. With that, Mr. President, it's my recommendation that the Village authorize myself to enter into a purchase agreement with the FDIC to acquire this property.

Clyde Allen:

Mike, on the west end there's a triangle that's not highlighted in green. The corner of Springbrook-

Mike Pollocoff:

That's right of way.

Clyde Allen:

That's all right of way. And who owns it? Isn't that drainage in there?

Mike Pollocoff:

There's a low spot in there but it's County.

Clyde Allen:

So the County owns it and that's for future right of way? Is anything going to happen to that spot?

Mike Pollocoff:

I think they're going to keep it until at some point-right now the Village and the County received a grant from the State to improve 39<sup>th</sup> Avenue two years from now. There could be a roundabout

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analysis that's done on that and they may keep that open. But in my discussion with the County in previous years they want to be able to have that right of way stay where it is until some ultimate design is done for that intersection. Since this area is going to be subject to some growth over the next 10 to 20 years I think that's a good idea.

Clyde Allen:

Okay, thank you. Unless there are other questions I'd like to make a motion to approve.

Monica Yuhas:

Second.

John Steinbrink:

Motion by Clyde, second by Monica. Further discussion?

**ALLEN MOVED TO AUTHORIZE THE VILLAGE ADMINISTRATOR TO ENTER INTO AN AGREEMENT TO PURCHASE 4.3 ACRES OF LAND LOCATED AT 3803 SPRINGBROOK ROAD FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION IN THE AMOUNT OF \$250,000; SECONDED BY YUHAS; MOTION CARRIED 5-0.**

John Steinbrink:

That's something years ago we looked. It's amazing if you wait what comes along.

**I. Consider Resolution #11-15 - Authorizing application for grant assistance for the development of the Pleasant Farms Trail.**

Tom Shircel:

Mr. President and fellow Trustees, through this resolution the Village is seeking the Board's approval to apply to the Wisconsin Department of Natural Resources for a grant for assistance for monies to develop the Pleasant Farms Trail. That's the trail, as you're well aware, running from Wilmot Road through the abandoned Sewer D plant and southward and then ultimately eastward to 88<sup>th</sup> Avenue. It's the trail that coincides with the installed 24 inch sanitary sewer main. So through this resolution we're seeking the Board's approval to apply for a grant through the DNR to look to receive monies for development of that trail. If there's any questions I'll be happy to answer them.

Steve Kumorkiewicz:

What are the chances for us to get any money?



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Tom Shircel:

The chances are many municipalities apply for these grants. They're awarded on a point system. The grant application is due by next Thursday the 15<sup>th</sup> I believe, so it is a competitive process. And the chances are how good the application is and how many different municipalities apply for grants.

Steve Kumorkiewicz:

So we can assume the answer is going to be no but we are going to apply.

Tom Shircel:

The only way to know is to apply, correct.

Steve Kumorkiewicz:

I'll make a motion to approve Resolution 11-15.

Monica Yuhas:

Second.

John Steinbrink:

You can't win unless you enter. Motion by Steve, second by Monica. Further discussion

**KUMORKIEWICZ MOVED TO ADOPT RESOLUTION #11-15 - AUTHORIZING APPLICATION FOR GRANT ASSISTANCE FOR THE DEVELOPMENT OF THE PLEASANT FARMS TRAIL; SECONDED BY YUHAS; MOTION CARRIED 5-0.**

**J. Consent Agenda**

- 1) Approve Bartender License applications on file.**
- 2) Approve Renewal of Towing Licences.**
- 3) Approve Renewal of Keno Outdoor Theater License.**

Michael Serpe:

Move approval of 1, 2 and 3.

Monica Yuhas:

Second.

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John Steinbrink:

Motion by Mike, second by Monica. Any discussion on any of the items?

**SERPE MOVED TO APPROVE CONSENT AGENDA ITEMS 1-3; SECONDED BY YUHAS; MOTION CARRIED 5-0.**

## **8. VILLAGE BOARD COMMENTS**

Mike Pollocoff:

This weekend we've had the first paraplegic I guess it was a triathlon out at Prairie Springs Park. There was I believe 19 athletes. It was really a nice event. They did the lake, they did the pool, the indoor track, the bike course around the lake. It was well received. A lot of people found some nice things that the facility accommodates handicapped individuals. And the RecPlex did a really good job of putting that event on. It was also the first weekend for the Village's newly constituted swim team to have their first meet at RecPlex and the Aqua Arena. I think it was 700 swimmers – a lot of people that were out of town spending money.

John Steinbrink:

The paraplegic was covered by Channel 6. They did a very nice job. They talked about it was the first time for some folks or one gentleman to actually put on the apparatus that would allow him to run. He was just amazed. There were a lot of people there from the Chicagoland area which means they've definitely taken notice of us through out other triathlons and people coming here. It's amazing how many people participate in the triathlons and come back for another event or make sure they come back for that same event when it's redone. How many triathlons are we going to have out there this summer, Mike?

Mike Pollocoff:

Three. Three adults and three youth. The first one is the 26<sup>th</sup> of June and the kids is the 25<sup>th</sup>. I think we already have 1,000 or 1,100 adults registered for that one. Of course, Trek is the big one. We're going to wait and see how far over 3,000 they kid. And then Danskin in August.

Steve Kumorkiewicz:

Which one is the one that brings their own people?

Mike Pollocoff:

Trek and Danskin both bring their own people now.

Steve Kumorkiewicz:

So they still need volunteers or no?

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Mike Pollocoff:

They still need volunteers but they bring their own race directors.

John Steinbrink:

Further Village Board comments?

**9. ADJOURNMENT**

**SERPE MOVED TO ADJOURN THE MEETING; SECONDED BY ALLEN; MOTION CARRIED 5-0 AND MEETING ADJOURNED AT 6:35 P.M.**



Resolution No. 11-17

**Resolution of Congratulations to the  
Jelly Belly Candy Company  
During the 10<sup>th</sup> Anniversary Celebration of Your  
Pleasant Prairie, Wisconsin Jelly Belly Visitor Center**

*WHEREAS*, the Jelly Belly Candy Company has operated a successful Jelly Belly Warehouse and Visitor Center in the Village of Pleasant Prairie, Wisconsin for the past ten years, and;

*WHEREAS*, the Jelly Belly Warehouse and Visitor Center offers and promotes free public tours of its Pleasant Prairie Warehouse and Visitor Center and has greatly bolstered tourism within the surrounding community, and;

*WHEREAS*, the Jelly Belly Candy Company, through its Warehouse and Visitor Center tours, has brought smiles to the faces of many children and families, both local and from afar, and;

*WHEREAS*, the Jelly Belly Candy Company has consistently been an active supporter of community events and programs, and;

*WHEREAS*, during the month of July, the Jelly Belly Candy Company will be celebrating the 10<sup>th</sup> Anniversary of their Pleasant Prairie, Wisconsin Warehouse and Visitor Center.

*NOW, THEREFORE BE IT RESOLVED*, by the Board of Trustees of the Village of Pleasant Prairie, that the Jelly Belly Candy Company receives our sincere congratulations on their 10<sup>th</sup> Anniversary in the Village of Pleasant Prairie and our sincere appreciation for their continued involvement in the community.

*Considered and adopted this 20<sup>th</sup> day of June, 2011.*

---

*John P. Steinbrink, President*

Attest:

---

*Jane M. Romanowski, Clerk*





## MEMORANDUM

**TO:** Village Board

**FROM:** Michael R. Pollocoff, Village Administrator

**DATE:** December 20, 2010

**SUBJECT:** Request of Lew Caliento, Project Manager for SAC Wireless, for an Extension of the Option and Lease Agreement between New Cingular Wireless PCS, LLC (d/b/a AT&T) and the Village of Pleasant Prairie for the Prairie Springs Park Site

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On December 20, 2010, the Village Board of Trustees conditionally-approved an Option and Lease Agreement ("Agreement") with New Cingular Wireless PCS, LLC (d/b/a AT&T) for a new cellular site to be located within the Village-owned Prairie Springs Park, just east of the South Ball Fields on a portion of Tax Parcel Number 92-4-122-204-0200, at 9951 Terwall Terrace. The communication facility is proposed to consist of the installation of a new 150 foot tall multi-carrier monopole cell tower facility, with 6 attached AT&T antennas atop the tower, and an associated 800 square foot multi-carrier equipment shelter. The Agreement sets forth terms, rules, rents and regulations for the facility.

### **The Agreement was approved subject to the following conditions:**

1. Completion and execution of the Agreement by New Cingular Wireless PCS, LLC and the Village **within 180 days (by June 21, 2011)** of the December 20, 2010 Village Board conditional approval of the Agreement. Failure to complete the Agreement by this date will result in the Village Board's approval becoming null and void. *(The Village will not issue permits until the Agreement is executed by all applicable parties.)*
2. Compliance with the December 13, 2010 Plan Commission approval of the Conditional Use Permit and Site and Operational Plans and any conditions thereof for the AT&T Prairie Springs Park facility
  - *(On June 13, 2011, the Plan Commission granted a 180 day time extension (until December 18, 2011) to satisfy the conditions of the December 13, 2010 Site and Operational Plans including a Conditional Use Permit for the AT&T facility)*
3. The inclusion of the correct Exhibits in the Agreement, as approved by the Plan Commission during its December 13, 2010.

### **RECOMMENDATION**

With the June 21, 2011 deadline approaching, the Village staff recommends approval of the requested time extension for the Option and Lease Agreement between New Cingular Wireless PCS, LLC (d/b/a AT&T) and the Village for the AT&T Prairie Springs Park site in order to allow the applicant time to satisfy the conditions of the December 20, 2010, the Village Board conditional-approval, subject to the comments and conditions of the attached December 22, 2010 approval letter. In order to avoid future confusion, it is recommended that this Option and Lease Agreement extension last until **December 18, 2011**, which is the same extension date that the Plan Commission approved for the Site and Operational Plans and Conditional Use Permit for this AT&T facility.



Mr. THOMAS G. SHIRCEL  
Assistant Village Administrator  
Village of Pleasant Prairie  
9915 39th Avenue  
Pleasant Prairie, Wisconsin 53158

June 13, 2011

**RE: AT&T (Prairie Springs Park) – Extension Request  
Option and Lease Agreement Approved 12.20.10**

Dear Mr. Shircel:

The purpose of this letter is to respectfully request the Village of Pleasant Prairie Board of Trustees extend the conditionally-approved Option and Lease Agreement (“Agreement”) with New Cingular Wireless PCS, LLC (d/b/a AT&T) for an additional 180 days. The related communication facility is proposed to consist of the installation of a new 150 foot tall multi-carrier monopole cell tower facility, with 9 new AT&T antennas atop the tower, and an associated 800 square foot multi-carrier equipment shelter. The cellular site is located within the Village-owned Prairie Springs Park, just east of the South Ball Fields on a portion of Tax Parcel Number 92-4-122-204-0200. The facility will have the address of 9951 Terwall Terrace.

**The Extension Agreement may be approved subject to the following conditions:**

1. Completion and execution of the Agreement by New Cingular Wireless PCS, LLC and the Village **within 180 days (by December 18, 2011)** of the June 20, 2011 Village Board Meeting. Failure to complete the Agreement by this date will result in the Village Board’s approval becoming null and void. *(The Village will not issue permits until the Agreement is executed by all applicable parties.)*
2. Compliance with current Plan Commission approval of the Conditional Use Permit and Site and Operational Plans and any conditions thereof for the AT&T Prairie Springs Park facility.
3. The inclusion of the correct Exhibits in the Agreement, as approved by the Plan Commission.

If there is anything further I need to supply please let me know. Thank you for your help with this project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lew Caliento'.

Lew Caliento, Project Manager, Representing Nsoro & AT&T



Office of the Assistant to the Administrator  
Thomas G. Shircel

December 22, 2010

Lew Caliento  
SAC Wireless, LLC  
635 E. Remington Road  
Schaumburg, IL 60173

**RE: AT&T (Prairie Springs Park) – Option and Lease Agreement Approval**

Dear Mr. Caliento:

The purpose of this letter is to inform you that on December 20, 2010, the Village of Pleasant Prairie Board of Trustees conditionally-approved the Option and Lease Agreement ("Agreement") with New Cingular Wireless PCS, LLC (d/b/a AT&T). The related communication facility is proposed to consist of the installation of a new 150 foot tall multi-carrier monopole cell tower facility, with 6 attached AT&T antennas atop the tower, and an associated 800 square foot multi-carrier equipment shelter. The cellular site is located within the Village-owned Prairie Springs Park, just east of the South Ball Fields on a portion of Tax Parcel Number 92-4-122-204-0200. The facility will have the address of 9951 Terwall Terrace.

**The Agreement was approved subject to the following conditions:**

1. Completion and execution of the Agreement by New Cingular Wireless PCS, LLC and the Village **within 180 days (by June 21, 2011)** of the December 20, 2010 Village Board conditional approval of the Agreement. Failure to complete the Agreement by this date will result in the Village Board's approval becoming null and void. (*The Village will not issue permits until the Agreement is executed by all applicable parties.*)
2. Compliance with the December 13, 2010 Plan Commission approval of the Conditional Use Permit and Site and Operational Plans and any conditions thereof for the AT&T Prairie Springs Park facility (*See previously mailed December 15, 2010 letter from Ms. Peggy Herrick, Assistant Planner/Assistant Zoning Administrator.*)
3. The inclusion of the correct Exhibits in the Agreement, as approved by the Plan Commission during its December 13, 2010.

If you have any questions, do not hesitate to contact me directly at the Village Municipal Building at (262) 925-6721.

Sincerely,

Thomas Shircel  
Assistant to the Administrator

cc: Jean M. Werbie, Community Development Director  
Mike Spence, P.E. Village Engineer  
Community Development Department  
Development File

App Letter - AT&T PS Park (Lease Agreement)



# General Location Map



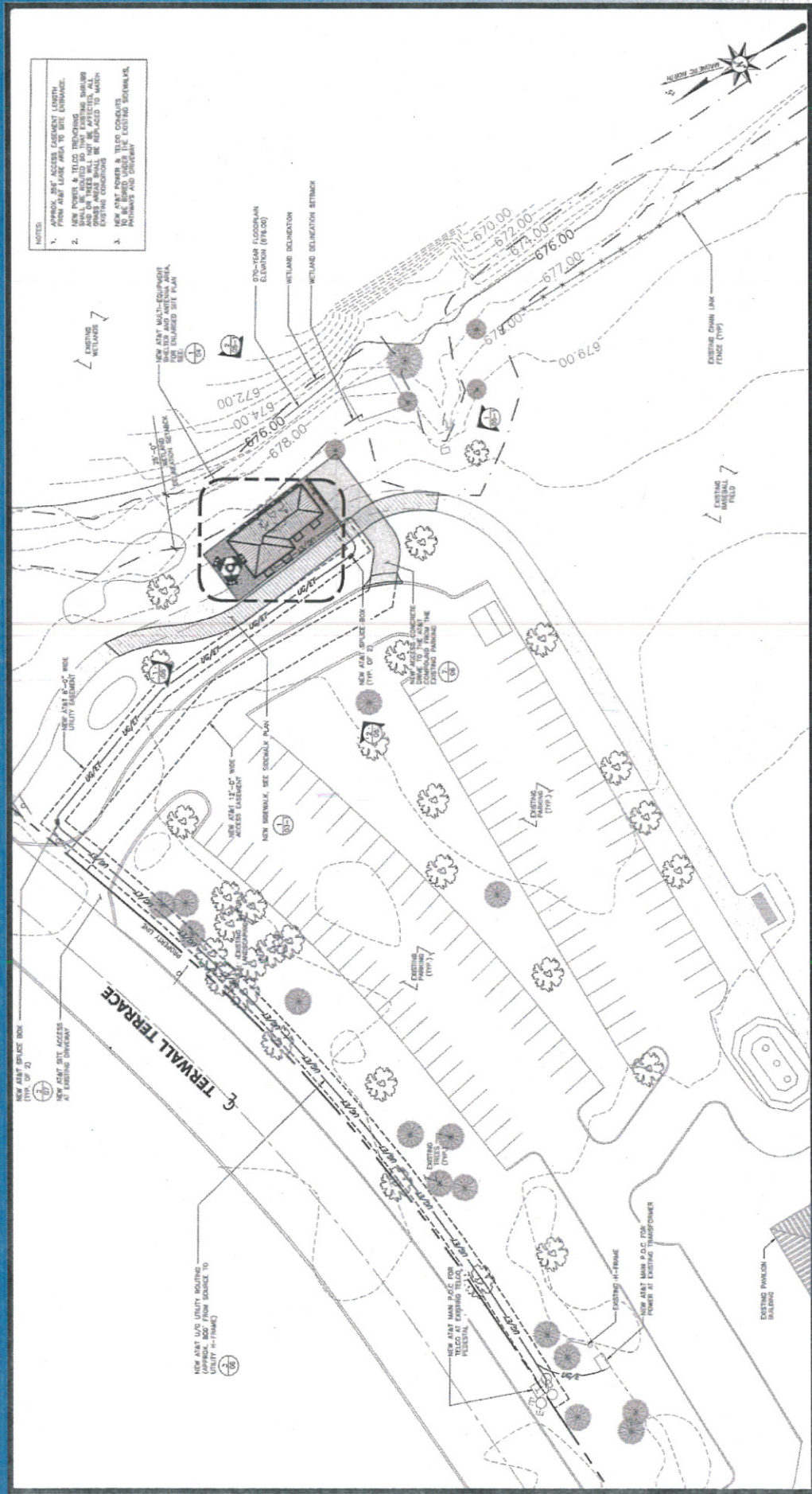
© 2009 Google  
© 2009 Europa Technologies

Village of Pleasant Prairie, Wisconsin





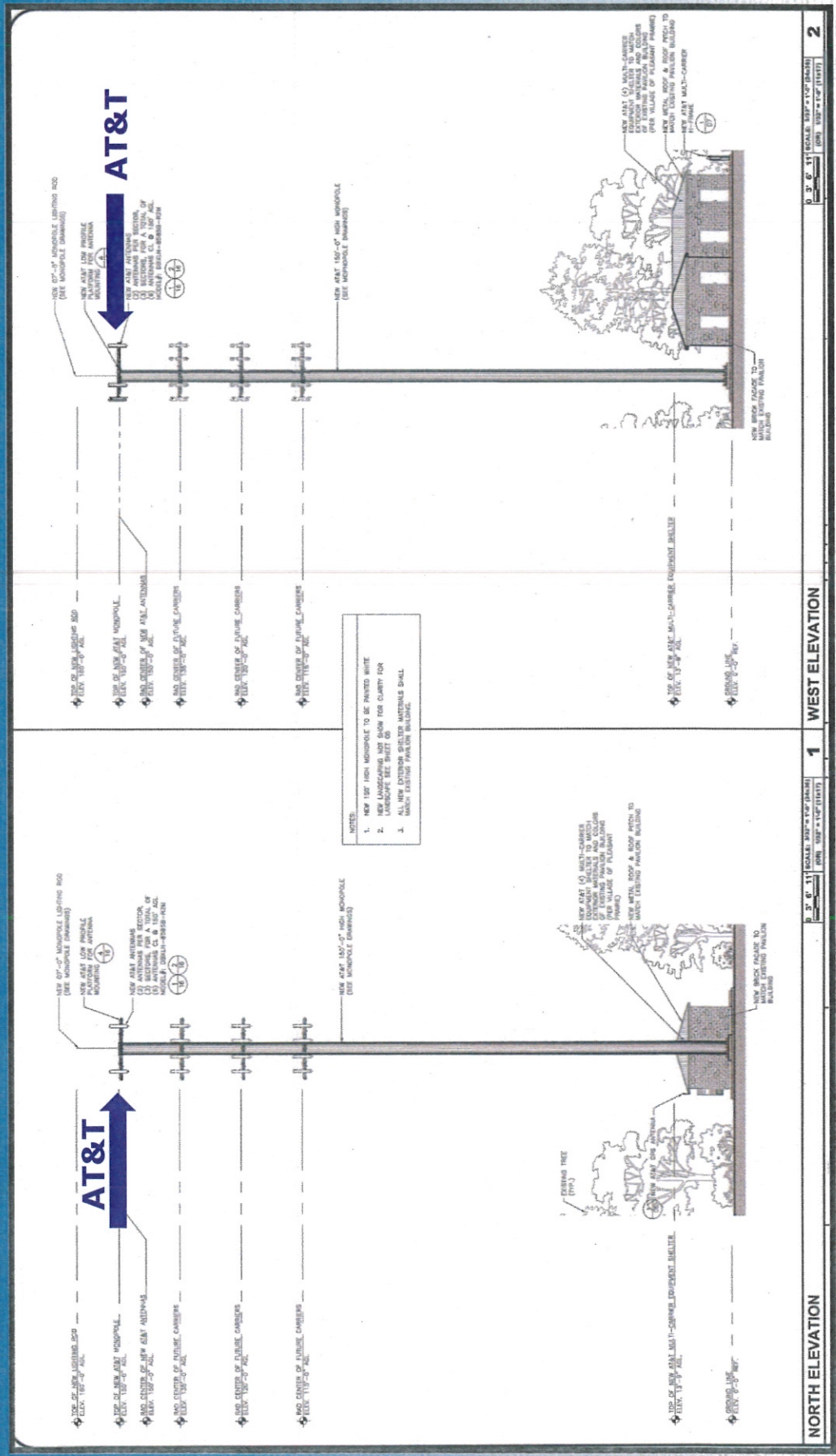
# Site Plan



- NOTES:
1. APPROX. 200' ACCESS EASEMENT LENGTHS SHOWN FOR ALL AREAS TO BE CHANGED.
  2. NEW POWER & TELE. CONDUITS SHALL BE LOCATED TO THE EXISTING SHOULDER AND SHALL BE INSTALLED TO THE EXISTING GRADE. GRADES SHALL BE ADJUSTED TO MATCH EXISTING CONDITIONS.
  3. NEW 4\"/>



# Six new AT&T antennas are proposed to be installed at 150 ft. with additional room on the antenna for three additional carriers





## **MEMORANDUM**

**TO:** Village Board

**FROM:** Michael R. Pollocoff, Village Administrator

**DATE:** June 20, 2011

**SUBJECT:** Consider a Facility Use Agreement between Brems Realty LLC; EMCO Chemical Distributors, Inc.; and the Village of Pleasant Prairie for the use of an industrial railroad spur.

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### **Introduction - Facility Use Agreement**

Through this Facility Use Agreement ("Agreement"), between Brems Realty LLC, property owner; EMCO Chemical Distributors, Inc. ("EMCO"); and the Village of Pleasant Prairie ("Village"), the Village grants EMCO the right to use an existing industrial railroad spur for the purpose of shipping and receiving materials via railcar to and from the EMCO chemical distribution facility, located at 8601 95<sup>th</sup> Street, provided EMCO complies with the terms and conditions of this Agreement. The railroad siding crosses 88<sup>th</sup> Avenue (CTH H) approximately 970 feet south of 95<sup>th</sup> Street.

### **Background Information**

On March 8, 1993, the Village and WisDOT entered into a Transportation Economic Assistance (TEA) Rail Agreement to serve the former Lawter site and on November 2, 1993, the Village and Lawter entered into a Facility Use Agreement which provided the guidelines for the construction and use of a rail spur on the Lawter parcel. The TEA program provides 50% State grants to governing bodies and private businesses for road, rail, harbor and airport projects that help attract employers to Wisconsin, or encourage business and industry to remain and expand in the State. The railroad spur was constructed in 1993-1994.

On December 14, 2009, the Plan Commission conditionally-approved Conditional Use Permit #09-08, including Site and Operational Plans, for EMCO to occupy the building and site, the former Lawter/Hexion site, for an industrial chemical distribution business.

On February 7, 2011, the Village Board approved a Private Railroad Siding Agreement, between the Soo Line Railroad Company (d/b/a Canadian Pacific - "CP"), the Village of Pleasant Prairie ("Village") and EMCO Chemical Distributors, Inc. ("EMCO"), which set forth the various parameters and provisions including, but not limited to, the use, maintenance, alterations, liability, insurance fees, termination and potential removal of the industrial railroad siding. As a part of that Private Railroad Siding Agreement, CP agreed to allow EMCO to use its own employees and equipment to move railroad cars over the private railroad siding.

## **Attachments to the Agreement**

Attachment I – Schedule “B” depicts the industrial RR spur constructed under the TEA-Rail Agreement, as well as other future spur additions, providing EMCO with access to the Canadian Pacific RR track (note that only Points C to E and Point F to G on Attachment I were constructed under the TEA Grant).

Attachment II – The Railroad Spur Easement Description describes the corridor of real estate owned by EMCO upon which the industrial RR spur was originally constructed under the TEA-Rail Agreement.

Attachment III – Through the “Easement for Railroad Access and Maintenance”, the Village allows EMCO a perpetual right for construction, operation and ingress/egress for the existing portion of the RR spur that crosses the existing track easement on the triangular-shaped Village-owned land along the west side of 88<sup>th</sup> Avenue.

Attachment IV – The Agreement for Private Siding.

## **RECOMMENDATION**

EMCO would like to begin using the private railroad siding soon. Therefore, it becomes imperative that this Agreement be approved and executed to allow the use of the siding. The Village staff recommends that the Village Board approve the Facility Use Agreement between Brems Realty LLC; EMCO Chemical Distributors, Inc.; and the Village of Pleasant Prairie as presented.

EMCO Facility Use Agreement VB 6-20-11

FACILITY USE AGREEMENT  
No. 3738-03-51

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Village of Pleasant Prairie, Kenosha County, Wisconsin (“Municipality”), a municipal corporation, and Brems Realty LLC and EMCO Chemical Distributors, Inc., (collectively the “Industry”).

WHEREAS, on March 8, 1993, the Municipality and WisDOT entered into a certain TEA-Rail Agreement;

WHEREAS, on November 2, 1993, Municipality and Lawter International, Inc. (“Lawter”) entered into a certain Facility Use Agreement which provided the guidelines for the construction and use of a certain rail spur on Industry Land;

WHEREAS, as of approximately February 11, 2010, Industry is the owner of or in occupation of land situated at 8601 95<sup>th</sup> Street, Pleasant Prairie, Wisconsin; and

WHEREAS, Municipality owns certain trackage from Points C to E and Point F to G on Attachment I and Industry owns certain trackage from Points H to I, Points J to K, Points L to M and Points N to O on Attachment I that connects to the Operator’s railway line near Milepost 50 of the C&M Subdivision;

NOW THEREFORE, the parties agree as follows:

**ARTICLE 1.0 – DEFINITIONS**

- a. “Operator” means Soo Line Railroad Company, d/b/a Canadian Pacific.
- b. “Municipality” means the Village of Pleasant Prairie, Kenosha County, Wisconsin.
- c. “WisDOT” means the Wisconsin Department of Transportation.
- d. “Industry” means EMCO Chemical Distributors, Inc. and Brems Realty, LLC.
- e. “Industry Land” means the corridor of real estate owned by Industry upon which the Project Facility is located at the Industry plant site in Pleasant Prairie, Wisconsin and more fully described in Attachment II.
- f. “Improved Property” means the rails, ties, ballast, track material, switches, and culverts acquired, used or installed with the proceeds received in part by the Municipality from the TEA-Rail Agreement (only Points C to E and Point F to G on Attachment I).
- g. “Person” means an individual, a partnership, an association, and bodies politic or corporate.
- h. “Project Facility” means the industrial railroad spur constructed under the TEA-Rail Agreement using Improved Property and providing Industry’s plant with access to the Operator’s track (only Points C to E and Point F to G on Attachment I).

- i. "BORAH" means the Bureau of Railroads and harbors of WisDOT or its successor as the regulatory agency with authority over the TEA-Rail Agreement.
- j. "Agreement for Private Siding" means the agreement by and between the Operator, Industry, and the Municipality, governing the provision of rail service over and the maintenance of the Project Facility (as well as the rest of the Private Siding) .
- k. "TEA-Rail Agreement" means the agreement dated March 8, 1993, by and between the Municipality and WisDOT, Identification No. 3738-030-50, setting forth the terms of the Municipality's receipt of a Transportation Economic Assistance-Rail grant to construct the Project Facility in 1993 - 1994.
- l. "Private Siding" shall mean the track or tracks described as the "Private Siding" in the Agreement for Private Siding.

## **ARTICLE 2.0 – PROJECT DESCRIPTION**

The Project Facility was constructed by the Municipality on Industry Land in 1993 -1994 and consists of a single track railroad spur of 1,060 feet from the point of the switch on the Operator's track to the end of the track at Industry's plant site. The Project Facility does not include all other trackage now in existence on Industry Land (See Attachment I, Points H to I, Points J to K, Points L to M and Points N to O).

## **ARTICLE 3.0 – USE AND TERM**

The Municipality grants to Industry the right to use the Project Facility for the purpose of shipping and receiving materials from and at Industry's plant, provided Industry complies with the terms and conditions set forth in this Agreement. Industry's right to use the Project Facility shall continue until terminated pursuant to this Agreement.

## **ARTICLE 4.0 – PROJECT FACILITY LIQUIDATION**

INTENTIONALLY DELETED.

## **ARTICLE 5.0 – PROJECT FACILITY OPERATION**

### Section 5.1. Written Agreements

(a) Industry shall maintain an existing track easement to the Municipality on Industry Land (as described in Attachment II) granting the Municipality a perpetual right for construction, operation and ownership of the Project Facility on said Land.

(b) Industry shall maintain an existing track easement from the Municipality on Municipality Land (as described in Attachment III) granting Industry a perpetual right for construction, operation and ingress/egress of the Project Facility on said land.

(c) Industry shall provide an Agreement for Private Siding by and between Industry, Operator and the Municipality. Said Agreement for Private Siding shall be attached hereto as Attachment IV and made part of this Agreement.

Section 5.2. Maintenance of Project Facility

Industry shall, at its expense, perform or arrange for performance of all maintenance and repairs of the Project Facility, the road bed of the Project Facility, drainage ways and any structures necessary for the safe operation of railroad service as determined by Operator or the Federal Railroad Administration, or both.

Section 5.3. Project Facility Use

A condition of default for failure to use may be declared by Municipality or WisDOT under Section 7.1 below upon occurrence of any one or more of the following events:

- (i) Industry renders its loading docks or a track side facility unfit for use for rail service or ceases its operation of its plant.
- (ii) Industry files a protection under bankruptcy laws.
- (iii) Operator abandons the line haul track and/or industrial lead track to which the Project Facility is connected.
- (iv) Operator ceases operation of line haul track and/or industrial lead track serving the Project Facility.
- (v) The Project Facility is rendered unfit for railroad freight service by Municipality, Industry, or Operator.

**ARTICLE 6.0 – PROJECT PROPERTY SECURITY, LIENS AND SALE**

Section 6.1. Security for Borrowing

Industry shall not give its permission or authorization for Operator to use the value of the Improved Property acquired or used for this project as security or collateral for any loan or other borrowing.

Section 6.2. Special Assessments.

Any amounts which Industry is required to pay to the Municipality under Section 6.3 of this Agreement may be levied by the Municipality as a police power special assessment against the Industry Land. The Industry, on behalf of itself and all present and future owners of the Industry Land, hereby waives, pursuant to Subsection 66.0703(7) (b) of the Wisconsin Statutes, any and all requirements of the Wisconsin Statutes that must be satisfied prior to the imposition of special

assessments (including, but not limited to, the notice and hearing requirements of Section 66.0703(7) (a) and the notice requirements of Subsection 66.0715(3)). The Industry agrees that the Municipality may proceed, immediately following the execution of this agreement on behalf of Industry, to levy special assessments for the sum of \$147,500.00. The Industry, on behalf of itself and all present and future owners of the Industry Land, waives its right to object to or appeal from such special assessments, and agrees that the amount of the special assessments (i.e., amounts owed by the Industry to the Municipality under this Agreement) has been determined on a reasonable basis and that the benefits to the Industry Land from the Project Facility exceeds the amount of the special assessments levied against the Industry Land. In no event will such special assessment exceed the sum of \$147,500.00. The Municipality agrees that payment of the special assessment shall be deferred, without interest, until such time as the Industry owes any amounts to the Municipality under this Agreement. Notwithstanding the foregoing provisions of this Section 6.2, in no event will the amount of special assessments to be collected by the Municipality under this Section 6.2 exceed amounts which the Industry owes to the Municipality under the terms of Section 6.3 of this Agreement.

Section 6.3. Sale of Improved Property or Industry Land

In the event Industry sells or liquidates the Improved Property or Industry Land, or both, without the written approval of BORAH, Industry shall pay to the Municipality an amount equal to \$147,500. In the event Industry sells or liquidates the Improved Property or Industry Land, or both, with the written approval of BORAH, Industry shall not owe any money to Municipality but the purchaser of the Improved Property or Industry Land shall continue to be bound by all provisions of this Agreement.

**ARTICLE 7.0 – DEFAULT AND TERMINATION**

Section 7.1. Declaration of Default

A condition of default exists under this Agreement when either party to this Agreement fails to abide by or perform according to any one or more of its terms and conditions. A declaration of default of this Agreement shall be made in writing and delivered to the alleged defaulting party as provided in Section 10.2. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice or the date insurance coverage fails to meet requirements or the date of filing for bankruptcy by Industry, whichever first occurs.

Section 7.2. Termination of Default

In the event of a failure on the part of either party to perform its obligations under the terms of this Agreement, including, but not limited to, transmittal of required payments under this Agreement, the other party shall have the right to give immediate notice of default and, at its option, after first giving ten (10) days written notice as provided in Section 10.2 to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this



Agreement, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages.

Section 7.3. Removal of a Condition of Default

The Municipality or Industry shall have ten (10) calendar days from written notification of the default to remove or remedy the cause of the default. This remedy period may be waived by the party declared in default. Correction by the defaulting party shall be completed and ready for verification by the other party within the ten (10) day period. Upon written petition by the defaulting party, the other party may extend the period for removal of a default condition. The defaulting party shall be notified of satisfactory correction in writing. Notwithstanding the forgoing provisions of this paragraph, in the event that such default cannot reasonably be cured within such ten (10) day cure period and the defaulting party is diligently attempting to cure such default within such ten (10) day period, the ten (10) day cure period shall be extended to such period of time as is reasonably necessary to cure the default, provided the defaulting party continues to diligently attempt to cure the default.

Section 7.4. Expenses of Termination

The parties shall themselves mitigate the expenses of termination to the greatest extent possible, and the Municipality shall pay those that do occur if default is caused by Municipality, and Industry shall pay those that do occur if default is caused by Industry. Said expenses of termination may include, without limitation, any amount which the Municipality or the Industry is required to pay to WisDOT under the terms of the TEA Rail Agreement or this Agreement; provided, however, in no event shall the total amount paid by Industry exceed the sum of \$147,500.00.

Section 7.5. Cessation of Service

Upon the reasonable determination by the Municipality that remedial action has not removed the default condition caused by Industry within the applicable cure period, the Municipality shall provide written notice to Industry and Operator for Industry and Operator to stop using the Project Facility within fourteen (14) days of delivery of such notice.

Section 7.6. Force Majeure

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitations: Acts of God; strikes or other labor troubles or other causes except the unavailability of insurance coverage in full accordance with Section 9.2 of this Agreement or any amendment hereto, beyond the reasonable control of the parties; interruption of service caused by accidents, explosions, fires, vandalism, or malicious mischief. To the extent reasonably permitted by WisDOT, the parties will be excused from the performance of their obligations hereunder if the parties' failure to use the Project Facility is due to the economic or business conditions of Industry or the failure of Operator to provide freight cars or switching service.

## **ARTICLE 8.0 – REPRESENTATIONS AND WARRANTIES**

The parties hereto represent and warrant that they have the power and authority to enter into this Agreement and to carry out their obligations under this Agreement.

## **ARTICLE 9.0 – LIABILITY AND INSURANCE**

### Section 9.1. Hold Harmless

Industry shall save and hold the Municipality, the county of Kenosha and WisDOT, their officers, employees and agents harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arises out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Industry or Operator, or Industry's or Operator's agents, servants, subcontractors or employees, or which arises out of or is connected with, or is claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened on the Industry Land or on Points A to H of the Private Siding, as well as within thirty (30) feet on either side of the Private Siding, (1) while Operator or Industry is performing its work, or (2) during the period this Agreement between Industry and Municipality is in effect, or (3) while any of the Operator's or Industry's property, equipment, or personnel, is in or about such place or the vicinity thereof by reason of or as result of the performance of Operator's or Industry's operations including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to the Municipality, the county of Kenosha or WisDOT, their, officers, employees, agents, subcontractors, or frequenters, or to any other person or legal entity whether based upon, or claimed to be based upon contract, tort, or having its basis in workers' compensation under federal or state statutes or having any other code, or statutory basis, or based upon administrative laws or other provisions, or other liability of the Municipality, the county of Kenosha or WisDOT, Industry or any other persons or entities, and whether or not caused by the negligence, or other breach of duty by the Municipality, the county of Kenosha or WisDOT, their officers, employees, agents, subcontractors, or frequenters or Industry, its officers, employees, agents, subcontractors or frequenters, or any other person or legal entity. Without limiting the applicability of the foregoing, the liability, damage, loss claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever.

### Section 9.2. Insurance

(a) Required Coverage – During the term of this Agreement, Industry shall maintain, at its own cost and expense, a Comprehensive General Liability Policy in an amount o not less than \$1,000,000.00 single limit coverage, and for matters of liability arising from the existence and use of the Project Facility, shall name the Municipality and WisDOT, their officers, employees, and agents as additional insured's on all Primary and Excess Comprehensive General Liability insurance documents. Industry shall in addition maintain and keep in force worker's compensation and employer's liability

insurance, to the extent, if any, that worker's compensation and employer's liability is not covered under the Comprehensive General Liability Policy.

(b) Validation of Coverage and Notice of Cancellation – Upon initial inclusion of the Municipality and WisDOT as additional insured's and on each renewal of insurance coverage required by Section 9.2(a), the insurance carrier shall provide to the Municipality and WisDOT written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage. In the event of insurance coverage suspension or insurance cancellation by any insurance carrier, Industry shall provide the Municipality and WisDOT with notification of such suspension or cancellation of insurance coverage required by Section 9.2(a) no less than 10 days prior to such suspension or cancellation.

(c) Reporting of Incidents and Claims – During the term of this Agreement, any damage or injury to person or property occurring on the Project Facility or from the operation of the equipment of Operator or Industry or by the employees of Operator or Industry herein (referred to as an "incident") on the Private Siding shall be reported to the Municipality and WisDOT at such time as said incident is reported to Industry or Industry's insurance carrier. Industry shall forthwith furnish the Municipality and WisDOT with copies of any notice of injury or claim of damage made to Industry. Thereafter, Industry shall provide the Municipality and WisDOT access to copies of any further instruments, reports and records involving such matter and shall report, at least quarterly, to the Municipality and WisDOT as to further happenings regarding the incident including the final disposition of the matter. Notice of court dates shall be given to the Municipality and WisDOT upon receipt. —

## **ARTICLE 10.0 – GENERAL CONDITIONS**

### Section 10.1. Choice of Law

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of the County of Kenosha.

### Section 10.2. Notice

a. Any notice required or permitted under this Agreement shall be personally served, mailed by certified United States mail, return receipt requested, postage prepaid, or sent by established overnight carrier such as UPS or Federal Express, fees prepaid, for overnight delivery, to the following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

**Village of Pleasant Prairie**  
Attention: Village Administrator  
9915 39<sup>th</sup> Avenue  
Pleasant Prairie, WI 53158

**EMCO Chemical Distributors, Inc.**  
Attention: Edward Polen, President  
2100 Commonwealth Avenue  
North Chicago, IL 60064

**BREMS Realty LLC**  
Attention: Edward Polen, Manager  
2100 Commonwealth Avenue  
North Chicago, IL 60064

Any notice personally served shall be deemed delivered on the date of personal service, any notice sent by an established overnight carrier for overnight delivery shall be deemed delivered on the day after the notice is delivered to the overnight carrier and any notice sent by certified United States Mail shall be deemed delivered three (3) days following the date the notice is deposited in the United States Mails.

b. Any notice provided under Section 10.2(a) shall be provided to the following by first class mail.

**WI - Department of Transportation  
Investment Management  
WisDOT Railroads & Harbors Section**  
Mr. Peter A. Bradley, Real Estate Specialist  
4802 Sheboygan Ave., Room 701  
PO Box 7914  
Madison, WI 53707-7914

**Canadian Pacific Railway**  
Attention: Area Manager - Business Manager  
501 Marquette Avenue South  
Suite 1510  
Minneapolis, MN 55402  
Fax #: (612) 904-5952

Section 10.3. Transfer of Rights Under This Agreement

This Agreement shall be binding upon and inure solely to the benefit of the parties hereto. Industry's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without the Municipality's prior written consent, which consent shall not be unreasonably withheld or delayed.

Section 10.4. Severability

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid

or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.5. Amendment, Consents and Approvals

(a) No term or provision of this Agreement, or any of its attachments, may be changed, waived, discharged or terminated, except by an instrument in writing signed by both parties to this Agreement.

(b) Consents and approvals required under this Agreement and interpretation of this Agreement may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 10.6. Officials

(a) Officials authorized to execute amendments or modifications to this Agreement on behalf of the Municipality are the Village President and Administrator.

(b) The official authorized to execute amendments or modifications to this Agreement on behalf of Industry is the General Manager.

Section 10.7. Handicapped

No otherwise qualified handicapped individual in the United States, as defined in Section 706(7) of Title 29 USC, and subchapter II of Chapter 111, Wis. Stats., shall solely by reason of the individual's handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 10.8. Environmental Protection

(a) Facilities or equipment shall not be acquired, constructed, or improved as a part of the Project Facility unless such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and federal standards, statutes, and regulation.

(b) Operations shall be conducted in compliance with all the requirements of Section 114 of the Clean Air Act, 42 USC sec. 7414, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under said Acts.

(c) Industry certifies that no facilities which will be utilized or improved as part of the Project Facility are listed on the Environmental Protection Agency ("EPA") list of Violating Facilities ("List").

(d) Industry shall notify the Municipality as soon as it receives any communication from the EPA indicating that any facility which will be utilized or improved as part of the Project Facility is under consideration to be listed on the EPA list.

#### Section 10.9. Prohibited Interests

##### (a) Conflicts of Interest:

(1) Neither Municipality nor Industry nor any of their subcontractors shall enter into any contract, subcontract, or agreement in connection with the project or any property included or planned to be included in the Project Facility in which any director, officer or employee of Municipality during his or her tenure or for one (1) year thereafter has any interest, direct or indirect, except as permitted under Sec. 946.13(2), Wis. Stats. (1991-1992).

(2) No director, officer, or employee of the Village of Pleasant Prairie, during his or her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof except as permitted under Sec. 946.13(2), Wis. Stats. (1991-1992).

(3) No subcontractor of Municipality or Industry may enter into any contract, subcontract or other arrangements which may affect the activities for which assistance is available to the Municipality under the TEA-Rail Agreement if any director, officer, any key salaried employee or official, or any member of the immediate family of one of the foregoing has any material interest in said Agreement.

(4) The provisions of this subsection shall not be applicable to any agreement between Municipality or Industry and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

#### Section 10.10. Non-Discrimination

(a) In connection with the performance of work under this Agreement, Industry 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 Sec. 51.01(5), Wis. Stats., sexual orientation 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.

(b) Municipality shall comply with the following laws, policies, regulations and pertinent directions as may be applicable and will require their subcontractors through contractual agreement to similarly comply:

- i. Title VI of the Civil Rights Act of 1964, 78 stats. 252, 42 U.S.C. 2000d et seq.
- ii. Subchapter II of Chapter 111, Wis. Stats.
- iii. Section 16.765, Wis. Stats.

(c) Municipality, in the procurement process, shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts, subcontract, or materials procurement connected with the work performed under this Agreement or the TEA-Rail Agreement.

Section 10.11. Assurance

Municipality shall require its construction contractor to acquire a performance and payment bond or an irrevocable letter of credit in the full amount of the grant to the Municipality under the TEA-Rail Agreement in favor of Municipality for the duration of the construction work set forth under said Agreement.

Section 10.12. Specific Performance

The Municipality and Industry shall have the right, as provided by law, to require specific performance by the other party of that party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days of the party notifying the other party of its obligation to perform.

Section 10.13. Entire Agreement

This Agreement and the attachments hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

Section 10.14 Obligations to Run with Land; Successors and Assigns.

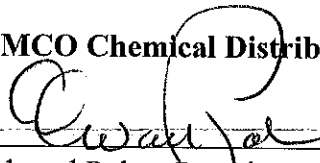
This Agreement shall bind the parties hereto and their respective successors and assigns. The obligations of the Industry under this Agreement are obligations which are deemed to run with the land and shall apply to all future owners of the Industry Land. Nothing contained herein shall be construed to allow any assignment of rights by the Industry, except in accordance with the terms of Section 6.3 and 10.3 above.

Section 10.15. Recording

The parties agree that this Facility Use Agreement may be recorded with the Kenosha County Register of Deed's office against the Industry Land. All parties agree that upon termination of this Facility Use Agreement, and the completion of all obligations of the parties under this Agreement, each party will, upon request of the other, sign any documents reasonably necessary and appropriate to effect the termination of this Agreement, in recordable form.

**SIGNATURES**


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date and year designated in this Agreement.

**EMCO Chemical Distributors, Inc.**  
  
\_\_\_\_\_  
Edward Polen, President

STATE OF ILLINOIS            )  
                                          ) ss:  
LAKE COUNTY                 )

This Agreement was acknowledged before me this 3<sup>rd</sup> day of June, 2011 by Edward Polen as President of EMCO Chemical Distributors, Inc.



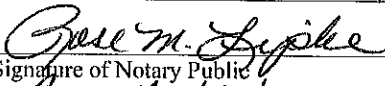
  
\_\_\_\_\_  
Signature of Notary Public  
Rose M. Lipke  
\_\_\_\_\_  
Typed or Printed Name of Notary Public  
Notary Public, State of Illinois

**Brems Realty LLC**  
  
\_\_\_\_\_  
Edward Polen, Manager

STATE OF ILLINOIS            )  
                                          ) ss:  
LAKE COUNTY                 )

This Agreement was acknowledged before me this 3<sup>rd</sup> day of June, 2011 by Edward Polen as Manager of Brems Realty, LLC.



  
\_\_\_\_\_  
Signature of Notary Public  
Rose M. Lipke  
\_\_\_\_\_  
Typed or Printed Name of Notary Public  
Notary Public, State of Illinois



**Village of Pleasant Prairie**

\_\_\_\_\_  
John P. Steinbrink, Village President

\_\_\_\_\_  
Jane M. Romanowski, Village Clerk

STATE OF WISCONSIN    )  
                                  ) ss:  
KENOSHA COUNTY        )

This Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011 by John P. Steinbrink and Jane M. Romanowski as President and Clerk of the Village of Pleasant Prairie.

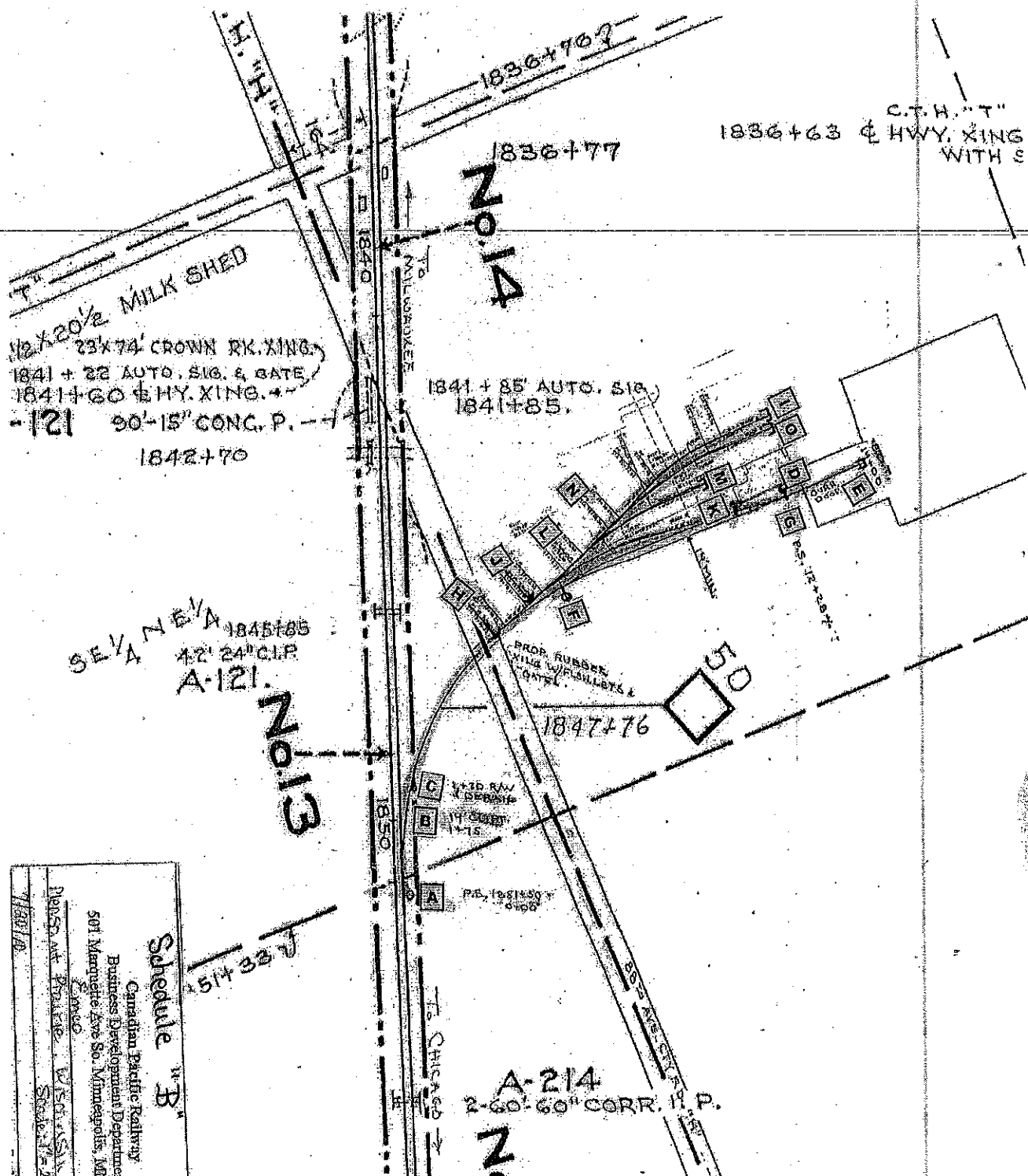
\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Typed or Printed Name of Notary Public  
Notary Public, State of Wisconsin

This instrument was drafted by:  
~~Attorney Timothy J. Geraghty~~  
Godin Geraghty Puntillo Camilli, SC  
6301 Green Bay Road  
Kenosha, WI 53142  
Tel: (262) 657-3500

---

# ATTACHMENT I



Schedule "B"  
 Canadian Pacific Railway  
 Business Development Department  
 501 Marquette Ave. So. Minneapolis, MN  
 7/18/70  
 N. S. & P. 1851  
 W. S. & P. 1852  
 S. S. & P. 1853  
 E. S. & P. 1854  
 W. S. & P. 1855  
 S. S. & P. 1856  
 E. S. & P. 1857  
 W. S. & P. 1858  
 S. S. & P. 1859  
 E. S. & P. 1860  
 W. S. & P. 1861  
 S. S. & P. 1862  
 E. S. & P. 1863  
 W. S. & P. 1864  
 S. S. & P. 1865  
 E. S. & P. 1866  
 W. S. & P. 1867  
 S. S. & P. 1868  
 E. S. & P. 1869  
 W. S. & P. 1870  
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 E. S. & P. 1893  
 W. S. & P. 1894  
 S. S. & P. 1895  
 E. S. & P. 1896  
 W. S. & P. 1897  
 S. S. & P. 1898  
 E. S. & P. 1899  
 W. S. & P. 1900

# ATTACHMENT II

RAILROAD SPUR  
EASEMENT DESCRIPTION

Lawter International, Inc.  
8601 - 95th Street  
Pleasant Prairie, Wisconsin 53158

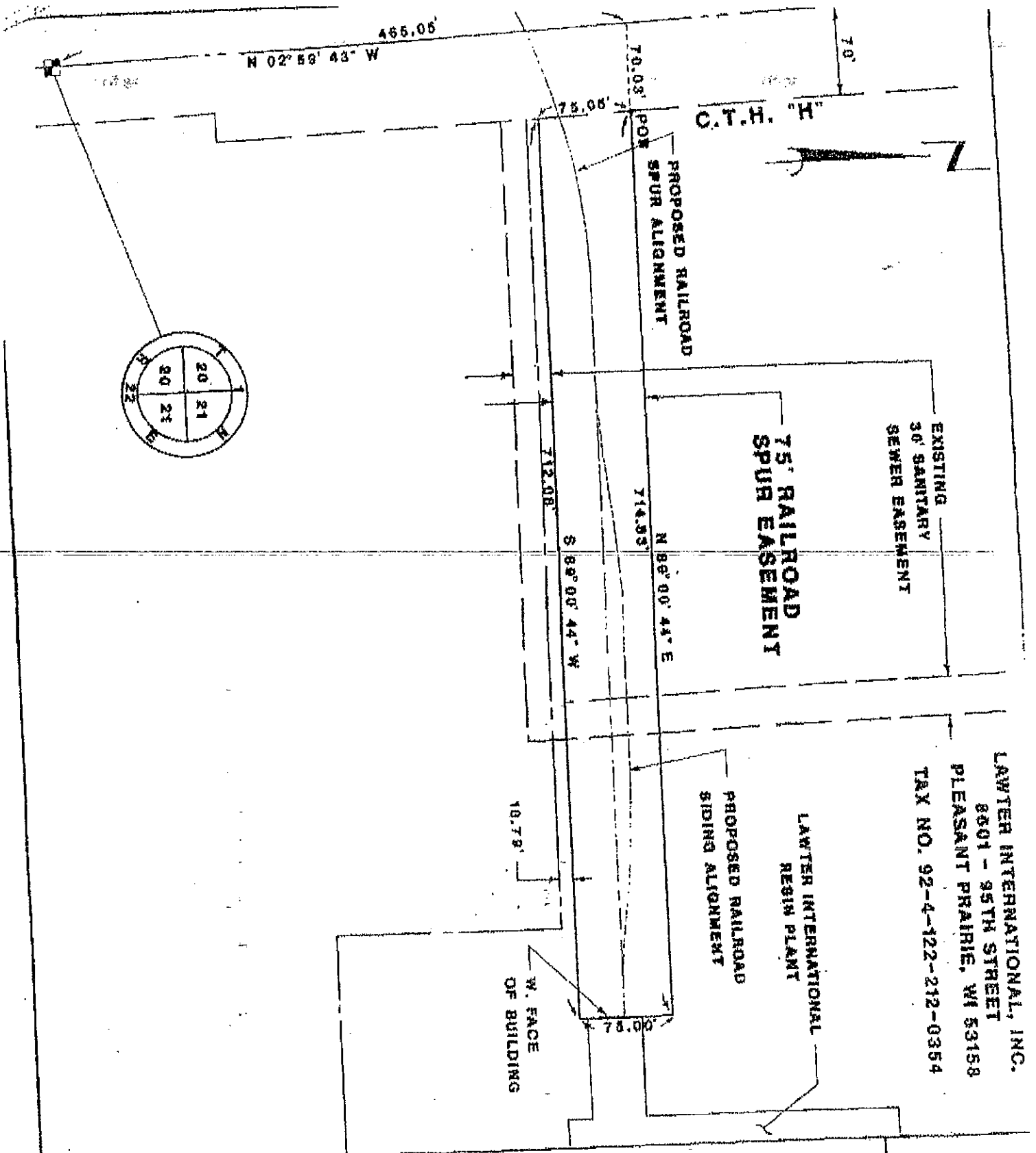
Tax No. 92-4-122-212-0354

All that part of the Northwest One-Quarter (1/4) of Section 21, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin bounded and described as follows:

Commencing at the concrete monument at the Southwest corner of said Northwest One-quarter (1/4); thence North 02° 59' 43" West, on and along the West line of said Northwest One-quarter (1/4), 465.05 feet to a point; thence North 89° 00' 44" East, 70.03 feet to a point on the East right-of-way line of C.T.H. "H", and the point of beginning; thence continuing North 89° 00' 44" East, 714.83 feet to a point on the West face of the existing Lawter International Building extended; thence South 00° 53' 36" East, on and along the West face of said building, 75.00 feet to a point; thence South 89° 00' 44" West, 712.08 feet to a point on said East right-of-way line; thence North 02° 59' 43" West, on and along said East right-of-way line, 75.05 feet to the point of beginning.  
(See attached Exhibit "A")

CRISPELL-SNYDER, INC.  
Engineers and Architects

February 1994



**EXHIBIT "A"**



**CRISPELL-SNYDER, INC.**  
ENGINEERS & ARCHITECTS

Chicago, Illinois 60604 (312) 723-0200  
Milwaukee, Wisconsin 53201 (414) 857-0230

LOCATION: VILLAGE OF PLEASANT PRAIRIE	
KENOSHA COUNTY, WISCONSIN	
SCALE: 1" = 100'	DATE: FEB. '94
DRAWN BY: RDD	

# ATTACHMENT III

**EASEMENT  
RAILROAD ACCESS AND MAINTENANCE**

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, in hand paid, the receipt of which is hereby acknowledged, the **Village of Pleasant Prairie**, herein referred to as "Grantor", does bargain, sell, convey, transfer, and deliver to **Brems Realty, LLC**, owners of 8501-95<sup>th</sup> Street further identified as tax parcel 92-4-122-212-0354, herein referred to as "Grantee", its successors and assigns forever, a perpetual Railroad Access and Maintenance Easement on those portions of the property described on Exhibit A, attached hereto and incorporated herein referred to as "easement area".

RETURN TO:  
Michael R. Pollocoff  
Village of Pleasant Prairie  
9915-39<sup>th</sup> Avenue  
Pleasant Prairie, WI 53158

92-4-122-201-0125  
(Parcel Identification Number)

1. **Purpose:** The purpose of this easement area is to access, maintain, and operate the railway spur including the right of ingress / egress of rail cars through and across the easement area.
2. **Access:** Grantee or its agents shall have the right to enter the grantor's land for the purpose of exercising its rights in the easement area including the full right of ingress and egress over and across the easement area.
3. **Buildings or Other Structures:** The grantee agrees that no buildings or other structures will be erected in the easement area, without prior approval from the Grantor, and that any utility structure installed will not interfere with the Grantor's continuous use of the property.
5. **Easement Area Maintenance:** Grantee agrees to restore or cause to have restored the grantor's land, as nearly as is reasonably possible, to the condition existing prior to such entry, or to a better condition, by the grantee or its agents due to any easement right maintenance or operation activities. Grantee agrees not use the easement area for storage of rail cars or other goods or equipment in which the easement purpose was not intended.
7. **Binding on Approved Successor or Assigns:** The easement area provided herein is a perpetual easement which shall be binding upon and inure to the benefit of the Grantee and their successors and assigns. The easement area provided herein shall run with the land and shall be binding upon the Owners and their personal representatives, heirs, successors, transferees, assigns, and all future owners of the Property.
8. **Indemnification and Hold Harmless:** The grantee shall indemnify the grantor and hold the grantor harmless from any and all liability, bodily injury, property damage, loss or claims which the grantee or their successors and assigns may suffer, or for which any third party makes claim, arising out of the use of the aforementioned easement.



**Grantor:**

**VILLAGE OF PLEASANT PRAIRIE**

By: \_\_\_\_\_

John P. Steinbrink

Title: Village President

By \_\_\_\_\_

Jane Romanowski

Title: Village Clerk

This Agreement was acknowledged before me in Kenosha County, Wisconsin on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the above named Grantor(s) John P. Steinbrink and Jane Romanowski, pursuant to approval of the Village Board on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Signature Notary Public, State of Wisconsin

\_\_\_\_\_  
Notary Public Name (Typed or Printed)

(NOTARY STAMP/SEAL)

My commission expires \_\_\_\_\_

This instrument was drafted by:

Michael R. Spence  
Village of Pleasant Prairie  
9915-39<sup>th</sup> Avenue  
Pleasant Prairie, WI 53158

**EXHIBIT A**

**RAILROAD ACCESS AND MAINTENANCE EASEMENT  
LOCATED IN THE VILLAGE OF PLEASANT PRAIRIE  
KENOSHA COUNTY, WISCONSIN**

**FROM:  
VILLAGE OF PLEASANT PRAIRIE  
Tax Parcel Number: 92-4-122-201-0125**

**TO:  
BREMS REALTY, LLC**

~~Description of a 60' Wide Railroad Access and Maintenance Easement:~~ That part of the Northeast  $\frac{1}{4}$  of Section 20, Township 1, North, Range 22 East in the Village of Pleasant Prairie, Kenosha County, Wisconsin described as follows: Commence at a point on the East-West  $\frac{1}{4}$  line of said Section 20 located  $S89^{\circ}32'53''W$  290.39 feet from the East  $\frac{1}{4}$  corner of said Section, said point also being on the C.P. Rail System's East right-of-way line; thence  $N18^{\circ}09'30''E$  96.35 feet along said East line to the point of beginning of this Easement; continue thence  $N18^{\circ}09'30''E$  222.76 feet along said East line to a point on a curve of Northerly convexity whose radius is 508.70 feet and whose chord bears  $N52^{\circ}10'06''E$  127.86 feet; thence northeasterly 128.20 feet along the arc of said curve to the West right-of-way line of C.T.H. "H" (88<sup>th</sup> Avenue); thence  $S02^{\circ}59'43''E$  69.00 feet along said West line to a point on a curve of Northerly convexity whose radius is 448.70 feet and whose chord bears  $S41^{\circ}33'24''W$  213.20 feet; thence Southwesterly 215.25 feet along the arc of said curve; thence  $S27^{\circ}48'48''W$  69.73 feet to the point of beginning of this Easement.

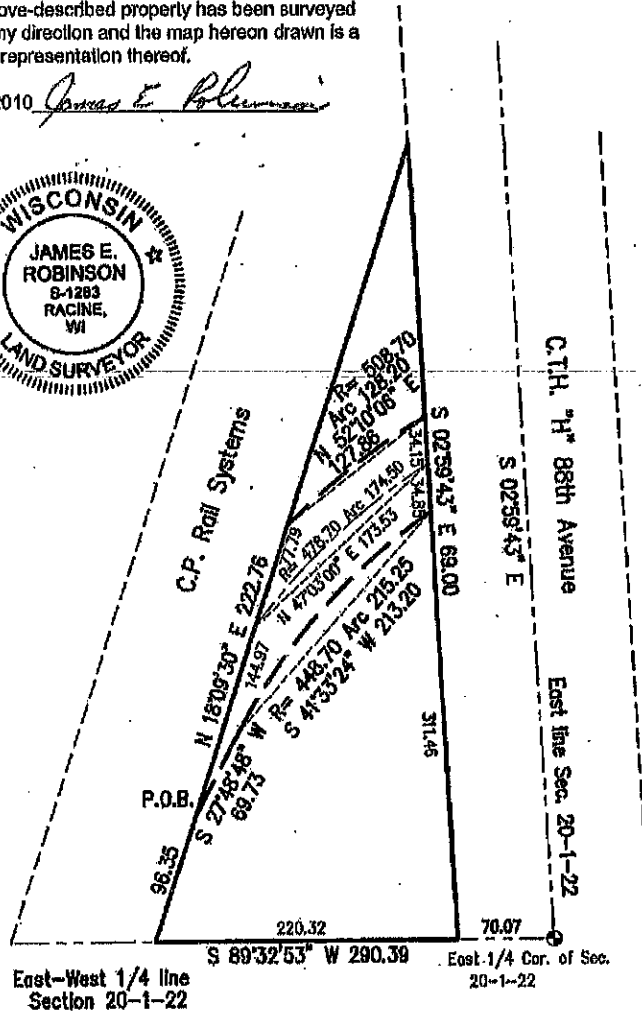
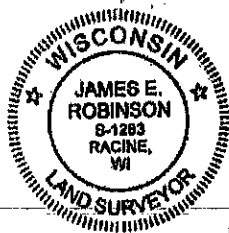
EXHIBIT A

**Description of a 80' Wide Railroad Access and Maintenance Easement:** That part of the Northeast 1/4 of Section 20, Township 1, North, Range 22 East in the Village of Pleasant Prairie, Kenosha County, Wisconsin described as follows: Commence at a point on the East-West 1/4 line of said Section 20 located S89°32'53"W 290.39 feet from the East 1/4 corner of said Section, said point also being on the C.P. Rail System's East right-of-way line; thence N18°09'30"E 96.35 feet along said East line to the point of beginning of this Easement; continue thence N18°09'30"E 222.76 feet along said East line to a point on a curve of northerly convexity whose radius is 508.70 feet and whose chord bears N52°10'48"E 127.86 feet; thence Northeasterly 128.29 feet along the arc of said curve to the West right-of-way line of C.T.H. "H" (88th Avenue); thence S02°59'43"E 69.00 feet along said West line to a point on a curve of Northerly convexity whose radius is 448.70 feet and whose chord bears S41°33'24"W 213.20 feet; thence Southwesterly 215.25 feet along the arc of said curve; thence S27°48'48"W 69.73 feet to the point of beginning of this Easement.

**Certificate**

The above-described property has been surveyed under my direction and the map hereon drawn is a correct representation thereof.

08/23/2010 *James E. Robinson*



**NOTES**

BEARING BASE: GRID NORTH, WISCONSIN COORDINATE SYSTEM, SOUTH ZONE.

ALL ELEVATIONS REFER TO NATIONAL GEODETIC DATUM OF 1988.

**LEGEND**

- = SET 1" IRON PIPE
- = IRON STAKE FOUND
- ⊙ = P.K. NAIL
- ⊕ = SET CHISEL "V"

FIELD WORK 8-19-2010 BY JWP, JER  
 DRAWN 8-23-2010 BY JER  
 SCALE 1" = 100'  
 SHEET 1 OF 1 SHEETS  
 JOB NO. 2010.0081.01

**mb Nielsen Madsen & Barber S.C.**  
 Civil Engineers and Land Surveyors

1339 Washington Ave. Racine, WI. 53403 Tele: (262)834-5588 Fax: (262)834-5024 Website: www.nmbac.net

# ATTACHMENT IV

**AGREEMENT FOR PRIVATE SIDING**

**THIS AGREEMENT** made the 11<sup>th</sup> day of February, 20 11, to be effective as of the first day of February, 20 11. (the "Effective Date")

**BETWEEN:**

**SOO LINE RAILROAD COMPANY  
d/b/a Canadian Pacific  
("CP");**

**AND**

**VILLAGE OF PLEASANT PRAIRIE, WISCONSIN  
("Village")**

**AND**

**EMCO CHEMICAL DISTRIBUTORS, INC.  
(the "Applicant")**

**WHEREAS** Applicant is the owner or in occupation of land situated at 8601 95<sup>th</sup> Street at or near Pleasant Prairie, in the State of Wisconsin;

**WHEREAS** Village owns trackage from Points C to E and Points F to G and Applicant occupies trackage from Points H to I, Points J to K, Points L to M and Points N to O (collectively (the "Private Siding" as described herein) that connects with CP's railway line near Milepost 50 of the C&M Subdivision;

**WHEREAS** Applicant desires to use its own employees to move railroad cars over the Private Siding and CP is willing to allow Applicant to use its own employees and equipment over that portion of the Private Siding;

**AND WHEREAS** the parties hereto have agreed that such Private Siding shall be subject to the terms, covenants and conditions hereinafter mentioned.

**NOW THEREFORE**, the parties agree as follows:

**ARTICLE 1 - DEFINITIONS**

"Applicant" means the party or parties of the third part as set out above, both jointly and severally, and his, her, its and their executors, administrators, successors and assigns.

1.1 "FRA" means the Federal Railroad Administration or any successor.

1.2 "Hazardous Substance" means any substance identified in or regulated by any Environmental Law, including without limitation the Comprehensive Environmental

Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. ss 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. ss 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. ss 1251 et seq., the Clean Water Act, 33 U.S.C. ss 1251 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

- 1.3 **"Point A"** identifies the beginning of the Private Siding on CP's right of way at the point of the switch.
- 1.4 **"Point B"** identifies the fourteen foot (14") clearance point from CP's right-of-way.
- 1.6 **"Point C"** identifies the derail located at or near the property line between CP's right-of-way and Village's land (unless otherwise identified in Schedule B attached to this Agreement) which is an intermediate location between Points A and Points E, I, M, and O and identified for purposes of determining responsibilities of the parties.
- 1.7 **"Points E, I, M, and O"** identify the end of track of the Private Siding (unless otherwise identified in Schedule B attached to this Agreement);
- 1.8 **"Private Siding"** means the entire track or tracks which comprise the Private Siding (Points A and Points E, I, M, and O identify the extreme limits) and includes turnouts, track, Track Materials, ballast, sub-ballast, crossing materials, crossing protection apparatus, signals, circuitry, fencing, structures such as culverts, bridges and retaining walls, land improvements or alterations required to accommodate the track such as cuts, embankments and ditches, and the land occupied and required to accommodate all of the features of the Private Siding including the foregoing.
- 1.9 **"Schedule A"** – The insurance schedule marked Schedule A that is attached hereto forms part of this Agreement.
- 1.10 **"Schedule B"** – The plan marked Schedule B that is attached hereto depicting the Private Siding and identifying Points A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O forms part of this Agreement.
- 1.11 **"Track Materials"** means and includes rails, rail anchors, fastenings, spikes, switch materials, derails, bumping posts, the plates and track and switch ties.

## **ARTICLE 2 - PROVISION OF PRIVATE SIDING AND SECURING OF RIGHT OF WAY**

- 2.1 Applicant has provided the right of way for the Private Siding, except for that portion of CP's right of way which is required to accommodate the Private Siding. Applicant has secured the right of way over all other land on which the Private Siding has been built outside of the land or property of CP used for the right of way.

- 2.2 If any roadway is or will be crossed or otherwise affected by the Private Siding, Applicant shall be responsible for securing the approval of the party or agency with jurisdiction and for any improvements required in connection with such approval.
- 2.3 Applicant shall assume and pay all taxes and assessments that may be lawfully levied or assessed by any public authority against the Private Siding.

**ARTICLE 3 – CONSTRUCTION, MAINTENANCE AND OWNERSHIP**

- 3.1 Applicant, at its expense, shall maintain, the Private Siding between Points C and E, Points F and G, Points H and I, Points, J and K, Points L and M, and Points N and O in good repair and condition, clear of grass, weeds, combustible material, snow and ice, as required to ensure good and safe operation on the Private Siding and that the Private Siding is open for traffic. CP, acting reasonably, shall determine whether the condition of the Private Siding is satisfactory. CP shall have the right to require Applicant to carry out such repairs as are, in the opinion of CP, necessary to properly maintain the Private Siding between Points C and E, Points F and G, Points H and I, Points, J and K, Points L and M, and Points N and O. Applicant must employ a CP-approved contractor for any such repairs.
- 3.2 CP, at Applicant's expense, shall inspect and maintain the Private Siding between Points A and C. However, CP, at its option and with prior written reasonable notice to Applicant as to the estimated amount of expenses to be incurred, shall have the right to require Applicant to maintain the Private Siding at Applicant's expense, between Points A and C (or any portion thereof). Applicant shall pay to CP the cost of such inspection and maintenance within thirty (30) days after receipt of a written statement of such actual cost.
- 3.3 CP owns the Private Siding between Points A and C; Village owns the Private Siding between Points C and E and Points F and G; and Applicant occupies the Private Siding between Points H and I, Points, J and K, Points L and M, and Points N and O.
- 3.4 Applicant shall furnish routine inspections of any warning devices (*i.e.*, cross bucks or crossing signals) present at the Private Siding. Any work required to be performed on the warning devices shall be done at Applicant's expense. Applicant shall pay CP for such work within thirty (30) days after receipt of a written statement of such actual cost.
- 3.5 CP acknowledges that Applicant is not located in an area where a third-party initiated "high speed" rail project is presently planned. In the event that existing rail infrastructure must be modified to accommodate future "high speed" rail operations, CP will take reasonable efforts to ensure that the project is designed to minimize delays to deliveries during construction and to allow future deliveries to be made on a timely basis.

#### ARTICLE 4 - ALTERATIONS

- 4.1 Should CP make such changes in the track to which the Private Siding connects, in railway structures or facilities, or in the characteristics of the engines and other equipment to be operated on the Private Siding, as would in the opinion of CP necessitate the moving, alteration or strengthening of the Private Siding in whole or in part, or should orders or regulations issued by the FRA, Surface Transportation Board or other authority having jurisdiction in relation thereto necessitate the moving, alteration or strengthening of the Private Siding in whole or in part, Applicant, at its expense and under the supervision of CP, shall employ a CP-approved contractor to move, alter or strengthen the Private Siding between Points C and E, Points F and G, Points H and I, Points, J and K, Points L and M, and Points N and O as required. In such event, CP shall provide Applicant with 120 days prior written notice with an estimate of the expenses to be incurred.
- 4.2 CP, at Applicant's expense, shall move, alter or strengthen the Private Siding between Points A and C as required. In such event, CP shall provide Applicant with 120 days prior written notice with an estimate of the expenses to be incurred. However, CP, at its option and with prior written reasonable notice to Applicant, shall have the right to require Applicant to move, alter or strengthen the Private Siding, at Applicant's expense, between Points A and C. In the event that CP moves, alters, or strengthens the Private Siding or any portion thereof, Applicant shall pay to CP the cost of such moving, alteration or strengthening within thirty (30) days after receipt of a written statement of such actual cost.
- 4.3 CP acknowledges that Applicant is not located in an area where a third-party initiated "high speed" rail project is presently planned. In the event that existing rail infrastructure must be modified to accommodate future "high speed" rail operations, CP will take reasonable efforts to ensure that the project is designed to minimize delays to deliveries during construction and to allow future deliveries to be made on a timely basis.

#### ARTICLE 5 - USE

- 5.1 CP shall have the right, free of charge, to use the Private Siding for railway purposes.
- 5.2 Applicant acknowledges that CP standards currently require all turnouts to be at least #9s, but due to space constraints and track geometry at Applicant's facility, Applicant's predecessor in interest installed two #8s at Points L and N as shown on Schedule B. CP approved the installation of these two #8 turnouts by Applicant's predecessor in interest with the stipulation that if in the future CP changes the type of engines used for switching Applicant's facility, this equipment may not be capable of negotiating the curvature found in #8 turnouts. Therefore, CP may elect not to operate on or over the tracks between Points L and M and Points N and O.



- 5.3 With Applicant's prior consent, CP may permit the use of the Private Siding by other parties upon reasonable compensation to be paid to Applicant, such compensation to be determined by CP and Applicant.
- 5.4 Applicant may use its own employees and equipment to move rail cars over the Private Siding between Points C and E, Points F and G, Points H and I, Points J and K, Points L and M, and Points N and O for loading and unloading. Applicant's use of the Private Siding shall not interfere with CP's operations and shall not occur within 25 feet of the centerline at CP's main track.
- 5.5 When Applicant's operations involve movements across public grade crossings, an employee of Applicant shall be in position to warn traffic of approaching cars, trains or engines, including those on adjacent tracks.
- 5.6 Applicant confirms that it, and all employees involved in the use of the Private Siding, will comply with CP's "Customer Safety Handbook".

#### ARTICLE 6 - CLEARANCES

- 6.1 Applicant shall in the provision, alteration, if any, use and operation of the Private Siding and of any building or other structure erected or to be erected over the Private Siding or on adjoining lands, observe and fully comply with all the laws, orders, regulations, rules and CP or other engineering standards in force as amended from time to time or which may hereafter come into force relating to railways or private sidings or buildings or structures over private sidings or adjacent thereto, including without limitation, clearance requirements defined in CP's Customer Safety Handbook.
- 6.2 Applicant shall notify CP in advance, in writing, if a building or structure over or beside the Private Siding will encroach within clearance requirements ("**Restricted Clearance**"), and shall submit to CP for review and approval, detailed plans and designs stamped by a Professional Engineer as well as detailed information regarding the reasons for less than standard clearance, operations over the trackage and any other information that CP may require. Any Restricted Clearance must be approved by CP, and CP may require Applicant to modify its plans and designs.
- 6.3 Applicant shall be responsible for providing, installing and maintaining signage regarding any Restricted Clearances, on Applicant's property at or near Point B of the Private Siding. In the event that Applicant fails to install and/or maintain such signage, CP may provide, install or replace the signage at Applicant's cost and expense; however, CP shall not be obligated or responsible to provide, install or maintain same.

#### ARTICLE 7 - LIABILITY

- 7.1 Except where and to the extent CP is negligent, Applicant shall make no claim or demand against CP for any injury, including injury resulting in death, loss or damage to property

suffered or sustained by Applicant or its employees, officers or agents which arises out of or is connected with the use of the Private Siding or this Agreement.

- 7.2 Except where and to the extent that CP is negligent, Applicant shall indemnify and save harmless CP:
- a) from and against any and all claims, demands, awards, actions and proceedings by whomsoever made, brought or prosecuted, and
  - b) from and against any and all loss, damages or expenses, including reasonable attorney's fees, suffered or incurred by CP including injuries, as well as those resulting in death, and damage to or destruction of CP property or third party property (including without limitation, engines, rolling stock and all other equipment and their contents), or against any taxes or local improvements assessed with respect to the Private Siding;

which are based upon, arise out of or are connected with the use of the Private Siding by Applicant or this Agreement.

- 7.3 Where CP is moving equipment on the Private Siding for any person other than Applicant, the waiver and indemnity given by Applicant in Article 7.1 and 7.2 shall not apply to the extent that such claims, demands, awards, actions, proceedings, loss, damages or expenses arise without any negligence of Applicant or its employees.
- 7.4 Notwithstanding any other provision of this Agreement, Applicant shall indemnify and save harmless CP from any and all loss, costs and damages, including attorney's fees, caused by Applicant's non-compliance with any of the provisions of this Agreement.
- 7.5 For purposes of this Section 7, "CP" shall mean CP, its parents and corporate affiliates, and each of their officers, directors, employees, agents and insurers.
- 7.6 The provisions of Section 7 shall survive the termination of this Agreement.

#### ARTICLE 8 - INSURANCE

- 8.1 Applicant agrees to maintain the insurance coverage set out in Schedule A.

#### ARTICLE 9- FEES

- 9.1 Applicant shall pay a license fee of \$546.00 (the "Private Siding License Fee") per year to CP for the use of the CP's right-of-way (between Points A and C) to accommodate the Private Siding. The Private Siding License Fee shall be payable, in advance, on the first day of February in each year during the Term of this Agreement.
- 9.2 The Private Siding License Fee shall be increased each year during the Term on the anniversary of the Effective Date by three (3%) percent.

**ARTICLE 10 – TERM AND TERMINATION**

- 10.1 This Agreement shall commence on the Effective Date and continue until termination by either party, at any time, on giving not less than ninety (90) days' written notice to the other party.
- 10.2 If Applicant fails to pay any amount due under this Agreement, or is in breach of any term of this Agreement then Applicant shall be in default under this Agreement. Should such default occur, CP may terminate this Agreement, after giving written notice thereof to Applicant and allowing thirty (30) days to elapse after such notice, unless in the meantime such default shall have been remedied or Applicant is making diligent and good faith efforts to remedy such breach.
- 10.3 With the exception of Applicant's obligations pursuant to Article 11 (Removal of Private Siding), from and after the termination date, Applicant shall cease to have any right to pass upon CP's right of way.

**ARTICLE 11 - REMOVAL OF PRIVATE SIDING**

- 11.1 Upon termination of this Agreement, unless Applicant provides CP with written notice within fifteen (15) days of the termination date that Applicant will reimburse CP's inspection and maintenance costs for the Private Siding between Points A and C during the one year period following the termination date, CP may remove the Private Siding from CP's right of way between Points A and C including all Track Materials and restore any pavement, sidewalks or other improvements at Applicant's expense. All Track Materials on the portion of the Private Siding on CP land not removed after one (1) year shall be the property of CP and subject to removal thereafter at CP's expense and discretion.
- 11.2 In the event that CP removes the Private Siding from CP's right of way or any portion thereof, Applicant shall pay to CP the cost of such removal within thirty (30) days after receipt of a written statement of such cost. For greater certainty, such cost shall include the cost of transportation and of loading and unloading the Track Materials.

**ARTICLE 12 - ASSIGNMENT**

- 12.1 In the event that Applicant's land is sold or possession is transferred to another entity, all rights, obligations and privileges of Applicant under this Agreement shall be transferred and assigned to the new owner or tenant. Applicant shall provide written notice to CP within fifteen (15) days of such assignment, and include the address for notice for the new assignee.

**ARTICLE 13 - NOTICE**

- 13.1 All notices or communications required hereunder shall be given by courier or facsimile, or if mailed by registered mail, postage prepaid, and addressed to the other party as follows:

**To CP:**                   **Canadian Pacific Railway**  
501 Marquette Avenue South  
Suite 1510  
Minneapolis, MN 55402  
Attention: Area Manager - Business Manager  
Fax #: (612) 904-5952

**To Applicant:**       **EMCO Chemical Distributors**  
2100 Commonwealth Avenue  
North Chicago, IL 60064  
Attention: Edward Polen, President  
Fax #: 847-689-8470

**To Village:**           **VILLAGE OF PLEASANT PRAIRIE**  
9915 39th Avenue  
Pleasant Prairie, Wisconsin 53158  
Attention: Village Administrator  
Fax#: 262-694-4734

or such other address as may be furnished from time to time by either party. Any notice, if delivered by courier or facsimile, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the facsimile was recorded by the sender and if mailed correctly, shall be deemed to have been received on the third (3rd) business day after mailing. In the event of an actual or imminent disruption in postal service, any notice shall be delivered by courier.

**ARTICLE 14- MISCELLANEOUS**

- 14.1 Applicant shall, at its own expense, comply with all applicable laws, by-laws, rules, orders, directions, ordinances, and regulations, including without limitation, applicable environmental laws.
- 14.2 Termination of this Agreement, for any reason, including default shall not release the parties from any obligations of liabilities incurred prior to termination of this Agreement.
- 14.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 14.4 This Agreement shall be construed in accordance with the laws of the state in which the Private Siding is situated.

- 14.5 Time shall be of the essence of this Agreement.
- 14.6 This Agreement may not be modified or amended except in writing signed by the parties.
- 14.7 No term, covenant or provision in this Agreement or right hereunder or in respect of will be deemed to have been waived by CP, except by express waiver in writing signed by CP.
- 14.8 The headings and numbering introducing sections in this Agreement are inserted for convenience only and in no way define or construe the scope or intent of such section.
- 14.9 This Agreement contains the entire agreement of the parties with respect to the Private Siding and, supersedes and cancels all prior agreements and understandings, oral or written, with respect thereto; provided however that payment terms may be supplemented or amended by CP's invoices which may be amended from time to time at CP's discretion.

The parties hereto have executed this Agreement on the date first above written.

**SOO LINE RAILROAD COMPANY,  
d/b/a CANADIAN PACIFIC**

Per: *Linda J. Hartner*  
Title: *Area Manager - ID*

**EMCO CHEMICAL DISTRIBUTORS, INC.**

Per: *Glenn J. Al*  
Title: *President*

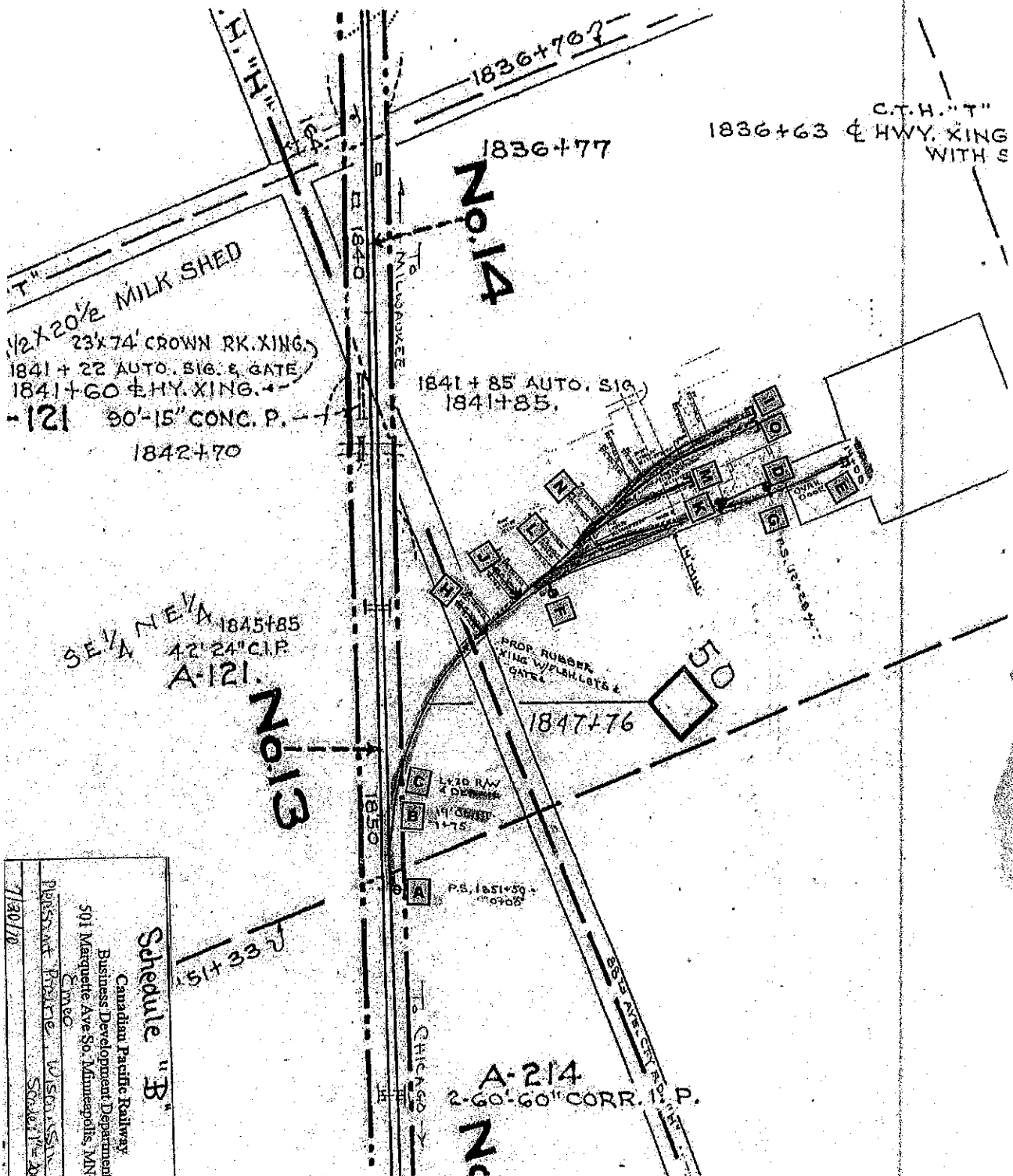
**VILLAGE OF PLEASANT PRAIRIE**

Per: *J.P. Stott*  
Title: *VILLAGE PRESIDENT*

## SCHEDULE A – INSURANCE

1. Applicant shall at its own cost and expense, take out and keep in full force and effect a Commercial General Liability Insurance policy with an inclusive limit of not less than **Five Million Dollars (\$5,000,000)** per occurrence for bodily injury and property damage, or any other increased amount as CP may reasonably require upon conducting reviews from time to time. Such insurance shall specifically state by its wording or by endorsement:
  - (a) the policy extends to cover the contractual obligations assumed by Applicant under this Agreement with CP;
  - (b) the policy shall name CP, its subsidiaries and affiliates as an additional insured;
  - (c) the policy shall contain a “cross-liability” clause which shall have the effect of insuring each person firm or corporation insured thereunder in the same manner and to the same extent as if a separate policy had been insured to each;
  - (d) the policy shall not be cancelled or materially altered unless written notice is given by Applicant to CP thirty (30) days before the effective date of such cancellation or material alteration;
  - (e) shall not contain any provision which excludes railway operations.
2. If Applicant is loading or unloading Hazardous Substances on the Private Siding, Applicant shall maintain a Commercial General Liability Insurance policy with an inclusive limit of not less than **Fifteen Million Dollars (\$15,000,000)** per occurrence for bodily injury and property damage or any other increased amount as CP may reasonably require upon conducting reviews from time to time, and in addition to meeting the requirements in Section 1 a) through e), it shall extend to cover sudden and accidental discharge or release of Hazardous Substances.
3. In the event Applicant carries, transports or stores Poisonous Inhalation/Toxic Inhalation Hazardous materials, Applicant shall increase the amount of the insurance described under Section 2 to an amount not less than One Hundred Million (\$100,000,000) Dollars. Poison Inhalation Hazard (PIH)/Toxic Inhalation Hazard (TIH) materials means any product considered poisonous or toxic by inhalation in the Canadian Transportation of Dangerous Goods Regulations, the United States Hazardous Materials Regulations, or the Association of American Railroads circular OT-55i (<http://boe.aar.com/boe-download.htm>). The terms PIH and TIH are used interchangeably.
4. Applicant shall, prior to the effective date of this Agreement, and upon the insurance renewal date thereafter, furnish to CP or Certificates of Insurance evidencing the above coverages. Upon request, Applicant shall provide CP with certified copies of the insurance policies Applicant shall not make or cause to be made any material modification or alteration to the insurance, or to do or leave undone anything, which may invalidate the insurance coverage.

5. The acquisition and maintenance of insurance policies by Applicant shall in no manner limit or restrict the liabilities incurred by Applicant under the provisions of this Agreement.



7/30/28  
 PERSHAT PERSHAT WISCONSIN  
 SCHEDULE "B"  
 Canadian Pacific Railway  
 Business Development Department  
 501 Marquette Ave So. Minneapolis, MN  
 CMBO



**RESOLUTION 11-16  
OF THE BOARD OF TRUSTEES  
VILLAGE OF PLEasant PRAIRIE  
KENOSHA COUNTY, WISCONSIN**

Whereas, the Village of Pleasant Prairie (the "Village") maintains one or more accounts at Talmer Bank & Trust ("Bank").

Whereas, it is in the best interests of the Village to enter into a contract permitting credit and debit entries by means of the Automated Clearing House Network pursuant to the terms of an ACH Originator Agreement.

Therefore, it is resolved that Michael R. Pollcoff, Village Administrator of the Village is authorized and empowered on behalf of the Village to enter into a contract to provide credit and debit entries by means of the Automated Clearing House Network. The Village Administrator is authorized to execute on behalf of the Village the contract entitled "ACH Origination Agreement," a copy of which has been received and reviewed by the Village, and/or to execute on behalf of the Village any such other agreement as may be agreed upon by the Finance Director and Bank for debit and credit entries to Village's accounts at Bank by means of the Automated Clearing House Network, and the Village shall be bound thereby.

Therefore, it is resolved that the following persons shall be the Authorized ACH Representatives to enter into transactions to cancel, amend, or reverse entries originated by Bank and to provide all notices as provided in the ACH Origination Agreement:

Representative Name	Signature	Date
Kathleen M. Goessl	_____	_____
Jennifer Laib	_____	_____

The undersigned Board of Trustees of the Village do hereby certify that the Village is organized and existing under and by virtue of the law of the State of Wisconsin. Furthermore, the undersigned Board of Trustees do hereby certify that this resolution was adopted in accordance with the Village's Bylaws or Operating Agreement at a meeting of the Board of Trustees, duly and regularly called on June 20, 2011, at which a quorum was present and voting.

\_\_\_\_\_  
John P. Steinbrink, President

\_\_\_\_\_  
Monica M. Yuhas, Trustee #1

\_\_\_\_\_  
Steve Kumorkiewicz, Trustee #2

\_\_\_\_\_  
Clyde R. Allen, Trustee #3

\_\_\_\_\_  
Michael J. Serpe, Trustee #4

I certify that at a meeting of the Village Board of Trustees of the Village of Pleasant Prairie, duly and regularly called and held on June 20, 2011, at which a quorum was present and voting, the foregoing resolution was adopted in accordance with the Village's Bylaws or Operating Agreement. I further certify that the signatures of the foregoing trustees are authentic and real in all respects. In testimony whereof, I have hereunto set my hand and attest that I have read all the provisions of this Resolution, and I personally and on behalf of the Village certify that all statements and representations made in this Resolution are true and correct.

**CERTIFIED AND ATTESTED BY:**

Corporate  
Seal

\_\_\_\_\_  
Jane M. Romanowski, Village Clerk

**TALMER BANK & TRUST  
ACH ORIGINATOR AGREEMENT**

This ACH Origination Agreement ("Agreement"), dated as of May 17, 2011, is between VILLAGE OF PLEASANT PRAIRIE, (the "Company") and Talmer Bank & Trust, (the "Bank").

Company wishes to initiate credit and/or debit Entries through the Bank to accounts maintained at Bank and in other depository financial institutions by means of the Automated Clearing House Network pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association ("NACHA") and Bank's operating rules and procedures for electronic entries, including any exhibits or appendices thereto now in effect, or as may be amended from time to time, (the "Rules"), and Bank is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries. This Agreement sets forth the terms and conditions pursuant to which Bank will provide to Company the ACH Services outlined herein ("Services"). Company hereby requests Bank to provide the Service described in this Agreement. By executing this Agreement and/or using the Services described in this Agreement, Company accepts and agrees to all terms, conditions, and provisions of this Agreement and agrees that this Agreement sets forth the terms and conditions pursuant to which Bank will provide to Company the Service outlined herein. The Internet Banking Terms and Conditions agreement is hereby incorporated by reference and made a part hereof. In the event of inconsistency between a provision of this Agreement, the Uniform Commercial Code (the "UCC"), the Internet Banking Terms and Conditions agreement, and/or the Depository Agreement, the provisions of this Agreement shall prevail. Terms not otherwise defined in this Agreement shall have the meaning ascribed to those terms in the Rules. The term "Entry" shall have the meaning provided in the Rules and shall also mean the data received from Company hereunder from which Bank initiates each Entry.

Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bank and Company, intending to be legally bound, do hereby agree as follows:

**AGREEMENT**

**1. COMPLIANCE WITH RULES AND LAWS.** Company acknowledges it has a copy or has access to a copy of the Rules. The Rules may also be purchased online at [www.nacha.org](http://www.nacha.org) under the publications tab. Company agrees to comply with and be subject to the Rules of NACHA in existence at the date of this Agreement, and any amendments to these Rules made from time to time. It shall be the responsibility of the Company that the origination of ACH transactions complies with U.S. law, including but is not limited to sanctions enforced by the Office of Foreign Assets Control (OFAC). It shall further be the responsibility of the Company to obtain information regarding such OFAC enforced sanctions. (This information may be obtained

directly from the OFAC Compliance Hotline at (800) 540-OFAC). Bank will charge the Company with any fines or penalties imposed by OFAC, NACHA or any organization which are incurred as a result of non-compliance by the Company and the Company agrees to fully reimburse and/or indemnify Bank for such charges or fines. The specific duties of the Company provided in the following paragraphs of this Agreement in no way limit the foregoing undertaking. The duties of the Company set forth in the following paragraphs of this Agreement in no way limit the requirement of complying with the Rules. The Bank also reserves the right to audit the Company's compliance with this agreement as well as the Rules. The audit may include, but is not limited to, a review of the Company's operations, procedures and a site visit by the Bank.

**2. CREDIT APPROVAL.** In utilizing the Automated Clearing House Network in performance of this Agreement, Bank must make certain warranties on behalf of Company. Specifically, Bank is charged with assuring the financial soundness of Company to make the intended Entries. Bank must approve all ACH Agreements and may request financial information from Company and/or a separate credit agreement. Bank shall also be authorized to obtain a credit report(s) on Company as may be necessary from time to time. Bank will also assign Company a limit representing the maximum aggregate dollar amount of Entries that may be initiated by Company each day ("ACH Processing Limit"). Company understands that daily requests for Entries exceeding this amount are honored solely at the discretion of the Bank. Requests not honored would be communicated to the Company or the Company's designated representative.

**3. DESIGNATION OF ADMINISTRATOR.** In order to originate ACH Entries via business internet banking, Company must designate at least one Administrator in accordance with the requirements of the Online Banking Agreement and Disclosure. Administrator(s) shall be responsible for designating "Users" who Company authorizes to issue Entries on its behalf. For the purposes of this Agreement, the term User shall also include the Administrator. The Bank shall be entitled to rely on the designations made by the Company's Administrator(s) and shall not be responsible for matching the names of the company users designated by the Administrator(s) to names or titles listed in Company's banking resolutions. Company agrees that any such online Entries shall comply with Bank's Security Procedures, which are subject to change without notice to Company. Although Bank is only required to act upon the instructions of the Users(s), the Bank may, in its sole discretion, execute debit or credit Entries initiated by any individuals authorized by Company to sign checks on Company accounts. The signature cards establishing the authorized signatories for Company deposit accounts are hereby incorporated by reference and made a part hereof.

**4. TRANSMISSION OF ENTRIES BY COMPANY.** User(s) shall initiate the debit or credit Entries hereunder on behalf of and selected by Company in Schedule A. Notwithstanding the provisions contained in Section 3 of this Agreement, Bank shall be entitled to deem any person having knowledge of any Security Procedure, defined below in Section 6 of this Agreement and required to initiate Entries under this Agreement, to be a User. User(s) shall transmit Entries to Bank in computer readable form in compliance with the formatting and other requirements set forth in the NACHA file specifications or as otherwise specified by Bank. Entries shall be

transmitted to Bank no later than the time and the number of days prior to the Effective Entry Date specified in the Processing Schedule attached hereto and made a part hereof as Schedule B. For the purposes of this Agreement, "Business Day" means Monday through Friday, excluding federal holidays and the "Settlement Date" with respect to any Entry shall be the Business Day when such Entry is debited or credited in accordance with instructions of the Company. Entries received after the cut off time shall be deemed to have been received on the next Business Day. The total dollar amount of Entries transmitted by Company to Bank on any one Business Day shall not exceed the lesser of the amount of collected funds in Company's account or the ACH Processing Limit set forth in Schedule D to this Agreement. Company may not reinitiate entries except as prescribed by the Rules.

**5. THIRD PARTY SERVICE PROVIDERS.** Company may be using special equipment, services or software provided by a third party to assist it in processing Files hereunder ("**Service Provider**"). Company (a) agrees that Service Provider is acting as Company's agent in the delivery of Files to Bank, and (b) agrees to assume full responsibility and liability for any failure of Service Provider to comply with the laws of the United States, the Rules and this Agreement. Bank will not be liable for any losses or additional costs incurred by Company as a result of any error by Service Provider or a malfunction of equipment provided by Service Provider. Company shall provide at least ten (10) days advance written notice to Bank in the event it uses any such Service Provider. Company is solely responsible for maintaining compliance with the requirements of Service Provider, including obtaining any software updates. Bank's sole responsibility shall be to enter Bank approved transactions into the ACH Operator and Bank shall not have any responsibility for any File handled by Service Provider until that point in time when Bank accepts and approves a File from such Service Provider for processing. If Bank authorizes Company to use a Service Provider, the terms and conditions governing the relationship between Company and the Service Provider shall be governed by a separate agreement between Company and Service Provider ("**Service Provider Agreement**"). All of Company's obligations and responsibilities under this Agreement will apply to the Service Provider, and Company's separate agreement with the Service Provider must so provide. At Bank's request, Company will provide to Bank a true and exact copy of such agreement. Company shall designate the Service Provider as a User and the Service Provider must also enter into a Service Provider agreement before the Service Provider sends Files to Bank. Notwithstanding the foregoing, Company hereby authorizes Bank to accept any File submitted by the Service Provider even if the Service Provider has not been designated as a User or if the Third Party Service Provider has not executed the Service Provider agreement. Company hereby indemnifies and holds Bank harmless for any losses, damages, fines, assessments, costs and expenses incurred or suffered by Bank or any other person as a result of or arising from Company's use of Service Provider, including fines or assessments incurred under or pursuant to the Rules and attorneys' fees.

**6. SECURITY PROCEDURES.**

(a) The Company shall comply with the "Security Procedures" described in Schedule C attached hereto and made a part hereof, and Company acknowledges and agrees that the Security Procedures, including (without limitation) any code, password, personal identification

number, user identification technology, token, certificate, or other element, means, or method of authentication or identification used in connection with a Security Procedure ("Security Devices") used in connection therewith, constitute commercially reasonable security procedures under applicable law for the initiation of ACH entries. Company authorizes Bank to follow any and all instructions entered and transactions initiated using applicable Security Procedures unless and until Company has notified Bank, according to notification procedures prescribed by Bank, that the Security Procedures or any Security Device has been stolen, compromised, or otherwise become known to persons other than User(s) and until Bank has had a reasonable opportunity to act upon such notice. Company agrees that the initiation of a transaction using applicable Security Procedures constitutes sufficient authorization for Bank to execute such transaction notwithstanding any particular signature requirements identified on any signature card or other documents relating to Company's deposit account maintained with Bank, and Company agrees and intends that the submission of transaction orders and instructions using the Security Procedures shall be considered the same as Company's written signature in authorizing Bank to execute such transaction. Company acknowledges and agrees that Company shall be bound by any and all Entries initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated by User(s), to the fullest extent allowed by law. Company further acknowledges and agrees that the Security Procedures are not designed to detect error in the transmission or content of communications or Entries initiated by Company and that Company bears the sole responsibility for detecting and preventing such error.

(b) Company agrees to keep all Security Procedures and Security Devices protected, secure, and strictly confidential and to provide or make available the same only to User(s). Company agrees to instruct each User not to disclose or provide any Security Procedures or Security Devices to any unauthorized person. Bank shall distribute Security Devices to the Administrator and Bank shall otherwise communicate with the Administrator regarding Security Procedures. Company's Administrator shall have responsibility to distribute Security Devices to User(s) and to ensure the proper implementation and use of the Security Procedures by User(s). Where Company has the ability to change or modify a Security Device from time to time (e.g., a password or PIN), Company agrees to change Security Devices frequently in order to ensure the security of the Security Device. Company agrees to notify Bank immediately, according to notification procedures prescribed by Bank, if Company believes that any Security Procedures or Security Device has been stolen, compromised, or otherwise become known to persons other than User(s) or if Company believes that any ACH transaction or activity is unauthorized or in error. In the event of any actual or threatened breach of security, Bank may issue Company a new Security Device or establish new Security Procedures as soon as reasonably practicable, but Bank shall not be liable to Company or any third party for any delay in taking such actions.

(c) Company agrees to notify Bank immediately, according to notification procedures prescribed by Bank, if the authority of any User(s) shall change or be revoked. Company shall recover and return to Bank any Security Devices in the possession of any User(s) whose authority to have the Security Device has been revoked.

(d) Bank reserves the right to modify, amend, supplement, or cancel any or all Security Procedures, and/or to cancel or replace any Security Device, at any time and from time to time in Bank's discretion. Bank will endeavor to give Company reasonable notice of any change in Security Procedures; provided that Bank may make any change in Security Procedures without advance notice to Company if Bank, in its judgment and discretion, believes such change to be necessary or desirable to protect the security of Bank's systems and assets. Company's implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute Company's agreement to the change and Company's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

#### **7. PHYSICAL AND ELECTRONIC SECURITY.**

(a) Company is solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Company's possession or under Company's control. Bank is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any computer viruses, or any related problems that may be associated with the use of an online system or any ACH Origination services. Any material downloaded or otherwise obtained is obtained at Company's own discretion and risk, and Bank is not responsible for any damage to Company's computer or operating systems or for loss of data that results from the download of any such material, whether due to any computer virus or otherwise. Company is solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to Company's operating systems, and for protecting, securing, and backing up any data and information stored in or on Company's operating systems. Bank is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on Company's operating systems or accessed through an Internet connection.

(b) Company acknowledges and agrees that it is Company's responsibility to protect itself and to be vigilant against e-mail fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as "phishing" and "pharming"). Company agrees to educate User(s), agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. Company acknowledges that Bank will never contact Company by e-mail in order to ask for or to verify Account numbers, Security Devices, or any sensitive or confidential information. In the event Company receives an e-mail or other electronic communication that Company believes, or has reason to believe, is fraudulent, Company agrees that neither Company nor its User(s), agents, and employees shall respond to the e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail. Company agrees that Bank is not responsible for any losses, injuries, or harm incurred by Company as a result of any electronic, e-mail, or Internet fraud.

(c) In the event of a breach of the Security Procedure, Company agrees to assist Bank in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing Bank or Bank's agent access to Company's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. Company further agrees to provide to Bank any analysis of such equipment, device, or software or any report of such analysis performed by Company, Company's agents, law enforcement agencies, or any other third party. Failure of Company to assist Bank shall be an admission by Company that the breach of the Security Procedure was caused by a person who obtained access to transmitting facilities of Company or who obtained information facilitating the breach of the Security Procedure from Company and not from a source controlled by Bank.

**8. INTERNATIONAL ACH TRANSACTIONS (IAT).** Company shall not initiate any IAT Entries without Bank's prior approval. If approved by Bank, the following provisions apply to IAT Entries originated by Company:

(a) IAT Entries are transmitted by Bank in U.S. dollars and converted to the local currency for receipt in the foreign country at the exchange rate determined by Bank's processor on the date determined by Bank's processor. All risk of fluctuation in the applicable exchange rate is borne by Company.

(b) In the event of a returned IAT Entry, consumer payments will be credited to Company at the originated U.S. dollar amount; corporate payments will be credited to Company at the exchange rate determined by Bank's processor at the time of return.

(c) In the event of an error in an Entry or duplicate entries, Company acknowledges and agrees that Company shall be liable for any and all losses caused by and a direct or indirect result from the error or duplicate Entry.

(d) Company shall originate all International ACH Transactions, as that term is defined in the Rules, with an IAT SEC code and Company hereby agrees to abide by all of the Rules related to IAT Entries.

(e) Company agrees that in the case of a non-Consumer Account, Company shall enter into an agreement with the Receiver whereby the Receiver agrees to abide by the Rules in effect from time to time.

(f) Company acknowledges that it has reviewed and understands Subsection 2.11.3 of the Rules entitled "Exceptions for Outbound IAT Entries" and Company understands and agrees that laws, regulations, and rules of the country in which the Receiver is located shall govern the matters listed within that subsection. Company further acknowledges that Company understands how such laws, regulations and rules differ from the Rules.



(g) Company hereby indemnifies Bank from and against any and all resulting claims, demands, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from Company's origination of an IAT Entry.

**9. DEBIT ENTRIES; RECORDS RETENTION.** Company shall obtain an authorization ("Authorization Agreement") from the Receiver whose account will be credited or debited as the result of a credit or debit Entry initiated by Company and Company shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for two (2) years after termination or revocation of such authorization as stated in the Rules. Upon request, Company shall furnish the original or a copy of the authorization to any affected Participating Depository Financial Institution, as defined in the Rules.

**10. RECORDING AND USE OF COMMUNICATIONS.** Company and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. Bank shall not be obligated to make such recordings.

**11. PROCESSING, TRANSMITTAL, AND SETTLEMENT.**

(a) Except as provided in Section 13, On-Us Entries, and Section 14, Rejection of Entries, the Bank shall (i) process Entries received from the Company to conform with the file specifications set forth in Rules, (ii) transmit such Entries as an Originating Depository Financial Institution to The Federal Reserve Bank (the "ACH") acting as an Automated Clearing House Operator, and (iii) settle for such debit Entries as provided in the Rules. Company agrees that the ACH processor selected by Bank shall be considered to have been selected by and designated by Company.

(b) The Bank shall complete the necessary batch authorization of ACH Entries by the Delivery Date deadline of the ACH set forth in Schedule B prior to the Effective Entry Date shown in such Entries, provided (i) Entries are received by the Bank's related cut-off time set forth in Schedule B on a Business Day, (ii) the Effective Entry Date is at least one day after that Business Day, and (iii) the ACH is open for business on that Business Day. Entries shall be deemed received by the Bank when the transmission (and compliance with any security procedure provided herein) is completed.

**12. SETTLEMENT OF CREDIT ENTRIES AND RETURNED DEBIT ENTRIES.** Company agrees to settle for all credit Entries issued by Company, User(s), or credit Entries otherwise made effective against Company. Company shall make settlement at such time on the date of transmittal by Bank of such credit Entries as Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Date of such credit Entry as Bank, in its discretion, may determine. Company shall settle with Bank for the amount of each debit Entry returned by a Receiving Depository Financial Institution or debit Entry dishonored by Bank. Settlement shall be made by Company to Bank in any manner specified by Bank. Notwithstanding the foregoing, Bank is hereby authorized to charge the account(s) ("Authorized Account(s)") designated in Schedule E, as settlement for credit Entries issued by

Company or returned or dishonored debit Entries. Company shall maintain sufficient collected funds in the Authorized Account(s) to settle for the credit Entries at the time the credit Entries are issued by Company. In the event the Authorized Account or any other Company Bank account does not have collected funds sufficient on the Settlement Date to cover the total amount of all Entries to be paid on such Settlement Date, Bank may take any of the following actions:

- a) Refuse to process all Entries, in which event Bank shall return the data relating to such credit Entries to Company, whereupon Bank shall have no liability to Company or to any third party as a result thereof; or
- b) Process that portion of the credit Entries as Company has sufficient collected funds in the Authorized Account to cover, in whatever order Bank in its sole discretion shall elect to process, in which event Bank shall return the data relating to such credit Entries as are not processed to Company, whereupon Bank shall have no liability to Company or any third party as a result thereof; or
- c) Process all credit Entries. In the event Bank elects to process credit Entries initiated by Company and Company has not maintained sufficient collected funds in the Authorized Account with Bank to cover them, the total amount of the insufficiency advanced by Bank on behalf of Company shall be immediately due and payable by Company to Bank without any further demand from Bank. If Bank elects to pay Company's account in the overdraft on any one or more occasions, it shall not be considered a waiver of Bank's rights to refuse to do so at any other time nor shall it be an agreement by Bank to pay other items in the overdraft.

**13. ON-US ENTRIES.** Except as provided in Section 14, Rejection of Entries, or in the case of an Entry received for credit to an account maintained with Bank (an "On-Us Entry"), the Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in Section 11 (b) (i), (ii), and (iii) are met. If any of those requirements is not met, the Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

**14. REJECTION OF ENTRIES.** Company agrees that Bank has no obligation to accept Entries and therefore may reject any Entry issued by Company. Bank has no obligation to notify Company of the rejection of an Entry but Bank may do so at its option. Bank shall have no liability to Company for rejection of an Entry and shall not be liable to pay interest to Company even if the amount of Company's payment order is fully covered by a withdrawable credit balance in an Authorized Account of Company or the Bank has otherwise received full payment from Company.

**15. CANCELLATION OR AMENDMENT BY COMPANY.** Company shall have no right to cancel or amend any Entry after its receipt by Bank. However, Bank may, at its option, accept a cancellation or amendment by Company. If Bank accepts a cancellation or amendment of an

Entry, Company must complete and submit a Reversal/Cancellation Request form signed by an Authorized ACH Representative. The designation of the Authorized ACH Representatives shall be made on a certificate of resolution acceptable to the Bank and certified by Company in accordance with Schedule G attached hereto and made a part hereof. If such a request is received by the Bank before the affected Entry has been transmitted to the ACH (or, in the case of an On-Us Entry, before the Receiver's account has been credited or debited), the Bank will use reasonable efforts to cancel or amend the Entry as requested, but the Bank shall have no liability if the cancellation or amendment is not effected. If Bank accepts a cancellation or amendment of an Entry, Company hereby agrees to indemnify, defend all claims and hold Bank harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Bank as the result of its acceptance of the cancellation or amendment.

**16. REVERSALS OF ENTRIES.**

(a) General Procedure. Upon proper and timely request by the Company, the Bank will use reasonable efforts to effect a reversal of an Entry or File. To be "proper and timely," the request must (i) be made within five (5) Business Days of the Effective Entry Date for the Entry or File to be reversed; (ii) be accompanied by a Reversal/Cancellation Request form, signed by an Authorized ACH Representative, and comply with all of the Rules. In addition, if the Company requests reversal of a Debit Entry or Debit File, it shall concurrently deposit into the Company Account an amount equal to that Entry or File. The Company shall notify the Receiver of any reversing Entry initiated to correct any Entry it has initiated in error. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry.

(b) No Liability: Reimbursement to the Bank. Under no circumstances shall the Bank be liable for interest or related losses if the requested reversal of an Entry is not effected. The Company shall reimburse the Bank for any expenses, losses or damages it incurs in effecting or attempting to effect the Company's request for reversal of an Entry

**17. ERROR DETECTION.** Bank has no obligation to discover and shall not be liable to Company for errors made by Company, including but not limited to errors made in identifying the Receiver, or an Intermediary or Receiving Depository Financial Institution ("RDFI") or for errors in the amount of an Entry or for errors in Settlement Dates. Bank shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Company. Notwithstanding the foregoing, if the Company discovers that any Entry it has initiated was in error, it shall notify the Bank of such error. If such notice is received no later than four (4) hours prior to the ACH receiving deadline, the Bank will utilize reasonable efforts to initiate an adjusting Entry or stop payment of any On-Us" credit Entry within the time limits provided by the Rules. In the event that Company makes an error or issues a duplicate Entry, Company shall indemnify, defend all claims, and hold Bank harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Bank as result of the error or issuance of duplicate Entries.

**18. PRENOTIFICATION.** Company, at its option, may send prenotification that it intends to initiate an Entry or Entries to a particular account within the time limits prescribed for such notice in the Rules. Such notice shall be provided to the Bank in the format and on the medium provided in the media format section of such Rules. If Company receives notice that such prenotification has been rejected by an RDFI within the prescribed period, or that an RDFI will not receive Entries without having first received a copy of the Authorization signed by its customer, Company will not initiate any corresponding Entries to such accounts until the cause for rejection has been corrected or until providing the RDFI with such authorization within the time limits provided by the Rules.

**19. NOTICE OF RETURNED ENTRIES AND NOTIFICATIONS OF CHANGE.** Bank shall notify Company by e-mail, facsimile transmission mail, or other means of the receipt of a returned Entry from the ACH Operator. Except for an Entry retransmitted by Company in accordance with the requirements of Section 4, Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Agreement with respect to the original Entry. Company shall notify the Receiver by phone or electronic transmission of receipt of each return Entry no later than one Business Day after the Business Day of receiving such notification from Bank.

Bank shall provide Company all information, as required by the Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by Bank relating to Entries transmitted by Company. Bank must provide such information to Company within two (2) banking days of the Settlement Date of each NOC or Corrected NOC Entry. Company shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) banking days of Company's receipt of the NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

**20. ACCOUNT RECONCILIATION.** The Company agrees to notify the Bank promptly of any discrepancy between the Company's records and the information shown on any periodic statement. If the Company fails to notify the Bank within fifteen (15) calendar days of receipt of a periodic statement containing such information; the Company agrees that the Bank shall not be liable for any other losses resulting from the Company's failure to give such notice or any loss of interest or any interest equivalent with respect to any Entry shown on such periodic statement. If the Company fails to notify the Bank within sixty days of receipt of such periodic statement, the Company shall be precluded from asserting any discrepancy against the Bank.

**21. PROVISIONAL SETTLEMENT.** Company shall be bound by and comply with the Rules as in effect from time to time, including without limitation the provision thereof making payment of an Entry by the Receiving Depository Financial Institution to the Receiver provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry; and Company acknowledges that it has received notice of that Rule and or the fact that, if such settlement is not received, the Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the Entry.

**22. COMPANY REPRESENTATIONS AND WARRANTIES; INDEMNITY.** With respect to each and every Entry transmitted by Company, Company represents and warrants to Bank and agrees that (a) each person or entity shown as the Receiver on an Entry received by Bank from Company has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein, (c) Entries transmitted to Bank by Company are limited to those types of credit and debit Entries set forth in Schedule A, (d) Company shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC; laws, regulations, and orders administered FinCEN; and any state laws, regulations, or orders applicable to the providers of ACH payment services, and (e) Company shall be bound by and comply with the provision of the *Rules* (among other provisions of the *Rules*) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Company specifically acknowledges that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the Entry. The Company shall defend, indemnify, and hold harmless the Bank, and its officers, directors, agents, and employees, from and against any and all actions, costs, claims, losses, damages, or expenses, including attorney's fees and expenses, resulting from or arising out of (a) any breach of any of the agreements, representations or warranties of the Company contained in this Agreement; or (b) any act or omission of the Company or any other person acting on the Company's behalf.

**23. ADDITIONAL COMPANY WARRANTIES FOR SELECTED STANDARD ENTRY CLASSES.** NACHA, in its role of ensuring the safety, security, and viability of the ACH network has determined that certain single-use or limited-use consumer authorizations have the potential to increase risk in the ACH system and compromise system effectiveness by increasing the incidence of returned Entries. Therefore, to qualify as an Originator of such Entries Company hereby warrants to Bank that for each such ACH Entry submitted for processing, Company has obtained all authorizations from the Receiver as required by the Rules, by Regulation E or other applicable law, and this Agreement. Company indemnifies and holds Bank harmless from any liability arising out of Company's breach of these warranties.

The warranties described below apply only to those Companies who have been approved by Bank to originate Entries of the type(s) described. In that event, Company acknowledges and agrees to adhere to the applicable measures shown for each respective SEC code:

- a) Company Warranties for the Telephone Initiated Entries (TEL) Standard Entry Class:
  - i. Entries representing the authorization of telephone-based payments must be identified via Company's use of NACHA's "TEL" Standard Entry Class code as defined in the Rules; Company's use of any Standard Entry Class codes other than TEL in order to avoid the increased scrutiny required for such transactions shall constitute a violation of applicable law and may result in Company's immediate loss of ACH

- Origination rights regardless of any termination notification period otherwise specified in this Agreement.
- ii. Company will utilize commercially reasonable methods to establish the identity of the Receiver, and hereby warrants to Bank that each such Receiver has authorized Company to submit ACH Entries to their accounts for settlement of transactions to which Receiver has agreed.
  - iii. As required by the Rules, Company must maintain records including but not limited to telephone voice recordings as proof of each Receiver's authorization. Bank from time to time may (without any obligation or duty to do so) require Company to make such records available for Bank's review.
  - iv. As required by the Rules, Company must use commercially reasonable procedures to verify that routing numbers are valid for entries originated using the TEL Standard Entry Class code.
  - v. Company will provide the Receiver the disclosures and information required by the Rules.
- b) Company Warranties for the Internet Initiated Entries (WEB) Standard Entry Class:
- i. Entries representing the authorization of Internet-based payments must be identified via Company's use of NACHA's "WEB" Standard Entry Class code as defined in the Rules.
  - ii. Company's use of any Standard Entry Class codes other than WEB in order to avoid the increased scrutiny required for such transactions shall constitute a violation of applicable law and may result in Company's immediate loss of ACH Origination rights regardless of any termination notification period otherwise specified in this Agreement.
  - iii. Company will utilize commercially reasonable methods to establish the identity of the Receiver, and hereby warrants to Bank that each such Receiver has authorized Company to submit ACH Entries to their accounts in settlement of transactions to which Receiver has agreed.
  - iv. As required by the Rules, Company must maintain records such as logs from an Internet ordering system as proof of each Receiver's authorization. Bank from time to time may (without any obligation or duty to do so) require Company to make such records available for Bank's review.
  - v. As required by the Rules, Company must use commercially reasonable procedures to verify that routing numbers are valid for entries originated using the WEB Standard Entry Class code.
  - vi. As required by the Rules, Company shall establish a secure Internet session with each Receiver utilizing a commercially reasonable security technology providing a level of security that, as a minimum, is equivalent to 128 bit-encryption technology prior to the Receiver entering any banking information.
  - vii. Company has employed a commercially reasonable fraudulent transaction detection system to screen each Entry.
  - viii. Company must conduct an annual audit to ensure that the financial information it obtains from Receiver is protected by security practices and procedures that include

adequate levels of , (1) physical security to protect against theft, (2) personnel and access controls, and (3) network security.

- c) Company Warranties for the Accounts Receivable Conversion Entries (ARC) Standard Entry Class:
- i. Company must in advance of receiving the Receiver's check, provide the Receiver with notice that clearly and conspicuously states that receipt of the Receiver's check will authorize an ACH debit Entry to the Receiver's account.
  - ii. Company must obtain the check from the Receiver via US mail or a drop box location. The check will serve as Company's source document to obtain the check serial number, account number, routing number, and dollar amount.
  - iii. The source document must contain a pre-printed serial number, not contain an Auxiliary On-us Field in the MICR line, be in an amount of \$25,000 or less, and be completed and signed by the Receiver.
  - iv. The amount of the Entry, the routing number, the account number, and the check serial number are in accordance with the source document.
  - v. The Company must retain a reproducible, legible image of the source document for two years from the Settlement Date and will provide Bank with a copy of the front of the Receiver's source document within 7 banking days of a request of a copy by Bank. The copy must indicate that it is a copy on its face.
  - vi. Company has employed commercially reasonable methods to securely store all source documents until destruction, and all banking information relating to ARC entries.
  - vii. Receivers must be provided an option to Opt-out of the ARC process. Company must maintain an Opt-Out database and procedures to accommodate Receivers who choose to opt-out.
  - viii. Company will not key enter the routing number, account number, or check serial number from the Receiver's source document unless it is being done to correct errors relating to MICR misreads, mis-encoding, or processing rejects.
  - ix. The source document to which the ARC Entry relates will not be presented or returned such that any person will be required to make payment based on the source document unless the ARC Entry is returned by the RDFI.
- d) Company Warranties for the Point-of-Purchase (POP) Standard Entry Class:
- i. Prior to receipt of each source document that is used as the basis for the origination of a POP Entry, the Company will provide the Receiver with the disclosure required by the Rules.
  - ii. Company will only obtain the source document from the Receiver at the Point-of-Purchase or manned bill payment location.
  - iii. The source document contains a pre-printed serial number, does not contain an Auxiliary On-us Field in the MICR line, is in an amount of \$25,000 or less, and has not been previously voided and used by the Receiver for a prior POP Entry.
  - iv. Company will use a reading device to capture the Receiver's routing number, account number, or check serial number from the source document.
  - v. Company will void the source document and return it to the Receiver.

- vi. Company will provide to the Receiver a receipt required by the Rules containing transactional information about the Entry being made to the Receiver's account.
- e) Company Warranties for the Re-Presented Check (RCK) Standard Entry Class:
  - i. Company must provide the Receiver with notice that clearly and conspicuously states the terms of the re-presented check Entry policy in advance of receiving the item.
  - ii. Company must retain a copy of the front and back of the item to which the RCK Entry relates for seven (7) years from the Settlement Date of the RCK Entry.
  - iii. Each Entry must be in an amount less than \$2,500 and the original check date must be less than 180 days from the date the Entry is transmitted to the RDFI.
  - iv. Each Entry must be drawn on a consumer account.
  - v. Company must notify the check writer that the check may be collected electronically if the check is returned for insufficient funds.
  - vi. Company must obtain the check writer's signature as authorization that fees related to the represented item may be collected electronically.
  - vii. Company has good title or is entitled to enforce the item to which the RCK Entry relates or is authorized to obtain payment or acceptance on behalf of one who has good title or is entitled to enforce the item.
  - viii. All signatures on the item to which the RCK Entry relates are authentic and authorized.
  - ix. The item to which the RCK Entry relates has not been altered, is not subject to a defense or claim in recoupment of any party that can be asserted against Bank, is drawn on, payable through, or payable at the RDFI, and the amount of the item, the item number, and the account number contained on the item have been accurately reflected in the RCK Entry.
  - x. Company has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor, or, in the case of an unaccepted draft, the drawer of the item to which the RCK Entry relates.
  - xi. The item to which the RCK Entry relates or a copy of such item will not be presented to the RDFI unless the related RCK Entry has been returned by the RDFI.
  - xii. The information encoded after the issue in magnetic ink on the item is correct.
  - xiii. Any restrictive endorsement made by Company or its agent on the item to which the RCK relates is void or ineffective upon initiation of the RCK Entry.
  - xiv. Company will provide Bank with a copy of the front and back of the item within 7 banking days of a request by Bank, provided the request is made within seven years of the settlement date of the RCK Entry.
- f) Company Warranties for the Back Office Conversion (BOC) Standard Entry Class Code:
  - i. Company may only use a check or sharedraft that (1) contains a pre-printed serial number, (2) does not contain an Auxiliary On-Ups Field in the MICR line, (3) is in an amount of \$25,000 or less, (4) is completed and signed by the Receiver as a source document, and (5) otherwise meets the requirements BOC entries.
  - ii. During the initial processing of a BOC Entry, Company must use a reading device to capture the Receiver's routing number, account number, and check serial number.



- iii. Company must use commercially reasonable procedures to verify the identity of the Receiver.
  - iv. Company has established and maintains a working telephone number, which is answered during normal business hours, for Receiver inquires regarding transactions, and the telephone number is included in the notice required for BOC entries.
  - v. Company warrants that the amount of the Entry, the routing number, the account number, and the check serial number are in accordance with the source document.
  - vi. Company shall retain a reproducible, and legible, image, microfilm, or copy of the front of the Receiver's source document for each BOC Entry for two years from the Settlement Date of the BOC Entry.
  - vii. Company will provide Bank with a copy of the front of the Receiver's source document within 7 banking days of Bank's request, provided that the request is within two years of the settlement date of the BOC Entry. The copy must indicate that it is a copy on its face.
  - viii. The source document to which the BOC Entry relates will not be presented or returned such that any person will be required to make payment based on the source document unless the BOC Entry is returned by the RDFI.
  - ix. Company has employed commercially reasonable methods to securely store (1) all source documents until destruction, and (2) all banking information relating to BOC entries for a period of not less than thirty (30) days ("Retention Period") and shall use a commercially reasonable method to destroy the source document upon the expiration of the Retention Period .
  - x. Company has provided the notices to the Receiver required by the Rules and Regulation E, including but not limited to the notice that the check may be converted to an ACH debit Entry and the Receiver has the option to Opt-out.
- (g) Company Warranties for the International ACH Transaction (IAT) Standard Entry Class Code:
- i. With respect to each IAT Entry, Company has complied with all U.S. laws, including, but not limited to, Companies obligations under programs administered by the Office of Foreign Assets Control (OFAC) and the U. S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).
  - ii. Company is in compliance with the laws and payment system rules of the receiving country.
  - iii. In the case of a non-Consumer Account, Company has entered into an agreement with the Receiver whereby the Receiver has agreed to abide by the Rules as in effect from time to time.
  - iv. Company has complied with all of the Rules related to IAT Entries

**24. LIMITATION OF LIABILITY.**

(a) IN THE PERFORMANCE OF THE SERVICES REQUIRED BY THIS AGREEMENT, BANK SHALL BE ENTITLED TO RELY SOLELY ON THE INFORMATION, REPRESENTATIONS, AND WARRANTIES PROVIDED BY COMPANY PURSUANT TO THIS AGREEMENT, AND SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS THEREOF. BANK SHALL BE RESPONSIBLE ONLY FOR

PERFORMING THE SERVICES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, AND SHALL BE LIABLE ONLY FOR ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING THOSE SERVICES. BANK SHALL NOT BE RESPONSIBLE FOR COMPANY'S ACT'S OR OMISSIONS (INCLUDING, WITHOUT IMITATION, THE AMOUNT, ACCURACY, TIMELINESS OF TRANSMITTAL OR AUTHORIZATION OF ANY ENTRY RECEIVED FROM COMPANY) OR THOSE OF ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY FEDERAL RESERVE BANK, ACH OPERATOR OR TRANSMISSION OR COMMUNICATIONS FACILITY, ANY RECEIVER OR RDFI (INCLUDING, WITHOUT LIMITATION, THE RETURN OF ANY ENTRY BY SUCH RECEIVER OR RDFI), AND NO SUCH PERSON SHALL BE DEEMED BANK'S AGENT. COMPANY AGREES TO INDEMNIFY BANK AGAINST ANY LOSS, LIABILITY OR EXPENSE (INCLUDING ATTORNEYS' FEES AND COSTS) RESULTING FROM OR ARISING OUT OF ANY CLAIM OF ANY PERSON THAT THE BANK IS RESPONSIBLE FOR ANY ACT OR OMISSION OF COMPANY OR ANY OTHER PERSON DESCRIBED IN THIS SECTION 24(a).

(b) BANK SHALL BE LIABLE ONLY FOR COMPANY'S ACTUAL DAMAGES DUE TO CLAIMS ARISING SOLELY FROM BANK'S OBLIGATIONS TO COMPANY WITH RESPECT TO ENTRIES TRANSMITTED PURSUANT TO THIS AGREEMENT; IN NO EVENT SHALL BANK BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH COMPANY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE BANK AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY WHICH COMPANY MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM BANK'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

(c) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING PROVISIONS, BANK SHALL BE EXCUSED FROM FAILING TO ACT OR DELAY IN ACTING IF SUCH FAILURE OR DELAY IS CAUSED BY LEGAL CONSTRAINT, INTERRUPTION OF TRANSMISSION OR COMMUNICATION FACILITIES, EQUIPMENT FAILURE, WAR, EMERGENCY CONDITIONS OR OTHER CIRCUMSTANCES BEYOND BANK'S CONTROL. IN ADDITION, BANK SHALL BE EXCUSED FROM FAILING TO TRANSMIT OR DELAY IN TRANSMITTING AN ENTRY IF SUCH TRANSMITTAL WOULD RESULT IN BANK'S HAVING EXCEEDED ANY LIMITATION UPON ITS INTRA-DAY NET FUNDS POSITION ESTABLISHED PURSUANT TO PRESENT OR FUTURE FEDERAL RESERVE GUIDELINES OR IN BANK'S REASONABLE JUDGMENT OTHERWISE WOULD VIOLATE ANY PROVISION OF ANY PRESENT OR FUTURE RISK CONTROL PROGRAM OF THE FEDERAL RESERVE OR ANY RULE OR REGULATION OF ANY OTHER U.S. GOVERNMENTAL REGULATORY AUTHORITY.

(d) SUBJECT TO THE FOREGOING LIMITATIONS, BANK'S LIABILITY FOR LOSS OF INTEREST RESULTING FROM ITS ERROR OR DELAY SHALL BE CALCULATED BY USING A RATE EQUAL TO THE AVERAGE FEDERAL FUNDS RATE AT THE FEDERAL RESERVE BANK OF SAINT LOUIS FOR THE PERIOD INVOLVED. AT BANK'S OPTION, PAYMENT OF SUCH INTEREST MAY BE MADE BY CREDITING THE ACCOUNT.

**25. RULES ENFORCEMENT.** In the event that a Report of Possible Rules Violation is filed on the Company, the Company will take appropriate steps to correct the problem within the time

frames suggested by the Bank. In the event that a fine is levied against the Bank for a violation of the Rules, the Company agrees to make the Bank whole for the value of the fine.

**26. INCONSISTENCY OF NAME AND ACCOUNT NUMBER.** The Company acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by the Bank to the Receiving Depository Financial Institution may be made by the Receiving Depository Financial Institution (or by the Bank in the case of an On-Us Entry) on the basis of the account number supplied by the Company, even if it identifies a person different from the named Receiver, and that the Company's obligation to pay the amount of the Entry to the Bank is not excused in such circumstances. Company is liable for and must settle with Bank for any Entry initiated by Company that identifies the Receiver by account or identifying number or by name and account or identifying number.

**27. PAYMENT FOR SERVICES.** The Company shall pay the Bank the charges for the services provided in connection with this Agreement, as set forth in Schedule F. All fees and services are subject to change upon thirty (30) days prior written notice from the Bank. Such charges do not include, and the Company shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Depository Agreement between the Bank and the Company with respect to the Account.

**28. AMENDMENTS.** Except as provided in Section 26, the Bank may amend this agreement from time to time upon written notice to the Company. In the event that performance of services under this Agreement would result in a violation of any present or future statute, regulation or governmental policy to which the Bank is subject, then this Agreement shall be amended to the extent necessary to comply with such statute, regulation or policy. Alternatively, the Bank may terminate this Agreement if it deems such action necessary or appropriate under the circumstances. The Bank shall have no liability to the Company as a result of any such violation, amendment or termination. Any practices or course of dealings between the Bank and the Company, or any procedures or operational alterations used by them, shall not constitute a modification of this Agreement or the Rules, nor shall they be construed as an amendment to this Agreement or the Rules.

**29. NOTICES, INSTRUCTIONS, ETC.**

(a) Except as stated herein, the Bank shall not be required to act upon any notice or instruction received from the Company or any other person, or to provide any notice or advice to the Company or any other person with respect to any matter.

(b) The Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized ACH Representative, and any such communication shall be deemed to have been signed by such person. The Company may add or delete any Authorized ACH Representative by written notice to the Bank signed by at least two Authorized ACH Representatives other than that being added

or deleted. Such notice shall be effective on the second Business Day following the day received by the Bank.

(c) Except as stated herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered, or sent by United States mail addressed as follows:

Talmer Bank & Trust  
**Attn: Treasury Management**  
**567 Broad Street**  
**PO Box 970**  
**Lake Geneva, WI 53147**

And, if to the Company  
VILLAGE OF PLEASANT PRAIRIE  
**9915 39TH AVE**  
PLEASANT PRAIRIE WI 53158-6501

unless another address is substituted by notice delivered or sent as provided hereon. Except as otherwise stated herein, any such notice shall be deemed given when received.

**30. DATA RETENTION.** The Company shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by the Bank as provided herein, and shall provide such Data to the Bank upon its request.

**31. TAPES AND RECORDS.** All magnetic tapes, Entries, security procedures and related records used by the Bank for transactions contemplated by this Agreement shall be and remain the Bank's property. The Bank may, at its sole discretion, make available such information upon the Company's request. Any expenses incurred by the Bank in making such information available to the Company shall be paid by the Company.

**32. TERMINATION.**

(a) By the Bank. The Bank may terminate this Agreement at any time without reason by notifying the Company. The Bank may terminate this Agreement without notification if the Company breaches any of its obligations under this Agreement or the Rules.

(b) By the Company. The Company may terminate this Agreement at any time upon ten (10) Business Days' prior written notice to the Bank.

(c) Effect of Termination. Termination of this Agreement shall not affect any of the Bank's rights or the Company's obligations hereunder with respect to any Entries initiated by the Company prior to such termination. Termination of this Agreement does not relieve the

Company of its obligations under Sections 17, 19, 21 or 22 of this Agreement, which shall remain enforceable by the Bank.

**33. ENTIRE AGREEMENT.** This Agreement (including the Schedules attached) together with the Depositary Agreement, is the complete and exclusive statement of the agreement between the Bank and the Company with respect to the subject matter hereof and supersedes any prior agreement(s) between the Bank with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Depositary Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which the Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and the Bank shall incur no liability to the Company as a result of such violation or amendment. No course of dealing between the Bank and the Company will constitute a modification of this Agreement, the Rules, or the security procedures, or constitute an agreement between the Bank and the Company regardless of whatever practices and procedures the Bank and the Company may use.

**34. NON-ASSIGNMENT.** The Company may not assign this Agreement or any of the rights or duties hereunder to any person without the Bank's prior written consent.

**35. WAIVER.** The Bank may waive enforcement of any provision of this Agreement. Any such waiver shall not affect the Bank's rights with respect to any other transaction or modify the terms of this Agreement.

**36. BINDING AGREEMENT; BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against the Bank or the Company hereunder.

**37. HEADINGS.** Headings are used for reference purposes only and shall not be deemed part of this Agreement.

**38. SEVERABILITY.** In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**39. GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**Bank:**

**Company**

**Talmer Bank & Trust**

**Village of Pleasant Prairie**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name: Michael R. Pollocoff

Title:

Title: Village Administrator

Schedule A

COMPANY SELECTED  
STANDARD ENTRY CLASS CODE

- |                                     |     |                                         |
|-------------------------------------|-----|-----------------------------------------|
| <input type="checkbox"/>            | ARC | Accounts Receivable Entry               |
| <input checked="" type="checkbox"/> | CCD | Corporate Credit or Debit Entry         |
| <input checked="" type="checkbox"/> | PPD | Prearranged Payment and Deposit Entry   |
| <input type="checkbox"/>            | RCK | Re-presented Check Entry                |
| <input type="checkbox"/>            | TEL | Telephone-Initiated Entry               |
| <input type="checkbox"/>            | WEB | Internet-Initiated Exchange             |
| <input type="checkbox"/>            | CTX | Corporate Trade Exchange (Debit/Credit) |
| <input type="checkbox"/>            | POP | Point-of-Purchase Entry                 |
| <input type="checkbox"/>            | POS | Point-of-Sale Entry                     |
| <input type="checkbox"/>            | SHR | Shared Network Transaction              |
| <input type="checkbox"/>            | IAT | International ACH Transaction           |

## Schedule B

### Processing Schedule

#### Delivery of ACH Files:

- Internet transmissions  
The Company may electronically transmit files to the Bank via the secured business internet banking.
- Format and content of entries  
All files must be submitted in NACHA format. The Company should refer to Appendix Two in the NACHA Rulebook for specific formatting details.
- Timing of delivery

#### Consumer Credit and Debit Entries

Delivery Method	Deadline	Day of Delivery
Transmission	5:00 p.m. Central Time	2 Business Days Prior to Effective Entry Date of transactions*

#### Corporate Credit and Debit Entries

Delivery Method	Deadline	Day of Delivery
Transmission	5:00 p.m. Central Time	1 Business Days Prior to Effective Entry Date of transactions*.

\*“Effective Date” must be a Business Day or the file will be processed on the first Business Day following the effective date. The Effective Entry Date for each Entry must be not more than ninety (90) calendar days after receipt of the Entry by Bank.



## **Schedule C Security Procedures**

### **Security Procedures**

The Company agrees to establish prudent security standards and policies that include proper safeguards to protect the confidentiality of all Login IDs, User ID and Passwords that are assigned to them for initiating ACH transactions. Any transaction initiated or authorized using a valid combination of a Login ID, User ID and Password will be considered authentic, valid and binding by the Company and the Bank. The Bank agrees to provide reasonable assistance to establish Login IDs, User IDs, and Passwords, training, and support to the Company for properly using the services.

The Bank will anticipate the receipt of a transmission from the Company on each scheduled processing date identified by the Company in writing and agreed to by Bank. The schedule is to be provided to the Bank five (5) business days in advance of the first ACH transaction of each new year. The Company is responsible for notifying the Bank of any changes to the prearranged scheduled date in sufficient time for the Bank to accommodate the requested change. The Authorized Company Representative will notify Bank if a transmission will not take place on the prearranged scheduled processing date. The Company is responsible for ensuring that the Bank receives the transmission on each processing date indicated in the processing schedule.

Schedule D

ACH PROCESSING LIMIT

<b>Credit Origination</b>	
Maximum File Value	<u>\$ 0.00</u>
Maximum Entry Value	<u>\$ 0.00</u>
<b>Debit Origination</b>	
Maximum File Value	<u>\$ 525,000.00</u>
Maximum Entry Value	<u>\$ 525,000.00</u>
<b>Overall</b>	
Maximum Net Settlement Limit	<u>\$ 525,000.00</u>

**SCHEDULE E**

**Originating Company Information**

Company: VILLAGE OF PLEASANT PRAIRIE

Street Address: 9915 39TH AVE

City, State Zip: PLEASANT PRAIRIE WI 53158-6501

Company Phone Number: 262-694-1400

Company Fax Number: 262-694-4734

Primary Contact: Kathleen Goessl

Primary E-Mail kgoessl@plprairie.com<sup>wi</sup>

Secondary Contact: Jennifer Laib

Authorized Account: 40015025

Authorized Account:

Authorized Account:

Authorized Account:

**SCHEDULE F  
SERVICE FEES**

Originating ACH	\$ 25.00
Positive Pay	\$ 50.00
Secure Token	\$ 30.00
Incoming Wire	\$ 10.00
Domestic Outgoing Wire	\$ 25.00
Foreign Outgoing Wire	\$ 40.00
Stop Pay	\$ 29.00



Office of the Village  
Director of Public Works  
**John P. Steinbrink, Jr.**

**To:** Michael Pollocoff  
**From:** John Steinbrink, Jr.  
**Subject:** Install Fencing – Prairie Farms Trail  
**Date:** June 14, 2011

On May 26, 2011, a bid announcement for Install Fencing on Prairie Farms Trail was posted to Wisconsin VendorNet System, the State of Wisconsin website for all state agency procurements. Through this posting, the bid was automatically distributed to 39 State registered vendors. The bid was also distributed to contractors pre-qualified to work in the Village.

On June 10, 2011, sealed bids were opened for the contract to install fencing. Two bids were received:

<u>Company</u>	<u>Bid</u>
Statewide Fencing	\$36,300
Aluminum Fence	\$38,612

The 2011 approved budget for this project is \$40,000.

This project is necessary to provide a physical barrier between the trail and the adjacent farm field. The 48" high woven wire fence is the same style fencing as used on the Interstate roads.

I recommend a contract be awarded to Statewide Fencing to install fencing on Prairie Farms Trail.

**ORDINANCE #11-16**

**ORDINANCE TO AMEND CHAPTER 355 OF  
THE MUNICIPAL CODE OF THE  
VILLAGE OF PLEASANT PRAIRIE,  
KENOSHA COUNTY, WISCONSIN  
RELATING TO MUNICIPAL WATER CROSS CONNECTIONS**

**BE IT ORDAINED AND ESTABLISHED** by the Village Board of Trustees of the Village of Pleasant Prairie, Kenosha County, Wisconsin, that Chapter 355-14 of the Municipal Code is hereby amended as follows:

**§ 355-14 Cross-connection control**

**A.**

*PURPOSE: The purpose of this section is to protect consumers and the public water supply system of the Village from the possibility of contamination or pollution due to a backflow of contaminants into building plumbing and/or into the public water supply system.*

**A.— B.**

A cross-connection shall be defined as any physical connection or arrangement between two otherwise separate systems, one of which contains potable water from the Village water system, and the other, water from a private source, water of unknown or questionable safety, or steam, gases or chemicals, whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

**B.— C.**

No person shall establish or permit to be established, or maintain or permit to be maintained, any cross-connection. No interconnection shall be established whereby potable water from a private, auxiliary or emergency water supply, other than the regular water supply of the Village, may enter the supply or distribution system of such municipality, unless such private, auxiliary or emergency water supply and the method of connection and use of such supply shall have been approved by the Water Utility and the Wisconsin Department of Natural Resources in accordance with § NR 811-09, Wis. Adm. Code.

**C.— D.**

It shall be the duty of the Water Utility to cause inspections to be made of all properties served by the public water system where cross-connection with the public water system is deemed possible. The frequency of inspection and reinspections based on potential health hazards involved shall be as established by the Water Utility and as approved by the Wisconsin Department of Natural Resources in accordance with § NR 811-09, Wis. Adm. Code.

**D.— E.**

Upon presentation of credentials, the Water Utility, Village and/or its representative representative of the Plumbing Inspector or Health Officer shall have the right to request entry at any reasonable time to examine any property served by a connection

to the public water system of the Village for cross-connections. If entry is refused, such representative shall obtain a special inspection warrant under § 66.0119, Wis. Stats. On request, the owner, lessee or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property.

**E. F.**

The Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this section exists and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service shall be discontinued only after reasonable notice and opportunity for hearing under Ch. 68, Wis. Stats., except as provided in Subsection **F-G**. Water service to such property shall not be restored until the cross-connection(s) has been eliminated in compliance with the provisions of this section.

**F. G.**

If it is determined by the Water Utility that a cross-connection or an emergency endangers public health, safety or welfare and requires immediate action, and a written finding to that effect is filed with the Village Clerk and delivered to the customer's premises, service may be immediately discontinued. The customer shall have an opportunity for hearing under Ch. 68, Wis. Stats., within 10 days of such emergency discontinuance.

**H.**

*The Village of Pleasant Prairie adopts by reference the State Plumbing Code of Wisconsin being Chapter COMM 82, Wisconsin Administrative Code. This ordinance does not supersede the State Plumbing Codes, but is supplementary to them.*

Passed and adopted this 20th day of June, 2011.

VILLAGE OF PLEASANT PRAIRIE

\_\_\_\_\_  
John P. Steinbrink, President

Attest:

\_\_\_\_\_  
Jane M. Romanowski, Clerk

Posted: \_\_\_\_\_

**RESOLUTION #11-19**

**RESOLUTION CERTIFYING THE CREATION, REVIEW AND ADOPTION OF THE  
COMPLIANCE MAINTENANCE ANNUAL REPORTS FOR THE  
WASTEWATER FACILITIES IN VILLAGE OF PLEASANT PRAIRIE**

**WHEREAS**, it is the policy of the Commissioners of Sewer Utility Pleasant Prairie Village that the utility be maintained within generally accepted guidelines; and

**WHEREAS**, the State of Wisconsin prescribes a method of evaluating the operating efficiency of a wastewater collection system; and

**WHEREAS**, the Sewer Utility Pleasant Prairie Village has been evaluated under the State's Annual Compliance Maintenance Evaluation, and financial management scored 4 with a GPA of 4.0; and

**WHEREAS**, wastewater facilities for Pleasant Prairie Village has received a raw score of 12 with a GPA of 4.00 and the Collection Systems Section has received a grade of A as set forth by the Department of Natural Resources; and

**WHEREAS**, the Wastewater Utility District continues to identify and eliminate infiltration and inflow; and

**WHEREAS**, the Commissioners of this Utility District have reviewed the report prepared by the Village's Plant Operator;

**NOW THEREFORE, BE IT RESOLVED**, by the Village Board of the Village of Pleasant Prairie that the Annual Compliance Maintenance Report has been reviewed and accepted as presented and is forwarded to the Department of Natural Resources for their review.

Passed and adopted this 20th day of June, 2011.

**VILLAGE OF PLEASANT PRAIRIE**

\_\_\_\_\_  
John P. Steinbrink, President

ATTEST:

\_\_\_\_\_  
Jane M. Romanowski, Clerk



## **RESOLUTION #11-18**

### **PRELIMINARY RESOLUTION DECLARING INTENT TO EXERCISE SPECIAL ASSESSMENT POLICE POWERS IN CONNECTION WITH THE CONSTRUCTION OF MUNICIPAL STORM WATER IMPROVEMENTS LOCATED IN THE RIGHT-OF-WAY AT 11606 47<sup>TH</sup> AVENUE**

**RESOLVED**, by the Village Board of the Village of Pleasant Prairie, Kenosha County, Wisconsin:

1. The Governing Body hereby declares its intention to levy special assessments pursuant to Section 66.0703, Wis. Stats., upon property described in Schedule A hereto for special benefits conferred upon such property for the construction of municipal public storm water improvements located in the right-of-way at 11606 47<sup>th</sup> Avenue.
2. The Governing Body hereby determines that the construction of such improvements are in the best interest of and for the health and welfare of the Municipality and the property affected by the improvement and constitutes an exercise of the police power.
3. The assessment against any parcel may be paid in cash or in ten equal, annual installments.
4. The Clerk shall cause to be prepared a report which shall consist of:
  - A. Preliminary plans and specifications for the improvements.
  - B. An estimate of the entire cost of the proposed improvements.
  - C. A schedule of proposed assessments.
5. When the report is completed, the Clerk shall make a copy of the report available for public inspection
6. Upon completion of the report, the Clerk shall cause notice to be given stating the nature of the proposed improvement, the general boundary lines of the proposed assessment district, the time and place at which the report may be inspected, and the time and place of the public hearing on the matters contained in the preliminary resolution and report. This notice shall be published as a Class 1 Notice and a copy shall be mailed, at least ten days before the hearing, to every interested party.

7. The hearing shall be held at the regular meeting place of the Governing Body at a time set by the Clerk in accordance with Section 66.0703(7(a)), Wis. Stats.

**Passed and adopted this 20<sup>th</sup> day of June, 2011.**

VILLAGE OF PLEASANT PRAIRIE

---

John P. Steinbrink, President

Attest:

---

Jane M. Romanowski, Clerk

Posted:

# 47<sup>th</sup> Avenue Storm Water Improvements



# ***MEMORANDUM***

---

TO: Village Board of Trustees

FROM: Jane Romanowski  
Village Clerk

DATE: June 9, 2011

RE: Operator License Application of Harmony J. Groth-Grigaitis

Harmony J. Groth-Grigaitis submitted an Operator's License application on June 3, 2011. The applicant has several offenses which do not meet the Village's guidelines for an operator's license.

It is the Assistant Police Chief's determination that Harmony J. Groth-Grigaitis does not meet the guidelines established by Chapter 194 of the Municipal Code as she has more than two criminal or civil ordinance convictions in the past five years. For the reason stated, the Assistant Police Chief and I recommend this license be denied.

\* \* \* \* \*

**CLERK'S CERTIFICATION OF  
BARTENDER LICENSE APPLICATIONS**

**Period Ending:      June 15, 2011**

I, Jane M. Romanowski, Village Clerk of the Village of Pleasant Prairie, Kenosha County, Wisconsin, do hereby certify the following persons have applied for bartender licenses and **each applicant is in compliance with the guidelines set forth in Chapter 194 of the Municipal Code.** I recommend approval of the applications for each person as follows:

NAME OF APPLICANT

LICENSE TERM

- |                       |                    |
|-----------------------|--------------------|
| 1. Meagan L. Casey    | thru June 30, 2013 |
| 2. Ella L. Sparks     | thru June 30, 2013 |
| 3. Brandon G. Wysocki | thru June 30, 2013 |

Jane M. Romanowski  
Village Clerk

**CLERK'S CERTIFICATION OF  
RENEWAL BARTENDER LICENSE APPLICATIONS**

I, Jane M. Romanowski, Village Clerk of the Village of Pleasant Prairie, Kenosha County, Wisconsin, do hereby certify the following persons have applied for a renewal bartender license, and each applicant is in compliance with the guidelines set forth in Chapter 194 of the Municipal Code. I recommend approval of the application for each person as follow:

<u>NAME OF APPLICANT</u>	<u>LICENSE TERM</u>
1. Pamela H. Bubeck	June 30, 2013
2. Barry A. Cable	June 30, 2013
3. Mary C. Debish	June 30, 2013
4. Rafael C. Delgado	June 30, 2013
5. Frances R. Ferraton	June 30, 2013
6. Stephanie A. Gallo	June 30, 2013
7. Donald L. Greene	June 30, 2013
8. Michael J. Greer	June 30, 2013
9. Shelley A. Greer	June 30, 2013
10. Mary C. Harper	June 30, 2013
11. Eva M. Hawkins	June 30, 2013
12. Amy C. Heckel	June 30, 2013
13. Debbie L. Jablonski	June 30, 2013
14. Linda M. Johnson	June 30, 2013
15. Jeffrey G. Leech	June 30, 2013
16. Thomas N. Leech	June 30, 2013
17. Michael E. Mack	June 30, 2013
18. Darlene M. Nemeth-Elam	June 30, 2013
19. Bailey K. Nussbaum	June 30, 2013
20. Dana M. Sampson	June 30, 2013
21. Theresa A. Schwanke	June 30, 2013
22. Gurpreet K. Singh	June 30, 2013
23. Jasleen K. Singh	June 30, 2013
24. Ashley J. Walker	June 30, 2013
25. Jessica A. Weishaar	June 30, 2013
26. Rita M. Wheeler	June 30, 2013
27. Frances A. Willkomm	June 30, 2013

**NOTE: ALL LICENSEES LISTED ABOVE HAVE SUBMITTED RENEWAL APPLICATIONS AND THE POLICE DEPARTMENT HAS SEARCHED ITS RECORDS. FOLLOWING PAST PRACTICE DUE TO THE NUMBER AND TIME REQUIRED, THE RENEWAL APPLICATIONS WERE NOT COPIED FOR THE BOARD MEETING.**

Jane M. Romanowski  
Village Clerk