

**AMENDED AGENDA  
VILLAGE OF PLEASANT PRAIRIE  
PLEASANT PRAIRIE VILLAGE BOARD  
PLEASANT PRAIRIE WATER UTILITY  
PLEASANT PRAIRIE SEWER UTILITY  
Village Hall Auditorium  
9915 – 39th Avenue  
Pleasant Prairie, WI  
February 19, 2018  
6:00 p.m.**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Presentation
  - A. Present Pleasant Prairie Police Association Appreciation to Sarah Borst.
  - B. Present Resolution #18-02 for Appreciation and Recognition to Thomas Clark for His Years of Service to the Village of Pleasant Prairie.
5. Minutes of Meetings – February 5, 2018
6. Citizen Comments (Please be advised per State Statute Section 19.84(2), information will be received from the public on items not on the agenda; however, no discussion is allowed and no action will be taken under citizen comments.)
7. Administrator's Report
8. New Business
  - A. Receive Plan Commission recommendation and consider Ordinance #18-05 for Comprehensive Plan Amendment as it relates to property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision.
  - B. Receive Plan Commission recommendation and consider Ordinance #18-06 for a Zoning Map Amendment to rezone the portion of the lot zoned C-1 as it relates to property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision.
  - C. Receive Plan Commission recommendation and consider Ordinance #18-07 for a Zoning Text Amendment to allow permitted uses and auxiliary uses allowed in the M-5 Production Manufacturing District.

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- D. Consider and approve partial termination of the Memorandum of Understanding and Waiver of Special Assessment related to vacant property located at the southwest corner of STH50 and 91<sup>st</sup> Avenue.
  - E. Ratify and approve settlement of lawsuit related to design and construction defects at RecPlex Aqua Arena.
  - F. Approve repair contract with Riley Construction as part of settlement of lawsuit related to design and construction defects at RecPlex Aqua Arena.
  - G. Approve repair contract with Van's Roofing, Inc. as part of settlement of lawsuit related to design and construction defects at RecPlex Aqua Arena.
  - H. Consider an award of contract for 2018 Annual Paving Program to Payne & Dolan, Inc.
  - I. Consider Letter of Credit Reduction Request No. 1 to Ayres CSM Phase 1 Improvements generally located at 47<sup>th</sup> Avenue.
  - J. Consider Resolution #18-04 to authorize the disposal of surplus vehicles and equipment.
  - K. Consider Resolution #18-05 to urge the State of Wisconsin Legislature to protect local businesses, apartment owners and homeowners from tax shifts relating to Dark Store and Walgreen property tax loopholes.
9. Village Board Comments
10. Consider enter into Executive Session pursuant to Section 19.85(1)(c) to consider employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility and subject to Wis. Stats. Sec. 19.85(1)(e) deliberating or negotiating the purchasing of public properties, the investing of public funds or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.
11. Return to Open Session and Adjournment

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

Resolution No. 18-02

**Resolution of Appreciation and Recognition  
to Lieutenant Thomas Clark  
for His Years of Service to the Village of Pleasant Prairie**

*WHEREAS*, Lieutenant Thomas Clark will retire on February 27, 2018, after twenty-seven years of service and commitment to the Village of Pleasant Prairie and the Fire & Rescue Department; and

*WHEREAS*, Tom began his career with the Fire & Rescue Department in October of 1990 as a Paid-on-Call firefighter and became full-time in May of 1995; and

*WHEREAS*, in December of 2001, Tom was promoted to the position of Fire Lieutenant; and

*WHEREAS*, Tom has been a long-time member of the Wisconsin State Fire Inspectors Association, and acted as President of the Association in 2014; and

*WHEREAS*, Tom worked on numerous prevention programs such as the WisSafe Smoke detector program and has been active in legislation to promote fire safety; and

*WHEREAS*, Tom continued to proudly represent the Village as a Gateway Technical College EMS Instructor, in addition to teaching CPR and Advanced Cardiac Life Support courses; and

*WHEREAS*, Tom has been an immeasurable asset to the department, not only in his Firemedic position, but also due to his inspection and code knowledge which allowed him to assist in countless building projects throughout the Village; and

*WHEREAS*, the Village would like to acknowledge and sincerely thank Tom for his dedication and commitment to the safety and well-being of residents in the community as an advocate of residential fire sprinkler systems which prolonged exit times and improved survivability during house fires; and

*NOW, THEREFORE BE IT RESOLVED*, that the Village of Pleasant Prairie hereby extends to Tom our sincere respect and appreciation for his service to the Village, our congratulations on a well-deserved retirement, and best wishes to for his continued success, health and happiness in the years to come.

*Considered and adopted this 19<sup>th</sup> day of February, 2018*

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*John P. Steinbrink, President*

Attest:

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*Jane Snell, Village Clerk*



**VILLAGE OF PLEASANT PRAIRIE  
PLEASANT PRAIRIE VILLAGE BOARD  
PLEASANT PRAIRIE WATER UTILITY  
PLEASANT PRAIRIE SEWER UTILITY  
9915 - 39th Avenue  
Pleasant Prairie, WI  
February 5, 2018  
6:00 p.m.**

A regular meeting of the Pleasant Prairie Village Board was held on Monday, February 5, 2018. Meeting called to order at 6:00 p.m. Present were Village Board members Kris Keckler, Steve Kumorkiewicz, Dave Klimisch and Mike Serpe. John Steinbrink was excused. Also present were Tom Shircel, Interim Village Administrator; Jean Werbie-Harris, Community Development Director; Kathy Goessl, Finance Director; Dave Smetana, Police Chief; Craig Roepke, Interim Fire & Rescue Chief; Rocco Vita, Village Assessor; Matt Fineour, Village Engineer; John Steinbrink Jr., Public Works Director; Carol Willke, Human Resources Director; Dan Honore', IT Director; Sandro Perez, Inspection Superintendent; Mary Jo Jiter, Communication Director, Craig Anderson, Recreation Director and Jane C. Snell, Village Clerk. Two (2) citizens attended the meeting.

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**4. PRESENTATION**

**A. Pleasant Prairie Police Association Appreciation Presentation.**

Michael Serpe:

We have a presentation, and that will be presented by Chief Dave Smetana for the police appreciation.

Chief Smetana:

Thank you. Trustee Serpe and members of the Board, in 2016 I met with Roger Mayer and Howard Cooley at their request regarding the welfare of the officers of the Pleasant Prairie Police Department. During that time frame five officers had been ambushed in Dallas and killed, and that was one of the seemingly endless stream of struggles between law enforcement across America and the public they serve during that summer. From that meeting the Pleasant Prairie Police Appreciation Association was born. The group grew, and other great community partners joined in, Rick Waller, Rosalie Villano and Kathy Barker. The main mission of the group was to support the men and women of the Pleasant Prairie Police Department.

The first operation included creating and distributing police appreciation yard signs throughout the Village. The goal being to fill as many yards as possible with these signs to be a constant reminder to the officers in the community that they are appreciated and supported by the Village they serve. The immediate future plans of the Association included sponsoring a cookout for the

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officers in the upcoming months. They also assisted the agency in sponsoring a mental health wellness meeting for the officers and their families. That wasn't all. The group then funded the purchase of 32 body cameras for those officers. They also worked and volunteered for a law enforcement appreciation day in 2017 started by another great Village resident Sarah Borst.

Tonight I would like to formally acknowledge their tireless work as they endeavor to make sure that each officer who wears a uniform in our community understands that they don't serve alone, that they have a grateful community behind them and supporting them. So if I could have the members Roger, Howard, Rick and Rosalie come forward for the presentation of a plaque. The plaque reads in recognition of Pleasant Prairie Police Appreciation Association and in grateful recognition of your dedication and for demonstrating service and caring to the officers and staff of the Pleasant Prairie Police Department with our sincerest thanks and gratitude. Signed this day 2018.

Michael Serpe:

Thank you, Chief. Is there anything that anybody would like to add to Howard, Roger, Rose, Rick, anybody?

Howard Cooley:

I'd just like to say we should also thank the many volunteers, some who are in this room who worked with us and spent their time. The money came from over 100 donors. And we should thank them as well. And they're well listed now as friends of the Pleasant Prairie Police Department.

Michael Serpe:

Thank you, Howard. Not only does Howard, Roger and Rick and Rosalie help out with the recognition for the police, they're also here to help the Village in many different ways. They're willing to come forward and to do what it takes to make Pleasant Prairie what it really is. And it's appreciated, believe me, by this Board. And I know the Police Department when they drive down the subdivisions and the main streets and see those signs thank you it means a lot to them. It means an awful lot to them. And I personally want to thank all of you for your efforts and it's really appreciated. Thank you very much.

**5. MINUTES OF MEETINGS - JANUARY 15, 2018**

**KLIMISCH MOVED TO APPROVE THE MINUTES OF THE VILLAGE BOARD REGULAR MEETING OF JANUARY 15, 2018 AS PRESENTED IN ITS WRITTEN FORM; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 4-0.**

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**6. CITIZEN COMMENTS**

Michael Serpe:

Jane, do we have a signup?

Jane Snell:

There are no signups this evening.

Michael Serpe:

John Prijic, I know you indicated you want to talk.

John Prijic:

John Prijic, 4861 84th Street. I'm here to comment on an item that's been approved in this year's budget. It's Beverly Woods phase 2 stormwater project. I understand that there's about \$470,000 approved in the budget for design for this year. And then there's some additional money in that budget next year for construction. I'm here to ask you to please expedite that engineering plan. From my understanding the engineering design and evaluation is going to be done by an outside engineering firm.

But there's going to be a significant lead time from the time the request for proposal gets sent out to the time that the engineering firm can put the evaluation and design on their schedule. It's going to take many months. So what I'm asking is if you could please expedite the request for proposal so that that engineering firm can at least put that work on their calendar so by the time the weather warms up they can get started because that's going to take some time to complete.

On another note I would like to state that we have plenty of drainage woods in Beverly Woods Subdivision, and we had the public works department come out and improve several ditches late in the year last year and they did an outstanding job. The crew that came out were efficient. They knew exactly what they were doing. And they did prevent some and minimize some property damage that occurred about three weeks ago. We had another watermain break, and those ditches that were recently dug carried a lot of the water away that would have otherwise caused property damage to some of the houses so for that I thank you.

Michael Serpe:

Thank you, John. This is an area that's troubled. And it's a different area because the water utility is serviced by the City of Kenosha. And there have been a couple watermain breaks. And I know John Steinbrink, Jr., our Public Works Director, is on top of it. And it is an area that's going to need attention, and it's going to need attention sooner than later. So we'll work with it, John. Thank you. Anybody else wishing to speak under citizens' comments?

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Joseph Rouse:

Thank you, I didn't know there was a signup. Joseph Rouse, 6530 42nd Avenue, Kenosha. I just wanted to -- I have a comment on the January 15th decision about the lethal removal of the beavers, of the beaver dam near 3rd Avenue. And I just wanted to -- I was looking over the 2015 to 2025 wildlife plan for beaver maintenance, I guess maintenance and management I think it's titled. I understand that there are beaver hunting periods and trapping periods and that removal is called for in certain cases of cold water flow to maintain that and to maintain areas for trout and everything like that. And I just wanted to ask if as the document states to consider removal only after certain management and education plans have been implemented. I just wanted to know if those have been talked about before the decision was removing them lethally.

Michael Serpe:

I'll let John answer that.

John Steinbrink, Jr.:

We did enter into a contract with the USDA, and they're really experts in executing this contract. We don't have in-house staff, we don't have any local contractors that we work with that have the qualifications of the USDA. So I guess the Village really leans on their expertise to make sure that everything is done properly. I haven't talked to them specifically about those questions that you had asked. But I can reach out to them and verify. But I would believe since they are the USDA they follow all the rules and regulations as far as trapping. And that's why we go with a company like them to make sure that things like this don't get missed.

Joseph Rouse:

Okay, if I can just say one more thing is that I know the decision was made in cooperation with them. I know that there was a statement that it was the most inexpensive way to do it and the least intrusive way. I just had noticed -- I just wanted to bring up the fact that in the management plan for the ten year management plan from 2015 it does suggest to do more management implementations for the site like, you know, in setting up certain fences or doing things like that to prevent beavers from building dams that might cause flooding. So I know that the cost was an issue when the decision was made. They did bring that up. And it was a relatively low cost for this lethal removal plan.

But I guess I just wanted to double check with that because they did say that other management plans should be implemented beforehand, and I just didn't want the cost to bypass all that and just jump to the lethal removal. Because even when the decision was made last month I believe that someone brought up the point that leaving that area unmanaged and proposed by the plans in that -- proposed by the facilities in that plan like setting up fences or putting up bars could just have beavers come back again like after they were already lethally removed. So I just wanted to make sure that all the options were explored first before going to that.

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John Steinbrink, Jr.:

I can just respond to that very quickly. We had looked at and talked about putting up a fence. Then you really need a fence on both sides, and the cost for that is just -- it's really nothing that the general fund is budgeted for at this time. We'd have to make a new decision packet. And so right now we're just removing them to make sure that we can get water flow. And the main key for this is just to make sure that we don't have residents that are flooded, we don't have any property damage. That's really our main focus right now.

Joseph Rouse:

Okay, thank you.

Michael Serpe:

Thank you. Is there anybody else wishing to speak?

Renee Rouse:

Thank you. Renee Rouse, 6530 42nd Avenue, Kenosha, 53142. I just wanted to back [inaudible] on what he was saying about that. That I actually work at Fellow Mortals Wildlife Hospital in Lake Geneva. It's a hospital where we rehabilitated injured and orphaned wildlife from a lot of areas in Wisconsin. But I was just going to say that if that plan were to go forward that just to remember that we are there, and that if anyone sees any beavers left behind or injured ones after the fact of doing the removal or anything like that that's what we are there for. But I think also doing something like this could cause a lot of problems for us also because there are so many rules and regulations that limit us to where we can release animals after we have helped them recover from their injuries and such. So if we were to intake any admits from doing this lethal removal it's going to be very troublesome for us to find places for them to go. But also it is just important just to remember that we are there and that's why we are there to take care of them if there is anyone that is left behind or damaged from this removal.

Michael Serpe:

Thank you.

John Steinbrink, Jr.:

I would like to get your contact information before you leave if I could. Thank you.

Michael Serpe:

Anybody else wishing to speak? Anybody else? We'll close the citizens' comments.



**7. ADMINISTRATOR’S REPORT**

Michael Serpe:

Administrator’s report, Tom?

Tom Shircel:

I have nothing this evening.

**8. NEW BUSINESS**

- A. Receive Plan Commission recommendation and consider Resolution #18-03 for the Creation of the Village's Tax Incremental District No. 6 (TID 6) for a mixed-use district for property generally located at the northeast corner of the intersection of STH 165 and STH 31 (Green Bay Road).**

Jean Werbie-Harris:

Actually I think Kathy will be giving the presentation.

Kathy Goessl:

Okay, this resolution is to create Tax Incremental Number 6, and the project location is on the map in the overheads. It’s in the northeast corner of the intersection of 165 and Green Bay Road. This is the creation time table that we followed. So we did bring it to Plan Commission and the first Joint Review Board, and also the hearing for the public Plan Commission on January 8th. Now we come to the Board for your approval of TID District Number 6. After this if you’re approving this plan it will be brought to the second Joint Review Board meeting to be created. And the documents will be submitted to the Department of Revenue for creation.

These are the estimated proposed project costs. Phase 1 is proposed to be \$2.133 million. And this project is mainly roads and some traffic signals. And this will be funded by issuance of a GO bond. The GO bond will mainly be paid back by increments from Froedtert Clinic that already is planning to build on the south corner of this property. The additional phases are totaling a little less than \$5 million. And these phases are being funded by the developer, and we will issue a developer bond and pay back after our costs for the GO debt and administrative costs are covered first. So the developer is mainly taking the risk. We will have a guarantee from the hospital in a certain increment which will pay off the debt for the Village’s GO bond.

This is our feasibility analysis where we looked at the different buildings that are looking to be built in different years. And the clinic which is a Froedtert Clinic is the first thing that will be started this year. And we’re looking at a \$11 million completion value. And we’ll generate

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enough taxes to pay our GO bond plus additional money to go for the revenue bond. We're also looking at additional stuff happening over the next number of years up to 2023. We're looking at some retail buildings, a convenience store, grocery store, gas station type thing for a total value once this is all built out of over \$40 million.

This is the projected fund balance of this TID. On the side is the incremental values as it increases over the years. The collection year is in the second column over and our estimated tax rate. We're being conservative by not increasing our tax rate. You can see that once our TID Number 2 comes off we have 16 for a mill rate which should go up over the years. But we left that conservatively at 16. Then how much taxes we're going to collect, and the first red column shows the debt for the Village's GO bond that we're going to be issuing. So the first increment that comes in we'll be paying off that first principal payment and the interest that's accumulated over the first couple years. And then we'll be issuing later -- a couple years later you can see we're starting to pay off some increments toward the developer bond payment.

So the Village will be paid off in the 20 years for sure. Depending on how fast the development occurs will depend on whether the total revenue bond is paid off. The revenue bond is set at a six percent return or investment there. So each year we'll pay out either paying off our debt first and then the revenue bond and then ending the fund balances at zero each year. Gene can go over these slides. If you have any questions at the end concerning the financial piece of it I have Jim Towne from Alpine Valley and Gene Schulz from Piper Jaffray in the audience to answer any questions also.

Jean Werbie-Harris:

So as part of the TID project plan we put together a series of maps to help describe and illustrate the various components of the TID project plan. These initial maps deal with the existing uses and conditions as well as the existing boundary and the wetlands on the property. On the map on the left the two wetlands that had been identified those are artificial wetlands that had been created over the years so they will not need to be preserved or protected during the development of this site. It shows that there's two tax parcels, two different parcels that have been already acquired by Main Street Market, LLC. So the developer that we're working with has already closed on the property, and they are owners of the property.

The second slide shows us, again, the existing conditions and this property was being farmed and was farmed this past year. Again, the wetlands to be filled, again because they're artificial that's identified with the slide on the left. The slide on the right identifies the proposed improvements. It covers the various roadway modifications or improvements which include improvements to Old Green Bay Road and the intersections with Main Street Market development as well as the adjacent 102nd Street.

It also addresses some improvements that are going to be made to Highway 165 on the south end as well as the intersection of 165 and Old Green Bay Road. In addition, there's an east/west road that's identified as Main Street. Again, this is just one little segment of Main Street. Eventually

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Main Street will connect all the way from Highway 31 all the way to 39th Avenue and Springbrook Road over here in the Village Green Center. There's also some identification of some public watermain improvement work that's going to be made as part of this as well as some offsite land improvements.

With respect to the next maps we have an existing and proposed zoning. As you know the property is zoned B-2 which is a Community Business District. It currently has an AGO which is an overlay district for agricultural. Again, this year construction is going to start with mass grading, so this property does need to be rezoned from that AGO, and then a PUD or Planned Unit Development overlay will be placed on this property. As you know this is going to be developed as a unified business development, and as such there as been some modifications that we are recommending as part of some flexibility to the zoning ordinance. And we are going to try to have zero lot lines on the site and a whole number of other very detailed provisions that you'll be seeing in a PUD. And, again, so it looks like it's one large development, that it just doesn't stop and start and it's carved up in multiple properties.

The next series of maps are the land use plan maps. Again, the existing land use plan map does identify it as a community retail and service center area. But it currently has that urban reserve overlay on top of it until we completed our detailed land use planning. And in this case we are completing it. They have gone through comprehensive planning, some neighborhood planning, and conceptual planning. So at this point and we're probably going to time this with the first tenant out there, the first business that's going to be under construction that will be the Froedtert South Clinic. And that urban reserve will come off so the entire property will be just in that land use designation as community retail and service center.

This evening you have Resolution #18-03 before you. This is a resolution approving the project plan as well as the boundaries for Tax Incremental District Number 6 of the Village of Pleasant Prairie. And it does make certain findings with respect to the development. And I'll just highlight a couple of these. The purpose of this resolution is for the Village Board to determine a finding that it's in the best interest of the Village to provide for the further promotion and attraction of mixed used development on vacant land, again, at the northeast corner of Highway 165 and Highway 31 in the Village. This project development is to be referred to as Main Street Market.

Under Section 66.1105 of the statutes the Plan Commission by resolution adopted the project plan. They held a public hearing. They also adopted the project boundaries. And it is subject to the local legislative body of approval which is the Village Board and also the Joint Review Board which will be taking this item up on February 15th. Pursuant to the state statutes, again, the Plan Commission prepared the project plan and the boundaries and has now presented it to the Village Board. Again, their hearing was set for January 8th.

The Plan Commission has also directed the staff to work on a number of other items with respect to this project plan, and we are currently working on those right now. So your approval this evening is subject to some of those other things taking place. And we hope to have those done

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within the next four weeks or so such as the detailed development agreement. We are working with our Village Attorneys on that document. We're working with the developer on declarations of covenants, restrictions and easements for this entire development. We're working on articles of incorporation for this development as well.

So all of those different pieces along with the PUD do need to accompany because we've got multiple things going on. We've got a TID project plan that we're looking to approve, but we also have our detailed plans as part of this unified business development and it goes through this planning process as well. And so prior to us finalizing and disbursing any funds or getting to a certain point, and we've got a TID schedule put together and Jim Towne has put that together for us, and we do need to finalize that development agreement. But we just need to take it in steps. We do have a draft that we're working on with respect to the development agreement and some of these other documents. And we have been in close contact with Bear Development through their Main Street Market, LLC ownership for this particular property.

And, again, a lot of this is tied also directly with the urgency and the necessity of Froedtert to begin their clinic on the property. They will be submitting their detailed plans for now, preliminary site and operational plans, sometime in the next few weeks. So this is something that will be coming to the Plan Commission probably in March, by the end of March. So we want to make sure that all of these other documents will be completed prior to our finalization of the TID project plan. Again, we're seeking the adoption of Resolution 18-03 this evening. And, again, if you have any questions we do have Jim Towne here, our advisor, as well as Gene Schulz from Piper Jaffray as well as Kathy or myself to answer any questions that you may have.

Michael Serpe:

How long before the traffic analysis is going to be ready, do you know?

Jean Werbie-Harris:

The traffic analysis was supposed to have been ready by February 1st. And I placed a call into the DOT because while we have a lot of estimates based on our best determinations from their engineers and our engineers and our staff as to what improvements need to be made out there, we really do need to get that forecasting information from the DOT. And so I'll be calling them several times this week because they had indicated that we would have that before now.

Michael Serpe:

We know we have Froedtert. S.R. is there anything you can share with us tonight that might be encouraging?

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S.R. Mills:

Sure, we received our traffic numbers back which is I think is exactly we're pleased with that as well. So we got that late last week. And so we can do as much as we can do, and then we still have to go back and wait on those DOT approved numbers. So I'll receive those so that allows us to actually finish the TIA. And TIA expectations from [inaudible] office is? So we've got a week to wrap that up. But the indicator is what's really important for us because we can do about 95 percent of it once we see that hard data. We generally have had a lot of communication with the DOT throughout this process so I don't think there's going to be a lot of surprises. So it now allows us to make some determinations on setbacks and exactly what we do or don't do. That's part of what we've been doing since last [inaudible].

Michael Serpe:

Any further interest in the property?

S.R. Mills:

Yeah, there has been, yeah. It's gotten a little more PR in the public. So we're fielding a lot of interest at this point. We're trying to make sure that it aligns with what we all see with division of the property when it's done. We've got three or four very real groups out there that I'm looking to ink. And as Jean mentioned we've got a lot of different processes kind of all going at once. So we're just trying to make sure we orchestrate it properly.

Michael Serpe:

Comments or questions?

Dave Klimisch:

We had talked in a previous meeting the setbacks and such that you're planning until we get that TIA and the other traffic numbers I'm guessing we're planning for the roads to be as wide as they can and then hoping for better news as opposed to planning for the buildings and the footprints and then having to squeeze out some parking spaces?

S.R. Mills:

Correct. We've laid the site out the way we think that it's all going to align. And we have been prudent in some worse case situations. Again, there's a lot of data that goes into it so I don't believe we're going to be surprised by anything with specifically Old Green Bay Road setbacks. The right of way we're increased that size of the walking path, bike trail. So we plan for a lot of those things. We had to make some adjustments on what would be the west side of Old Green Bay Road to properly handle the parking and looking at how it all fits. And then there's some discussion on that 165 piece with relation to turn lanes, etc. So I think we're in pretty good shape

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on that and we shouldn't have any surprises. But we'll have all of that confirmed before the next time.

Dave Klimisch:

And with the turn lanes in that intersection with 165 and 104th or with 165 and Old Green Bay are the turns lanes dictated by the DOT and the TIA? Or do you conjure up what it looks like based on their data?

S.R. Mills:

So we make sure we don't conjure any of it because we're going to be wrong. So we really rely back on our traffic engineers. And the particular group that we're working with here has actually done a lot of work in the Village, knows the site well. So they put their best information together as we've had a handful of meetings with the DOT throughout the process. So we're getting constant communication and feedback. But you still have to wait for the numbers, and it is a DOT decision. It isn't a decision as to what actually ends up there. And then they do their traffic projections for where they think it's going to go in the next 10 years, 20 years. We don't want to have airport runways and big roadways that aren't used at the same point. We have to be appropriate. So they really dictate where that balance lies.

Michael Serpe:

Question, Gene, Mr. Schulz if I could. They're going to be responsible for the payments of the GO bonds. If that area doesn't develop as they predicted it may be developed, what would happen to the time frame of this TIF District payoff if it's not fully developed rather quickly?

Gene Schulz:

The key component here is the Froedtert Clinic, and that's designed to actually pay off the Village's GO. The rest of the development if it doesn't go through is going to be funded with the revenue bond. And if there's no increment there to pay off the revenue bond Mr. Mills doesn't get his money back. So the Village is protected, the developer is the one that's at risk.

Michael Serpe:

Okay.

S.R. Mills:

And designing it from the front end was to mitigate Village risk, and it certainly puts risk back on us that we need to get some increment out there. But Froedtert was key in helping us move that forward to make sure we could do for [inaudible].

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Michael Serpe:

Could that extend the life of the TIF District if lack of development? Obviously it would extend the life of the district, right?

Gene Schulz:

Yeah, it could collect until all the debt is paid off from the clinic.

Michael Serpe:

And usually it's 20 years?

Gene Schulz:

Twenty years with a three year extension.

Michael Serpe:

Any other questions? What's your pleasure?

**KUMORKIEWICZ MOVED TO CONCUR WITH THE PLAN COMMISSION RECOMMENDATION AND ADOPT RESOLUTION #18-03 FOR THE CREATION OF THE VILLAGE'S TAX INCREMENTAL DISTRICT NO. 6 (TID 6) FOR A MIXED-USE DISTRICT FOR PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF STH 165 AND STH 31 (GREEN BAY ROAD); SECONDED BY KECKLER; MOTION CARRIED 4-0.**

**B. Consider the 1st Amendment to The Cottages at Village Green Condominium development allowing issuance of building permits prior to the completion of road pavement.**

Jean Werbie-Harris:

Trustee Serpe and members of the Board, this is a request that has come to us from Todd Stanich, The Cottages at Village Green, LLC. They are specifically requesting the first amendment to their original development agreement. And this is to allow for building permits to be issued prior to road pavement being completed within The Cottages at Village Green Condominium Development. Again, this project is located north of Main Street between 46th Court and 98th Street just to the west of the Village Green Center and just kind of at that northeast corner of the Village Green area of the community.

Specifically what they're requesting, two different things. They are requesting to obtain full construction building permits and begin construction of the condominium units in Phase 1, units 1

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through 31. And secondly they're requesting to obtain an occupancy permit to operate their models. And that would be units 4 and 5. The reason for their request is to have the ability to move forward to construct the vertical units in Phase 1 that are not currently approved for construction under the original terms of the development agreement. Owing to the public response to their development as evidenced by their sales and reservations over the last several months, it's their desire to begin to properly market the development and to project to have their models online in spring of 2018 for people to view.

They have completed all of the construction on the site outside of the actual pavement including the grading, public utility work, the water, storm, sanitary systems, along with retention basin improvements. They've proof rolled all subgrade on the public right of ways for 46th Court, South Cottage Lane and North Cottage Lane. They've installed the base course for the roadway to a level that's been approved by the Village's public works department. They've also added an additional four inches of base course to the roadway, two inches on bottom and two inches on top to facilitate and to provide full access to all of the Phase 1 area for the fire and rescue department including the capability to support that 70,000 pound piece of equipment that the fire department has.

As a developer of the site and the general contractor for the construction of units through their sister company Douglas Kent Development, Inc., they're in complete control of the development and the construction activity on the site giving the Village the assurance that all terms and all conditions of the development agreement would be met and the proposed amendment would be adhered to. If they're granted the amendment they understand that the Village will not be issuing full occupancy permits or even verbal occupancy permits for the rest of the units until the roads are fully installed which is slated for spring of 2018.

Again, so what they're asking for right now is to be able to get occupancy to be able to operate the two models, and then the rest of the units they want to be able to start construction on them, obtain building permits, and start construction but not getting any final occupancies. So, again, we're just going to still be dealing with the developer. Again, this is one of the first of the newer subdivisions where it's all intended to be built under one construction season. But because it started too late in the year it was split between the fall and now in the spring. So they actually have all the underground improvements, the gravel base and everything set and ready to go, but they ran out of construction seasons.

And years ago for the first 25 years of the Village's history that's how we built the roads. That we got to a certain point and then we would allow construction to begin, and then the curb and gutter and final lift of asphalt will be placed. So this is similar except that there's a much deeper base that we're working with. And we are working with a single developer, single contractor so that makes a big difference. We did run this through the public works department, engineering department, talked to the Administrator about this. So everyone has looked through this and is on board with respect to their request. They understand that it's their liability to do any plowing out there with respect to making sure that their sites are accessible during construction. And, again,



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they need to be able to pick things up in the spring and then get their concrete in and their lift of asphalt.

Michael Serpe:

According to your maps here they have 12 reserved already sold, is that correct?

Jean Werbie-Harris:

Mm-hm, yes, almost have.

Michael Serpe:

That's good.

Jean Werbie-Harris:

There is a demand in Pleasant Prairie for not only single family but condominium units.

Michael Serpe:

Very timely. Gentlemen?

**KLIMISCH MOVED TO APPROVE THE 1ST AMENDMENT TO THE COTTAGES AT VILLAGE GREEN CONDOMINIUM DEVELOPMENT ALLOWING ISSUANCE OF BUILDING PERMITS PRIOR TO THE COMPLETION OF ROAD PAVEMENT; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 4-0.**

**C. Consider Letter of Credit Reduction Request No. 3 for The Cottages at Village Green Development.**

John Steinbrink, Jr.:

Mr. President Pro Tem and members of the Board, this is a letter of credit reduction for The Cottages at Village Green. This work was done a couple months ago, but it takes some time to get it inspected and get the paperwork processed and actually get it on the agenda. So a lot of the work is done like Jean had just talked about, the storm sewer, sewer, water, roadway is in, the backyard storm sewers are all complete. So this evening what we have is a letter of credit reduction for the roadway gravel and some of the backyard storm sewer and the pond excavation. All that amounts to \$91,688.30. Our construction management team went through and verified everything with the consulting engineer on the project and all the numbers were very consistent. So we do recommend a reduction in the letter of credit for \$91,688.30.

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**KECKLER MOVED TO APPROVE LETTER OF CREDIT REDUCTION REQUEST NO. 3 FOR THE COTTAGES AT VILLAGE GREEN DEVELOPMENT; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 4-0.**

**9. VILLAGE BOARD COMMENTS**

Michael Serpe:

I just have one. Tonight recognizing our police appreciation reminded me of something else that we have going that's kind of nice for the Village. When things are going well in an organization and you need help on certain commissions or whatever, it's real easy to attract qualified people. And right now we have outstanding qualified people on our boards, the Plan Commission, Board of Appeals, Board of Review, Recreation, Parks. And it just makes everybody feel good and especially this Board that we have competent, good, qualified, energetic people serving this Village. And I can't say enough how much I appreciate what these people did for the police appreciation and what they do for this Village not being on a board with the exception of Roger who has been on the Police and Fire Commission since the 1800s. We're fortunate to have people like you serve in the Village and supporting us and what we try to do. And, again, thank you.

**10. ADJOURNMENT**

**KECKLER MOVED TO ADJOURN THE MEETING; SECONDED BY KUMORKIEWICZ; MOTION CARRIED AND MEETING ADJOURNED AT 6:41 P.M.**

**THESE ITEMS ARE RELATED AND WILL BE DISCUSSED AT THE SAME TIME HOWEVER SEPARATE ACTION IS REQUIRED.**

Consider approval of a **Comprehensive Plan Amendment (Ord #18-05)** for the request of Steven Brown, agent for the vacant property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision (Lot 14 of Block 3) to amend the 2035 Comprehensive Land Use Plan Map 9.9 to change the Park, Recreational and Other Open Space Lands with an Interpolated Wetlands land use designations to the Low-Medium Density Residential land use designation as a result of the Wisconsin Department of Natural Resources confirmation that there are no wetlands on the property; and to update Appendix 10-3 of the Village of Pleasant Prairie Wisconsin, 2035 Comprehensive Plan.

**Recommendation:** On February 12, 2018, the Plan Commission held a public hearing, approved Plan Commission Resolution #18-04 and recommended that the Village Board approve the Comprehensive Plan Amendments as presented.

Consider approval of a **Zoning Map Amendment (Ord. #18-06)** for the request of Steven Brown, agent for the vacant property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision (Lot 14 of Block 3) to rezone the portion of the lot zoned C-1, Lowland Resource Conservancy District to the R-6, Urban Single Family Residential District so that the entire property is within the R-6 District as a result of the Wisconsin Department of Natural Resources confirmation that there are no wetlands on the property.

**Recommendation:** On February 12, 2018, the Plan Commission held a public hearing and recommended that the Village Board approve the Zoning Map Amendment as presented.

## VILLAGE STAFF REPORT OF FEBRUARY 19, 2018

Consider approval of a **Comprehensive Plan Amendment (Ord #18-05)** for the request of Steven Brown, agent for the vacant property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision (Lot 14 of Block 3) to amend the 2035 Comprehensive Land Use Plan Map 9.9 to change the Park, Recreational and Other Open Space Lands with an Interpolated Wetlands land use designations to the Low-Medium Density Residential land use designation as a result of the Wisconsin Department of Natural Resources confirmation that there are no wetlands on the property; and to update Appendix 10-3 of the Village of Pleasant Prairie Wisconsin, 2035 Comprehensive Plan.

Consider approval of a **Zoning Map Amendment (Ord. #18-06)** for the request of Steven Brown, agent for the vacant property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision (Lot 14 of Block 3) to rezone the portion of the lot zoned C-1, Lowland Resource Conservancy District to the R-6, Urban Single Family Residential District so that the entire property is within the R-6 District as a result of the Wisconsin Department of Natural Resources confirmation that there are no wetlands on the property.

### **THESE ITEMS ARE RELATED AND WILL BE DISCUSSED AT THE SAME TIME HOWEVER SEPARATE ACTION IS REQUIRED.**

*The petitioner had hired DK Environmental Services Inc., to complete a wetland delineation on the vacant property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision (Lot 14 of Block 3) and further identified as Tax Parcel Number 93-4-123-184-0985. The wetland staking was completed on June 10, 2017 and the required wetland report was filed with the Wisconsin Department of Natural Resources (WI DNR) and on December 7, 2017. The WI DNR sent the **attached** letter indicating that upon their field visit on October 25, 2017, they had concurred with the biologist with DK Environmental Services Inc., that there are no wetlands found on the site.*

In accordance with the Village of Pleasant Prairie 2035 Comprehensive Plan, upon completion of a wetland staking, the 2035 Land Use Plan Map 9.9 shall be amended to reflect the results of the aforementioned wetland staking. Therefore, the Village of Pleasant Prairie 2035 Comprehensive Land Use Plan Map 9.9 is proposed to be corrected to change the Park, Recreational and Other Open Space Lands with an Interpolated Wetlands land use designations to the Low-Medium Density Residential land use designation and Appendix 10-3 of the Village of Pleasant Prairie Wisconsin, 2035 Comprehensive Plan is proposed to be updated to reflect this change in the land use plan.

Furthermore, in accordance with the Village Zoning Ordinance, upon completion of a wetland staking the Zoning Map shall be corrected to reflect the results of the staking. Since the WI DNR has determined that there were no wetlands on the property the portion of the property that is zoned C-1, Lowland Resource Conservancy District is proposed to be rezoned into the R-6, Urban Single Family Residential District so that the entire property is within the R-6 District.

On February 12, 2018, the Plan Commission held a public hearing, approved Plan Commission Resolution #18-04 and recommended that the Village Board approve the Comprehensive Plan Amendments as presented.

On February 12, 2018, the Plan Commission held a public hearing and recommended that the Village Board approve the Zoning Map Amendment as presented.

**ORD. # 18-05**  
**ORDINANCE TO AMEND**  
**THE VILLAGE OF PLEASANT PRAIRIE, WISCONSIN**  
**2035 COMPREHENSIVE PLAN**  
**PURSUANT TO CHAPTER 390 OF THE**  
**VILLAGE MUNICIPAL CODE**

**BE IT ORDAINED** by the Village of Pleasant Prairie Board of Trustees, Kenosha County, Wisconsin, that the Village of Pleasant Prairie, Wisconsin 2035 Comprehensive Plan is hereby amended as follows:

1. To amend the Village 2035 Land Use Plan Map 9.9 to change the Park, Recreational and Other Open Space Lands with an Interpolated Wetlands land use designations to the Low-Medium Density Residential land use designation as a result of the Wisconsin Department of Natural Resources confirmation that there are no wetlands on the property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision (Lot 14 of Block 3) and further identified as Tax Parcel Number 93-4-123-184-0985; and
2. To update Appendix 10-3 of the Village of Pleasant Prairie Wisconsin, 2035 Comprehensive Plan to reflect the above noted changes to the 2035 Land Use Plan Map 9.9.

The Village Community Development Director is hereby directed to record these Amendments to the Comprehensive Plan on the appropriate pages of said Plan and to update Appendix A in Chapter 390 of the Village Municipal Code to include said amendments.

**Adopted this 19<sup>th</sup> day of February 2018.**

VILLAGE OF PLEASANT PRAIRIE

ATTEST:

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

\_\_\_\_\_  
Jane C. Snell  
Village Clerk

Ayes: \_\_\_\_ Nays: \_\_\_\_ Absent: \_\_\_\_

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

Ord #18-05 Brown LU Amend  
CODE1712-001

**ORD. # 18-06**

**ORDINANCE TO AMEND THE OFFICIAL ZONING MAP  
OF THE VILLAGE OF PLEASANT PRAIRIE,  
KENOSHA COUNTY, WISCONSIN  
PURSUANT TO CHAPTER 420-13 OF THE VILLAGE ZONING ORDINANCE**

**BE IT ORDAINED by the Village of Pleasant Prairie Board of Trustees,  
Kenosha County, Wisconsin, that the Official Village Zoning Map is hereby amended  
as follows:**

The vacant subject property generally located on 92<sup>nd</sup> Street east of 11<sup>th</sup> Avenue within Carol Beach Estates Unit #6 Subdivision (Lot 3 of Block 14) located in U.S. Public Land Survey Section 19, Township 1 North, Range 23 East in the Village of Pleasant Prairie and further identified as Tax Parcel Number 93-4-123-184-0952 is hereby rezoned as follows: the portion of the lot zoned C-1, Lowland Resource Conservancy District shall be changed to the R-6, Urban Single Family Residential District so that the entire property is within the R-6 District as a result of the Wisconsin Department of Natural Resources confirmation that there are no wetlands on the property.

The Village Zoning Administrator is hereby directed to record this Zoning Map Amendment on the appropriate sheet of the Official Village Zoning Map and Appendix B in Chapter 420 of the Village Municipal Code shall be updated to include said amendment.

**Adopted this 19<sup>th</sup> day of February, 2018.**

**VILLAGE BOARD OF TRUSTEES**

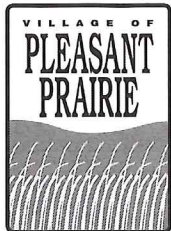
\_\_\_\_\_  
John P. Steinbrink  
Village President

ATTEST:

\_\_\_\_\_  
Jane C. Snell  
Village Clerk

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

06-Brown wetland  
CODE1712-002



### COMPREHENSIVE PLAN AMENDMENT

I (We), the undersigned owner(s)/agent do hereby petition the Village Board to amend the Village of Pleasant Prairie 2035 Comprehensive Plan as hereinafter requested related to the following property:

Property Location: East of 1004 92nd St. and West of 938 92nd St.

Legal Description: SW 1/4 of the SE 1/4 of Sec. 18 Township 1 N Range 23 East

Tax Parcel Number(s): 93 4 123 184 0985

**Check all that apply**

Land Use Plan Amendment:

To change the land use designation from remove wetland designation to \_\_\_\_\_

Neighborhood Plan Amendment to \_\_\_\_\_ Neighborhood

Other Amendment to the Comprehensive Plan (specify) \_\_\_\_\_

Petitioner's interest in the requested amendment: \_\_\_\_\_

I (We), have contacted the Community Development Department to arrange a pre-application meeting to discuss the proposed request with the Village staff to determine whether additional information may be needed to consider the request.

I (We), hereby certify that all the above statements and attachments submitted herewith are true and correct to the best of my knowledge.

**PROPERTY OWNER:**

**APPLICANT/AGENT:**

Print Name: Boys & Girls Club of Kenosha Inc

Print Name: Steven H Brown

Signature: [Signature]

Signature: [Signature]

Address: 1330 52nd St.

Address: 9656 Meadowdale Lane

Kenosha WI 53140  
(City) (State) (Zip)

Pleasant Prairie WI 53158  
(City) (State) (Zip)

Phone: 262 385 7205

Phone: 847 489 5991

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: jmcghee@bgckenosha.org

Email: stevenshouldbrown@yahoo.com

Date: 12-12-17

Date: 12/12/17

\$225



### ZONING MAP AMENDMENT APPLICATION

I, (We), the undersigned owner(s)/agent do hereby petition the Village Board of Trustees to amend the Village of Pleasant Prairie as hereinafter requested.

Property Location: East of 1004 92nd St. and West of 938 92nd St.

Legal Description: SW 1/4 of the SE 1/4 of Sec. 18. Township 1 N. Range 23 East

Tax Parcel Number(s): 934 123 184 0985

Existing Zoning District(s): C-1

Proposed Zoning District(s): R-4

Proposed Use: Single Family Residents

Compatibility with Adjacent Land Uses:  
Same, Single Family Residents

**If the property is being zoned into multiple zoning classifications or only a portion of the property is being rezoned (i.e. wetlands area) then submit an exhibit with complete legal description of each zoning classification.**

I (We), have contacted the Community Development Department to arrange a pre-application meeting to discuss the proposed request to determine whether additional information may be needed for this request.

I, (We), hereby certify that all the above statements and attachments submitted herewith are true and correct to the best of my knowledge.

**PROPERTY OWNER:**

**APPLICANT/AGENT:**

Print Name: Boys & Girls Club of Kenosha Inc

Print Name: Steven H Brown

Signature: Jake McGhee

Signature: Stu H

Address: 1330 52nd St.

Address: 9656 Meadowdale Lane

Kenosha WI 53140  
(City) (State) (Zip)

Pleasant Prairie WI 53158  
(City) (State) (Zip)

Phone: 262 385 7205

Phone: 847 489 5991

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: jmcghee@bgckenosha.org

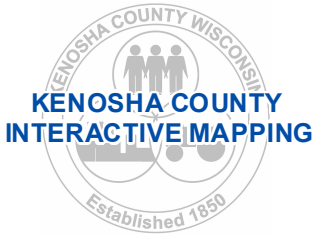
Email: stevensharoldbrown

Date: 12-12-17

Date: 12/12/17



# General Location Map



1 inch = 140 feet  
Date Printed: 1/3/2018



**DISCLAIMER** This map is neither a legally recorded map nor a survey and is not intended to be used as one. This drawing is a compilation of records, data and information located in various state, county and municipal offices and other sources affecting the area shown and is to be used for reference purposes only. Kenosha County is not responsible for any inaccuracies herein contained. If discrepancies are found, please contact Kenosha County.

**DK Environmental Services, Inc.**

1422 Sunflower Court ♦ Grayslake, Illinois 60030 ♦ (847) 548-7458 ♦ [dkenvserv@sbcglobal.net](mailto:dkenvserv@sbcglobal.net)

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# **WETLAND ASSESSMENT REPORT**

**PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN 53158**

**Tax Parcel# 93-4-123-184-0985**

**(Lot 14, Block 3 in Carol Beach Estates Subdivision Unit #6)**

**SE1/4 Section 18 – Township 1 North – Range 23 East**

*Prepared for:*

**BOYS & GIRLS CLUB OF KENOSHA, INC.**

**9656 MEADOWDALE LANE**

**PLEASANT PRAIRIE, WI 53158**

*Prepared by:*

*June 10, 2017*

**WETLAND ASSESSMENT REPORT**

**PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN 53158**

**Tax Parcel# 93-4-123-184-0985**

**(Lot 14, Block 3 in Carol Beach Estates Subdivision Unit #6)**

**SE1/4 Section 18 – Township 1 North – Range 23 East**

**INTRODUCTION**

On June 10, 2017, DK Environmental Services, Inc. (DKES) staff completed a wetland field investigation of the Boys & Girls Club of Kenosha parcel in the Village of Pleasant Prairie, Kenosha County, Wisconsin to determine on-site wetland and “waters of the U.S.” boundaries. The assessment resulted in one, low-quality wetland area of less than 1000 s.f. being identified and flagged on the 0.19 acre vacant residential lot. This report was prepared to document the results of data collection located on and near the project site, and to serve as a basis for wetland identification under Section 404 of the Clean Water Act. Wetland investigation techniques were performed in accordance with methodology established by the U.S. Army Corps of Engineers (USACE). The approximate data point locations are shown in Appendix A, Exhibit 5. Appendices illustrate the following:

- A) Exhibits
  - 1) Location Map
  - 2) Wisconsin Wetland Inventory (WWI) Map
  - 3) Soils Survey with Wetland Indicators
  - 4) Flood Insurance Rate Map (FIRM)
  - 5) Aerial Photograph with Data Point Locations
- B) Site Photographs
- C) U.S. Army Corps of Engineers Data Forms

The ±0.19-acre project site is a vacant, residential lot surrounded by existing homes to the north, east and west. The property is located directly east of 1004 92<sup>nd</sup> Street, and west of 938 92<sup>nd</sup> Street, between 11th Ave and 8<sup>th</sup> Avenue on the north side of 92<sup>nd</sup> Street in the town of Pleasant Prairie, Wisconsin.

The property is located in a mature residential area in Carol Beach Estates subdivision in the SE ¼ of Section 18, Township 01 North, Range 23 East of the Third Principle Meridian. The central portion of the study area is located approximately at 42.538598° North Latitude and - 87.821995° West Longitude.

### METHODOLOGY

Our methodology followed procedures outlined in the *Corps of Engineers Wetland Delineation Manual*, dated January 1987, including the *Regional supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region*, dated August 2010. Both manuals identify the mandatory technical criteria for wetland identification. The three essential characteristics of a jurisdictional wetland are hydrophytic vegetation, hydric soils and wetland hydrology as described below:

I) Hydrophytic Vegetation: Hydrophytic vegetation is defined as the community of macrophytes that occurs in areas where inundation or soil saturation is either permanent or of sufficient frequency and duration to exert a controlling influence on the plant species present. Hydrophytic vegetation is present when the plant community is dominated by species that can tolerate prolonged inundation or soil saturation during the growing season. Wetland indicator status is the estimated probability a plant species occurs in a wetland area. Reed (1988) designated indicator statuses for the U.S. Fish and Wildlife Service, Region 3, which are based on separating plants into five basic groups:

- (1) OBL (Obligate Wetland) almost always occur (estimated probability >99%) in wetlands under natural conditions;
- (2) FACW (Facultative Wetland) usually occur in wetlands (estimated probability 67-99%), but occasionally are found in nonwetlands;
- (3) FAC (Facultative) are equally likely to occur in wetlands or nonwetlands (estimated probability 34-66%);
- (4) FACU (Facultative Upland) usually occur in nonwetlands (estimated probability 67-99%), but occasionally are found in wetlands (estimated probability 1-33%); and
- (5) UPL (Upland) almost always occur (estimated probability >99%) in nonwetlands under natural conditions.

If greater than 50% of the plants present are FAC, FACW, or OBL the subject area is considered jurisdictional in terms of vegetation.

Vegetation was sampled within plots to quantitatively characterize wetland and/or upland plant communities within a given area. Within each plot visual estimates of percent cover of each plant species was made for each stratum (trees, saplings and shrubs, herbaceous plants and woody vines). The Dominance Test is then calculated by applying the 50/20 rule. If a plant community passes the Dominance Test, then the vegetation is hydrophytic and no further vegetative analysis is required. However, if the plant community fails the dominance test, and indicators of hydric soil and/or wetland hydrology are present then the Prevalence

Index is applied. The Prevalence Index is a weighted-average of wetland indicator status of all plant species within a sample plot. If the plant community satisfies the Prevalence Index, then the vegetation is hydrophytic. If the plant community fails Prevalence Index then it must meet the test Morphological Adaptations to be considered hydrophytic. If this last test fails then the vegetation is considered non-hydrophytic. Results of vegetative sampling are illustrated on the attached Routine U.S. Army Corps of Engineers Data Forms.

**II) Hydric Soils:** According to the National Technical Committee for Hydric Soils a hydric soil is a soil that formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part (USDA Soil Conservation Service 1994). Repeated periods of saturation or inundation combined with microbial activity causes morphological changes within the soil. This promotes biogeochemical processes, such as the accumulation of organic matter and the reduction, translocation, or accumulation of iron and other reducible elements. The result of these processes is useful in identifying hydric soils during both wet and dry periods (USDA Natural Resources Conservation Service 2006). There are 21 hydric soil indicators and if one is present it is considered a hydric soil. A detailed description on the 21 hydric soil indicators can be found in *Interim Regional supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region*, dated September 2008. The hydric soil indicators include:

- Histosol
- Histic Epipedon
- Black Histic
- Hydrogen Sulfide
- Stratified Layers
- 2 cm Muck
- Depleted Below Dark Surface
- Thick Dark Surface
- Sandy Mucky Mineral
- 5 cm Mucky Peat or Peat
- Sandy Gleyed Matrix
- Sandy Redox
- Stripped Matrix
- Loamy Mucky Mineral
- Loamy Gleyed Matrix
- Depleted Matrix
- Redox Dark Surface
- Depleted Dark Surface
- Redox Depressions
- Coast Prairie Redox
- Iron-Manganese Masses

A soil pit is excavated to the appropriate depth to describe the soils profile. Color of the soil matrix and redox, mottling, and gleying within the profile are described using the Munsell Soil Color Charts (Gretagmacbeth 2000). Generally, a hydric soil is present when there is an organic soil, histic epipedon, sulfidic material, aquic or paraquic moisture regime, reducing soils conditions, soil colors gleyed, bright mottles and/or low matrix chroma, soil listed on the hydric soil list, and iron and manganese. Results of soil sampling and if they meet one of the indicators are illustrated on the attached Routine U.S. Army Corps of Engineers Data Forms.

**III) Wetland Hydrology:** Wetland hydrology indicators are used in combination with indicators of hydric soil and hydrophytic vegetation. These other indicators reflect a sites history of past episodes of inundation or soil saturation and if it was repeated over a period of time. Areas that have hydrophytic vegetation and hydric soils generally have wetland hydrology (National Research Council 1995). Hydrologic indicators are the most brief of all wetland indicators as occur from recent or long-term meteorological conditions. Typically, the presence of water for a week or more during the growing season creates

anaerobic conditions. Anaerobic conditions lead to the prevalence of wetland plants. An area needs to meet one or more of the primary wetland hydrology indicators, which include: surface water, high water table, saturation, water marks, sediment deposits, drift deposits, algal mat or crust, iron deposits, inundation visible on aerial imagery, sparsely vegetated concave surface, water-stained leaves, aquatic fauna, true aquatic plants, hydrogen sulfide odor, oxidized rhizopheres on living roots, presence of reduced iron, recent iron reduction in tilled soils, thin much surface, and gauge or well data.

A sampled area may also meet two or more of the secondary indicators, which include: surface soil cracks, dry-season water table, crayfish burrows, saturation visible on aerial imagery, stunted or stressed plants, geomorphic position and the FAC-Neutral test. Results of hydrology are illustrated on the attached Routine U.S. Army Corps of Engineers Data Forms.

## **RESULTS**

The following is a brief description of the results of our field reconnaissance. We have included a list of the dominant plant species identified on site, including hydrologic conditions and soils observed from data point samples taken at the time of the investigation. Specific information regarding the on-site data sampling plots is found on the attached USACE Data Forms.

The subject property is a vacant, residential lot bordered by existing homes to the north, east and west, and 92<sup>nd</sup> Street at the south. Dumping of debris, including lawn clippings, brush, concrete, etc. was observed throughout portions of the lot.

The site is partially covered by mature trees in the overstory, dominated by Cottonwood (*Populus deltoides*). Silky dogwood (*Cornus obliqua*), invasive common buckthorn (*Rhamnus cathartica*), and Elderberry (*Sambucus canadensis*) were found in the shaded woody scrub/shrub layer.

The understory was dominated by a mix of weedy forbs typical of disturbed habitats, including Tall Goldenrod (*Solidago altissima*), field thistle (*Cirsium arvense*), Common Red Raspberry (*Rubus idaeus*), Common Burdock (*Arctium minus*), Creeping Charlie (*Glechoma hederacea*), Garlic Mustard (*Alliaria petiolata*), Field Sowthistle (*Sonchus arvensis*), Riverbank Grape (*Vitis riparia*), Virginia Rose (*Rosa virginiana*), and Reed Canary Grass (*Phalaris arundinacea*).

No significant hydrologic indicators were found during the site investigation. There was no evidence of inundation or drainage patterns found on the site. However, runoff from the improved, surrounding homes and lawns were observed to be at a higher elevation on the landscape, and are directed to the vacant, undeveloped lot. Downspout and/or sum pump drainage from the adjacent lots also appears to settle on the lower, vacant subject lot.

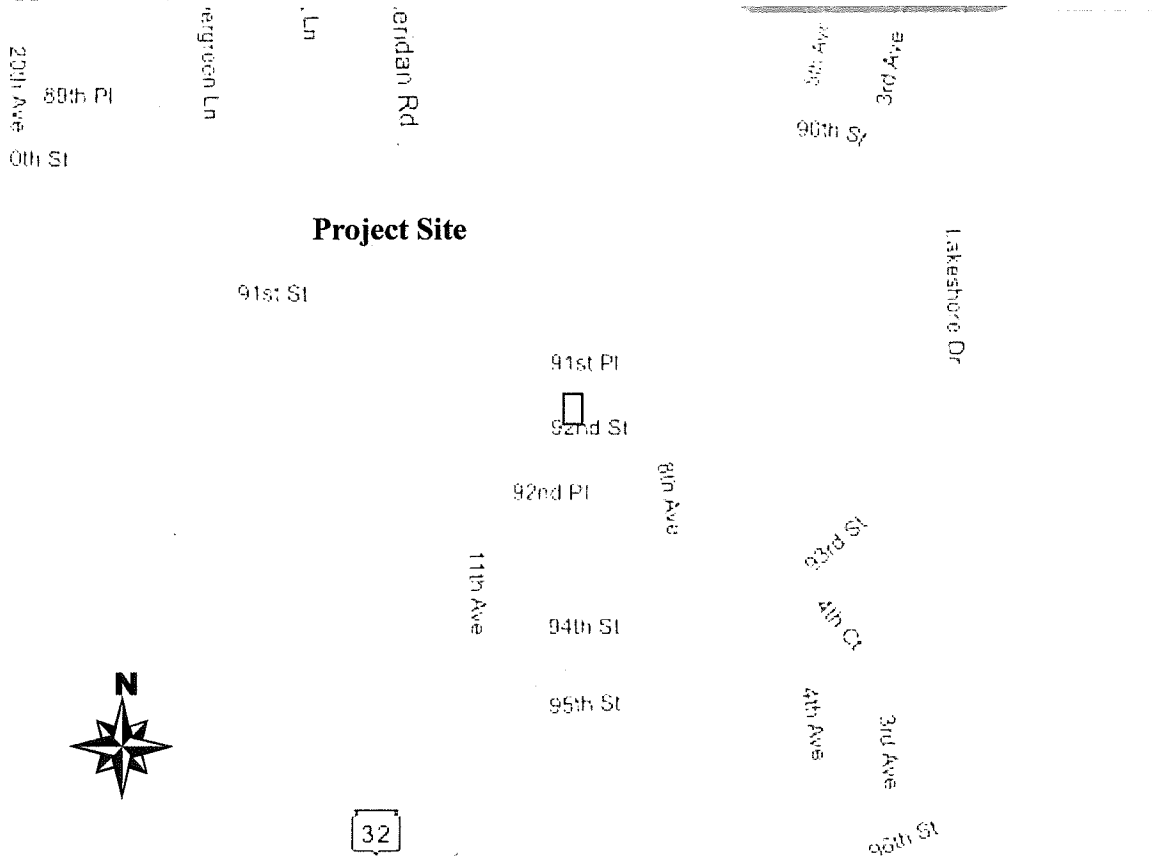
Soils throughout the project area and on surrounding properties are mapped as AzA—Aztalan loam, 0 to 2 percent slopes, classified as a somewhat poorly drained soil by the Natural Resource Conservation Service (NRCS). The soils sampled at Data Point 1A began to show saturation at 16” and lower. Field sampled soil profiles revealed low chroma matrix color with mottling, which is indicative of hydric soils.

**APPENDIX A**

The following reference materials were reviewed and used to assist in the wetland field reconnaissance.

**1. LOCATION**

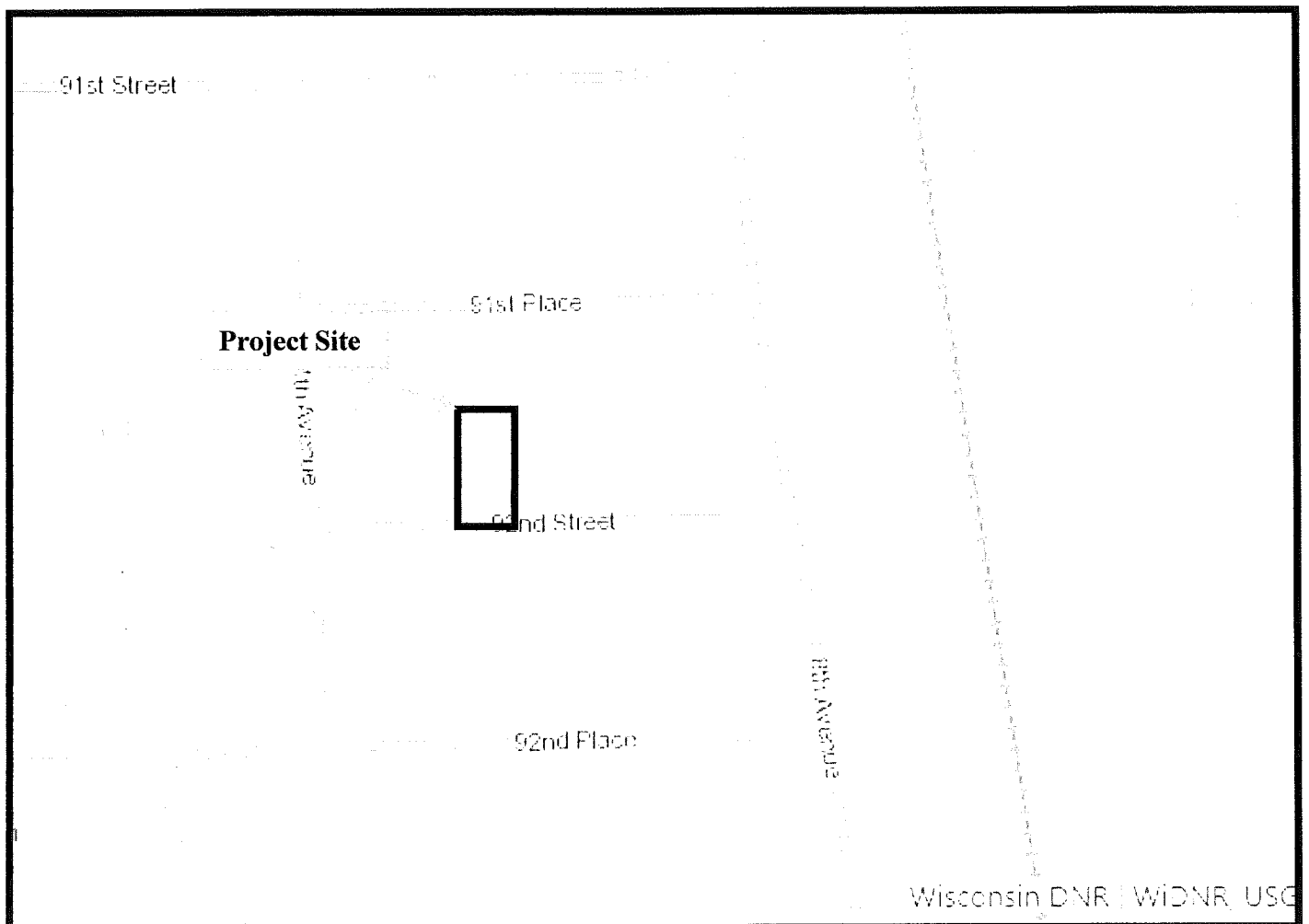
The ±0.19-acre project site is a vacant, residential lot surrounded by existing homes to the north, east and west. The property is located directly east of 1004 92<sup>nd</sup> Street, and west of 938 92<sup>nd</sup> Street, between 11<sup>th</sup> Ave and 8<sup>th</sup> Avenue on the north side of 92<sup>nd</sup> Street in the town of Pleasant Prairie, Wisconsin. The property is located in a mature residential area in Carol Beach Estates subdivision in the SE ¼ of Section 18, Township 01 North, Range 23 East of the Third Principle Meridian. The central portion of the study area is located approximately at 42.538598° North Latitude and -87.821995° West Longitude.



2. WISCONSIN WETLAND INVENTORY – WI Department of Natural Resources

The Wisconsin Wetland Inventory map (WWI) indicates that there are no mapped wetlands located on the subject property, outlined in black. However, the site is shown as a potential “Wetland Indicator” area in pink (see Soil Survey Map #3), generally coincides with soils mapped by the USDA Natural Resources Conservation Service in somewhat poorly drained soils.

Note: The WWI serves as a large-scale guide and actual wetland locations and types often vary.

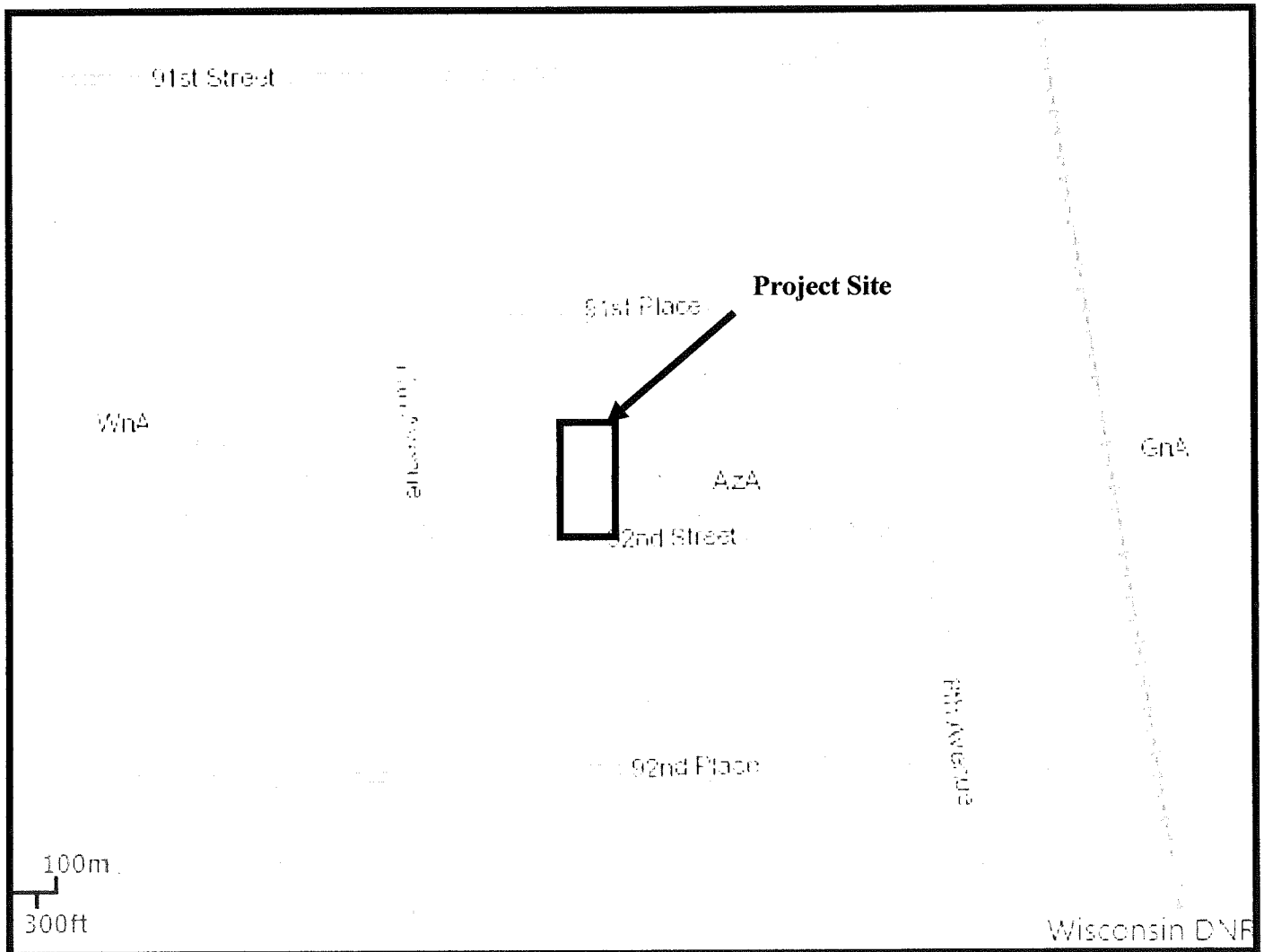




**3. SOIL SURVEY**

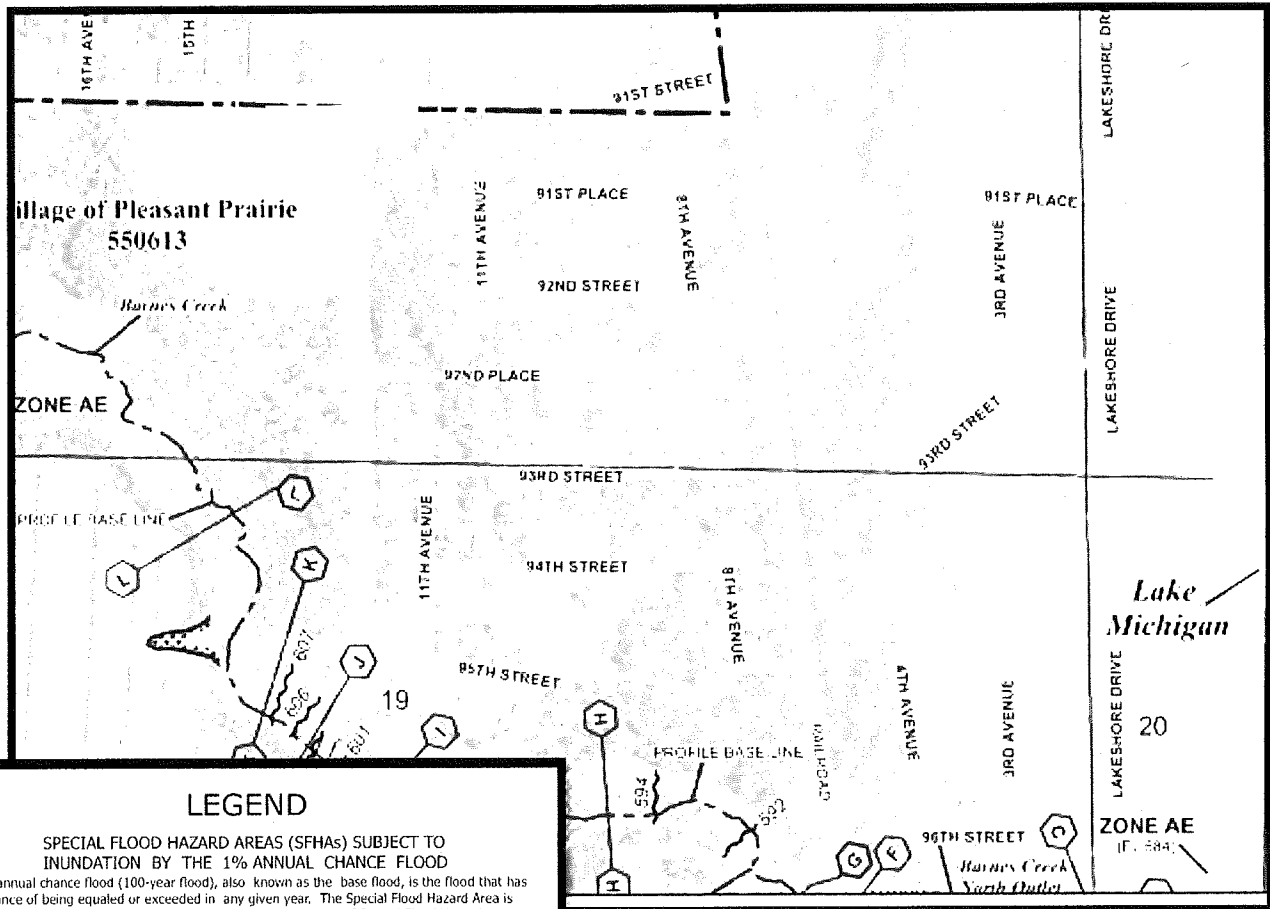
The Soil Survey of Kenosha and Racine Counties, Wisconsin was reviewed to determine the location of hydric soils within the study area. The following soils are mapped within the study area:

Soils throughout the entire site and surrounding properties were mapped as **AzA—Aztalan loam, 0 to 2 percent slopes**, classified as a somewhat poorly drained soil by the Natural Resource Conservation Service (NRCS). Soils mapped within this drainage class are soil types typically found within areas designated as wetlands. Therefore, this map layer can be used to identify potential wetlands. During the on-site investigation, field sampled soil profiles at Data Point 1A revealed low chroma matrix color with mottling, which is indicative of hydric soils.



4. FLOOD INSURANCE RATE MAP

The Flood Insurance Rate Maps (FIRMs) for Kenosha County, Wisconsin and Incorporated Areas (effective date June 19, 2012) were reviewed to determine the presence of floodplain, which can be indicative of wetland hydrology. The FIRM indicates that there is no portion of the site or adjacent properties in the subdivision located within floodplain - Zone A SFHA.



**LEGEND**

**SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD**

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

<b>ZONE A</b>	No Base Flood Elevations determined.
<b>ZONE AE</b>	Base Flood Elevations determined.
<b>ZONE AH</b>	Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
<b>ZONE AO</b>	Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
<b>ZONE AR</b>	Special Flood Hazard Areas formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
<b>ZONE A99</b>	Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
<b>ZONE V</b>	Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
<b>ZONE VE</b>	Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

*5. AERIAL PHOTOGRAPH  
APPROXIMATE WETLAND LIMITS and DATA POINT LOCATIONS*



**LITERATURE CITED**

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USACE. 2009. Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast, ed. J.S. Wakeley, R.W. Lichvar, and C.V. Noble. ERDC/EL TR-09-19. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

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USDA Natural Resources Conservation Service. 2006. Field Indicators of Hydric Soils in the United States, Version 6.0. ed. G.W. Hurt and L.M. Vasilas. Fort Worth, TX: USDA NRCS in cooperation with the National Technical Committee for Hydric Soils. (<http://soils.usda.gov/use/hydric/>)

USDA Soil Conservation Service. 1994. Changes in Hydric Soils of the United States. Federal Register 59(133): 35680-35681, July 13, 1994.

**APPENDIX B – SITE PHOTOGRAPHS 6.10.2017**



**Data Point 1A – WETLAND facing northwest**



**Data Point 1B– UPLAND facing northeast**

**APPENDIX C**

**USACE WETLAND DETERMINATION  
DATA FORMS**

**WETLAND DETERMINATION DATA FORM – Northcentral and Northeast Region**

Project/Site: 92nd Street - vacant lot		City/County: Pleasant Prairie / Kenosha		Sampling Date: 6/10/17	
Applicant/Owner: Girls & Boys Club of Kenosha		State: WI		Sampling Point: 1A – WETLAND	
Investigator(s): Daniel J. Krill - DKES			Section, Township, Range: SE1/4 Section 18 Twp. 01 R.23E		
Landform (hillslope, terrace, etc.): flat			Local relief (concave, convex, none): concave		
Slope (%): 0		Lat: 42.538508°N	Long: -87.822029°W		Datum:
Soil Map Unit Name: AzA—Aztalan loam, 0 to 2 percent slopes			NWI classification:		
Are climatic / hydrologic conditions on the site typical for this time of year?			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		No (If no, explain in Remarks.) <input type="checkbox"/>
Are Vegetation <input type="checkbox"/> ,	Soil <input type="checkbox"/> ,	or Hydrology <input type="checkbox"/> significantly disturbed? No		Are "Normal Circumstances" present? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Are Vegetation <input type="checkbox"/> ,	Soil <input type="checkbox"/> ,	or Hydrology <input type="checkbox"/> naturally problematic? No		(If needed, explain any answers in Remarks.)	

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<b>Is the Sampled Area within a Wetland?</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Hydric Soil Present?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>			
Wetland Hydrology Present?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>			
Remarks:					

**VEGETATION – Use scientific names of plants.**

Tree Stratum (Plot size: 30')	Absolute % Cover	Dominant Species?	Indicator Status	Dominance Test worksheet:		
1. Populus deltoides	90	Y	FAC	Number of Dominant Species That Are OBL, FACW, or FAC: 6 (A)		
2.				Total Number of Dominant Species Across all Strata: 6 (B)		
3.				Percent of Dominant Species That Are OBL, FACW, or FAC: 100 (A/B)		
4.						
5.						
90 = Total Cover				<b>Prevalence Index worksheet:</b>		
				Total % Cover of:		Multiply by:
<u>Sapling/Shrub Stratum</u> (Plot size: 15')				OBL species		x 1 =
1. Rhamnus cathartica	30	Y	FAC	FACW species		x 2 =
2. Sambucus canadensis	30	Y	FACW	FAC species		x 3 =
3. Cornus obliqua	20	Y	FACW	FACU species		x 4 =
4. Rosa virginiana	5	N	FAC	UPL species		x 5 =
5.				Column Totals: (A)		(B)
				Prevalence Index = B/A =		
85 = Total Cover				<b>Hydrophytic Vegetation Indicators:</b>		
<u>Herb Stratum</u> (Plot size: 5')				<input type="checkbox"/> Dominance Test is >50%		
1. Solidago gigantea	20	Y	FACW	<input type="checkbox"/> Prevalence Index is ≤3.0 <sup>1</sup>		
2. Alliaria petiolata	20	Y	FAC	<input type="checkbox"/> Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet)		
3.				<input type="checkbox"/> Problematic Hydrophytic Vegetation <sup>1</sup> Explain)		
4.				<sup>1</sup> Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.		
5.						
6.						
7.						
8.						
9.						
10.						
40 = Total Cover						
<u>Woody Vine Stratum</u> (Plot size: 5')						
1.						
2.						
				= Total Cover		
				<b>Hydrophytic Vegetation Present?</b>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Remarks: (include photo numbers or on a separate sheet)						



**SOIL**

Sampling Point 1A

**Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)**

Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
0-8	10YR 3/1	100					Silt loam	
8-18	2.5Y 5/2	90	10YR 5/6	10	C	M	Silt loam	
18-24	10YR 5/1	90	10YR 4/6	10	C	M	Silty clay loam	

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. <sup>2</sup>Location: PL=Pore Lining, M=Matrix.

**Hydric Soil Indicators:**

- Histosol (A1)
- Histic Epipedon (A2)
- Black Histic (A3)
- Hydrogen Sulfide (A4)
- Stratified Layers (A5)
- 2 cm Muck (A10)
- Depleted Below Dark Surface (A11)
- Thick Dark Surface (A12)
- Sandy Mucky Mineral (S1)
- 5 cm Mucky Peat or Peat (S3)
- Sandy Gleyed Matrix (S4)
- Sandy Redox (S5)
- Stripped Matrix (S6)
- Loamy Mucky Mineral (F1)
- Loamy Gleyed Matrix (F2)
- Depleted Matrix (F3)
- Redox Dark Surface (F6)
- Depleted Dark Surface (F7)
- Redox Depressions (F8)

**Indicators for Problematic Hydric Soils<sup>3</sup>:**

- Coast Prairie Redox (A16)
- Iron-Manganese Masses (F12)
- Other (Explain in Remarks)

<sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

**Restrictive Layer (if observed):**

Type:  
Depth (inches):

Hydric Soil Present? Yes  No

Remarks:

**HYDROLOGY**

**Wetland Hydrology indicators:**

Primary Indicators (minimum of one is required; check all that apply)

- Surface Water (A1)
- High Water Table (A2)
- Saturation (A3)
- Water Marks (B1)
- Sediment Deposits (B2)
- Drift Deposits (B3)
- Algal Mat or Crust (B4)
- Iron Deposits (B5)
- Inundation Visible on Aerial Imagery (B7)
- Sparsely Vegetated Concave Surface (B8)
- Water-Stained Leaves (B9)
- Aquatic Fauna (B13)
- True Aquatic Plants (B14)
- Hydrogen Sulfide Odor (C1)
- Oxidized Rhizospheres on Living Roots (C3)
- Presence of Reduced Iron (C4)
- Recent Iron Reduction in Tilled Soils (C6)
- Thin Muck Surface (C7)
- Gauge or Well Data (D9)
- Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- Surface Soil Cracks (B6)
- Drainage Patterns (B10)
- Dry-Season Water Table (C2)
- Crayfish Burrows (C8)
- Saturation Visible on Aerial Imagery (C9)
- Stunted or Stressed Plants (D1)
- Geomorphic Position (D2)
- FAC-Neutral Test (D5)

**Field Observations:**

Surface Water Present? Yes  No  Depth (inches): \_\_\_\_\_  
 Water Table Present? Yes  No  Depth (inches): \_\_\_\_\_  
 Saturation Present? (includes capillary fringe) Yes  No  Depth (inches): \_\_\_\_\_ 16

Wetland Hydrology Present? Yes  No

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

**WETLAND DETERMINATION DATA FORM – Northcentral and Northeast Region**

Project/Site: 92nd Street - vacant lot		City/County: Pleasant Prairie / Kenosha		Sampling Date: 6/10/17	
Applicant/Owner: Girls & Boys Club of Kenosha		State: WI		Sampling Point: 1B – UPLAND	
Investigator(s): Daniel J. Krill - DKES			Section, Township, Range: SE ¼ Section 18 Twp. 01 R.23E		
Landform (hillslope, terrace, etc.): flat			Local relief (concave, convex, none): flat		
Slope (%): 0		Lat: 42.538645°N	Long: -87.822038°W		Datum:
Soil Map Unit Name: AzA—Aztalan loam, 0 to 2 percent slopes			NWI classification: N/A		
Are climatic / hydrologic conditions on the site typical for this time of year?			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		No (if no, explain in Remarks.) <input type="checkbox"/>
Are Vegetation <input type="checkbox"/>	Soil <input type="checkbox"/>	or Hydrology <input type="checkbox"/> significantly disturbed? No		Are "Normal Circumstances" present? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Are Vegetation <input type="checkbox"/>	Soil <input type="checkbox"/>	or Hydrology <input type="checkbox"/> naturally problematic? No		(If needed, explain any answers in Remarks.)	

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<b>Is the Sampled Area within a Wetland?</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Hydric Soil Present?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			
Wetland Hydrology Present?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			
Remarks:					

**VEGETATION – Use scientific names of plants.**

Tree Stratum (Plot size: 30')	Absolute % Cover	Dominant Species?	Indicator Status	Dominance Test worksheet:		
1.				Number of Dominant Species That Are OBL, FACW, or FAC: 1 (A)		
2.				Total Number of Dominant Species Across all Strata: 4 (B)		
3.				Percent of Dominant Species That Are OBL, FACW, or FAC: 25 (A/B)		
4.						
5.						
= Total Cover				<b>Prevalence Index worksheet:</b>		
				Total % Cover of:		Multiply by:
<u>Sapling/Shrub Stratum</u> (Plot size: 15')				OBL species	x 1 =	
1. Rhamnus catartica	50	Y	FAC	FACW species	x 2 =	
2.				FAC species 50	x 3 =	150
3.				FACU species 95	x 4 =	380
4.				UPL species	x 5 =	
5.				Column Totals: 145 (A)		530 (B)
50 = Total Cover				Prevalence Index = B/A = 530/145 = 3.66		
				<b>Hydrophytic Vegetation Indicators:</b>		
<u>Herb Stratum</u> (Plot size: 5')				<input type="checkbox"/> Dominance Test is >50%		
1. Cirsium arvense	30	Y	FACU	<input type="checkbox"/> Prevalence Index is ≤3.0 <sup>1</sup>		
2. Solidago altissima	30	Y	FACU	<input type="checkbox"/> Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet)		
3. Sonchus arvensis	30	Y	FACU	<input type="checkbox"/> Problematic Hydrophytic Vegetation <sup>1</sup> Explain)		
4. Allium canadense	5	N	FACU	<sup>1</sup> Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.		
5.						
6.						
7.						
8.						
9.						
10.						
95 = Total Cover						
<u>Woody Vine Stratum</u> (Plot size: 5')						
1.						
2.						
= Total Cover				<b>Hydrophytic Vegetation Present?</b>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Remarks: (include photo numbers or on a separate sheet)</b>						

**SOIL**

Sampling Point 1B

**Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)**

Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
0-6	10YR 2/1						Silt loam	
6-14	2.5Y 5/4						Silt loam	
14-24	2.5Y5/2	95	10YR 5/6	5			Silty clay loam	

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. <sup>2</sup>Location: PL=Pore Lining, M=Matrix.

**Hydric Soil Indicators:**

- Histic Epipedon (A2)
- Black Histic (A3)
- Hydrogen Sulfide (A4)
- Stratified Layers (A5)
- 2 cm Muck (A10)
- Depleted Below Dark Surface (A11)
- Thick Dark Surface (A12)
- Sandy Mucky Mineral (S1)
- 5 cm Mucky Peat or Peat (S3)

- Sandy Gleyed Matrix (S4)
- Sandy Redox (S5)
- Stripped Matrix (S6)
- Loamy Mucky Mineral (F1)
- Loamy Gleyed Matrix (F2)
- Depleted Matrix (F3)
- Redox Dark Surface (F6)
- Depleted Dark Surface (F7)
- Redox Depressions (F8)

**Indicators for Problematic Hydric Soils<sup>3</sup>:**

- Coast Prairie Redox (A16)
- Iron-Manganese Masses (F12)
- Other (Explain in Remarks)

<sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

**Restrictive Layer (if observed):**

Type:  
Depth (inches):

Hydric Soil Present? Yes  No

**Remarks:**

Soil sample dry, friable

**HYDROLOGY**

**Wetland Hydrology Indicators:**

**Primary Indicators (minimum of one is required; check all that apply)**

- Surface Water (A1)
- High Water Table (A2)
- Saturation (A3)
- Water Marks (B1)
- Sediment Deposits (B2)
- Drift Deposits (B3)
- Algal Mat or Crust (B4)
- Iron Deposits (B5)
- Inundation Visible on Aerial Imagery (B7)
- Sparsely Vegetated Concave Surface (B8)
- Water-Stained Leaves (B9)
- Aquatic Fauna (B13)
- True Aquatic Plants (B14)
- Hydrogen Sulfide Odor (C1)
- Oxidized Rhizospheres on Living Roots (C3)
- Presence of Reduced Iron (C4)
- Recent Iron Reduction in Tilled Soils (C6)
- Thin Muck Surface (C7)
- Gauge or Well Data (D9)
- Other (Explain in Remarks)

**Secondary Indicators (minimum of two required)**

- Surface Soil Cracks (B6)
- Drainage Patterns (B10)
- Dry-Season Water Table (C2)
- Crayfish Burrows (C8)
- Saturation Visible on Aerial Imagery (C9)
- Stunted or Stressed Plants (D1)
- Geomorphic Position (D2)
- FAC-Neutral Test (D5)

**Field Observations:**

Surface Water Present? Yes  No  Depth (inches): \_\_\_\_\_  
 Water Table Present? Yes  No  Depth (inches): \_\_\_\_\_  
 Saturation Present? (includes capillary fringe) Yes  No  Depth (inches): \_\_\_\_\_

Wetland Hydrology Present? Yes  No

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

**Remarks:**



December 7, 2017

WIC-SC-2017-30-03451

Boys & Girls Club of Kenosha, Inc.  
Steven Brown  
9656 Meadowdale Lane  
Pleasant Prairie, WI 53158

RE: Wetland Delineation Report for a project area (Carol Beach Estates Lot 14 Block 3) located in the SW ¼ of the SE 1/4 of Section 18, Township 01 North, Range 23 East, Village of Pleasant Prairie, Kenosha County

Dear Mr. Brown:

We have received and reviewed the wetland delineation report prepared for the project area referenced above by DK Environmental Services, Inc. This letter will serve as confirmation that no state regulated wetland is present within the project area, based upon an October 25, 2017 field visit. This finding of no state regulated wetland within the project area is valid for five years unless altered site conditions warrant a new wetland delineation be conducted. Since this finding is in contrast to the conclusion of the delineation report, it is recommended that an updated report be provided to the appropriate regulatory agencies.

If you are planning development on the property, you are required to avoid take of endangered and threatened species, or obtain an incidental take authorization, to comply with the state's Endangered Species Law. To insure compliance with the law, you should submit an endangered resources review form (Form 1700-047), available at <http://dnr.wi.gov/topic/ERReview/Review.html>. The Endangered Resources Program will provide a review response letter identifying any endangered and threatened species and any conditions that must be followed to address potential incidental take.

In addition to contacting WDNR, be sure to contact your local zoning office and U.S. Army Corps of Engineers to determine if any local or federal permits may be required for your project.

If you have any questions, please contact me at (608) 261-6430 or email [Neil.Molstad@wisconsin.gov](mailto:Neil.Molstad@wisconsin.gov).

Sincerely,

Neil Molstad  
Wetland Identification Specialist

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

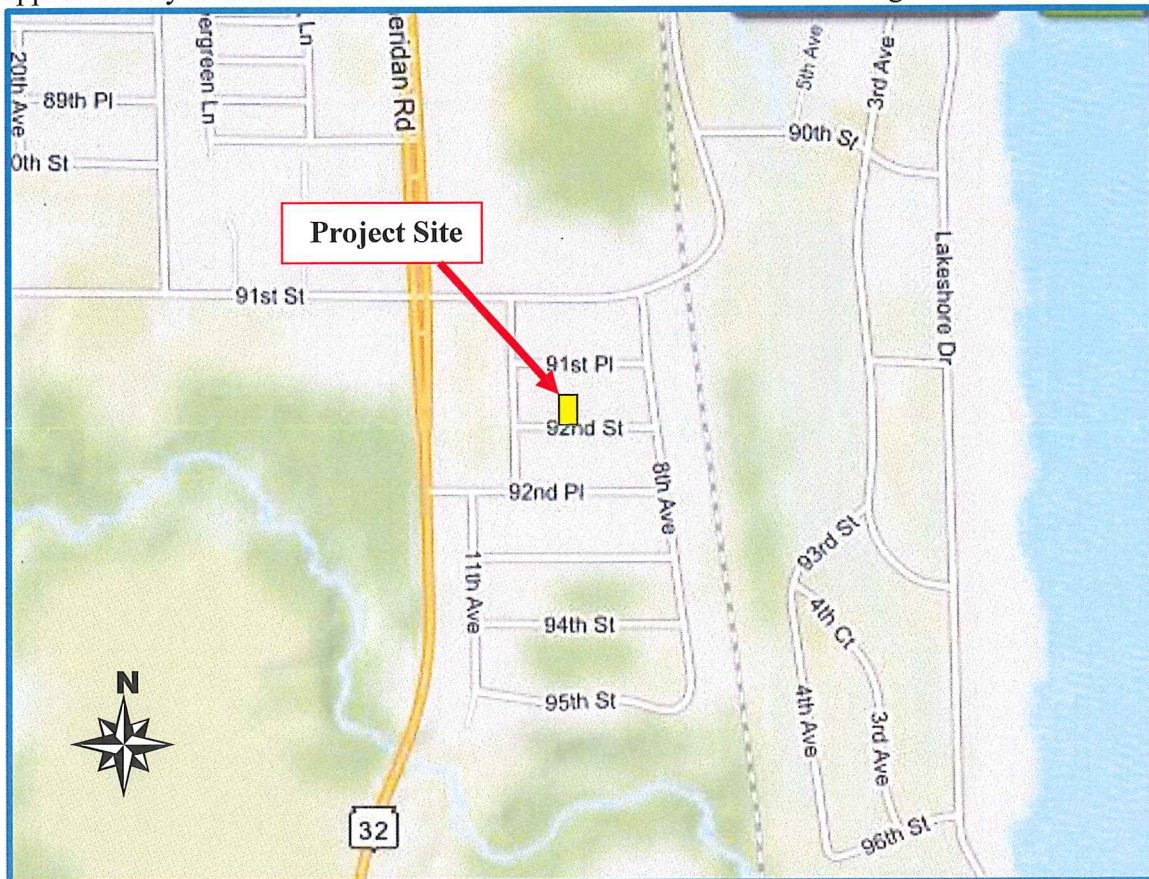
Soils throughout the project area and on surrounding properties are mapped as AzA—Aztalan loam, 0 to 2 percent slopes, classified as a somewhat poorly drained soil by the Natural Resource Conservation Service (NRCS). The soils sampled at Data Point 1A began to show saturation at 16” and lower. Field sampled soil profiles revealed low chroma matrix color with mottling, which is indicative of hydric soils.

**APPENDIX A**

The following reference materials were reviewed and used to assist in the wetland field reconnaissance.

**1. LOCATION**

The ±0.19-acre project site is a vacant, residential lot surrounded by existing homes to the north, east and west. The property is located directly east of 1004 92<sup>nd</sup> Street, and west of 938 92<sup>nd</sup> Street, between 11<sup>th</sup> Ave and 8<sup>th</sup> Avenue on the north side of 92<sup>nd</sup> Street in the town of Pleasant Prairie, Wisconsin. The property is located in a mature residential area in Carol Beach Estates subdivision in the SE ¼ of Section 18, Township 01 North, Range 23 East of the Third Principle Meridian. The central portion of the study area is located approximately at 42.538598° North Latitude and -87.821995° West Longitude.



Consider approval of a **Zoning Text Amendment (Ord. #18-07)** to amend Sections 420-125.2 B and C related to permitted uses and auxiliary permitted uses allowed in the M-5, Production Manufacturing District.

**Recommendation:** On February 12, 2018, the Plan Commission held a public hearing and recommended that the Village Board approve the **Zoning Text Amendment** as presented in the February 19, 2018 Village Staff Report.

## VILLAGE STAFF REPORT OF FEBRUARY 19, 2018

Consider approval of a **Zoning Text Amendment (Ord. #18-07)** to amend Sections 420-125.2 B and C related to permitted uses and auxiliary permitted uses allowed in the M-5, Production Manufacturing District.

*On January 8, 2018, the Plan Commission approved Resolution #18-03 to initiate amendments to the M-5, Production Manufacturing District in the Village.*

*The following amendments to the M-5 District are proposed:*

1. A medical office facility with approval of a Payment in Lieu of Taxes (PILOT) Agreement acceptable to the Village, if any portion of the property is exempt from paying Village of Pleasant Prairie real estate taxes is proposed to be listed as a permitted use.

A medical office facility would include the operation of a health center for the provision of medical, surgical, dental, psychiatric and behavioral care, whether inpatient or outpatient, and related uses, including, without limitation, a hospital, outpatient surgery center, urgent care, medical offices, health club, pharmacy, laboratory, auxiliary uses such as temporary overnight lodging for employees for use while on duty only, and complimentary retail uses, such as gift shop, food and beverage and similar uses reasonably auxiliary to the operation of a health center.

2. Retail auxiliary permitted uses are proposed to be amended to allow the retail sale of any of the following goods or products shall be an auxiliary permitted use in a principal office building **or medical office facility** in the M-5 District: bakery goods; books; candy; cards; **clothing; electronics; handbags;** ice cream; **jewelry; leather goods;** newspapers and magazines; office supplies; pharmaceuticals; sundries; **shoes;** and tobacco, provided that the following limitations are satisfied: such uses are auxiliary to the permitted office uses(s), in that they are located in the principal office building, and are designed to serve the needs of the occupants of the principal office building, and have no dedicated outside entrance to such building, and have no signage visible from the exterior of such building, and further provided that all retail and service auxiliary permitted uses in a principal office building together shall not occupy more than 10% of the gross floor area of such building, all subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes. **(Note items highlighted in yellow are being added to the list of uses.)**
3. Service auxiliary permitted uses. The following service uses shall be auxiliary permitted uses in a principal office building **or medical office facility** in the M-5 District: barbershop; coffeehouse; dry-cleaning service; financial institution; **museum;** photocopying center; photograph developing and printing; restaurant (not including a drive-in restaurant, ~~or a restaurant with drive-through facility, a restaurant with outdoor seating, or a restaurant serving or selling alcoholic beverages~~); and shoe shine or repair service, provided that the following limitations are satisfied: such uses are auxiliary to the permitted office uses(s), in that they are located in the principal office building, and are designed to serve the needs of the occupants of the principal office building, and have no dedicated outside entrance to such building, and have no signage visible from the exterior of such building, and further provided that all service and retail auxiliary permitted uses in a principal office building together shall not occupy more than 10% of the gross floor area of such building, all subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes. **(Note items highlighted in yellow are being added to the list of uses and items in red that are struck-thru are being removed.)**

4. Corporate campus auxiliary permitted uses are being added to the M-5 District. These auxiliary uses are proposed to be permitted within a corporate campus development only.

A corporate campus is defined as a development with multiple buildings on a single lot provided that a minimum of 60% of the gross floor area of all of the buildings within the campus development is being developed as permitted uses listed in M-5 District on a single lot with Village approval of a Master Conceptual Plan. As a part of the Master Conceptual Plan, the Village Board, may on a case by case basis, allow for buildings to be constructed and occupied in phases pursuant to an approved development agreement, wherein reasonable conditions for the development construction are made and reasonable time frames for the required permitted uses to be constructed and occupied within the corporate campus development are required.

- Retail auxiliary permitted uses. The retail sale of any of the following goods or products: bakery goods; books; candy; cards; clothing; electronics; handbags; ice cream; jewelry; leather goods; newspapers and magazines; office supplies; pharmaceuticals; sundries; shoes; and tobacco, provided that the following limitations are satisfied: such uses are auxiliary to the permitted uses(s), in that they are designed primarily to serve the needs of the occupants of the corporate campus occupants and secondarily to serve the needs of the general public, provided that they are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- Retreat center or corporate retreat center, with or without overnight stays in a separate building on the property of the permitted use or within the same building as the permitted use on the property.
- Service auxiliary permitted uses. The following service uses: barbershop; coffeehouse; dry-cleaning service; financial institution; museum; photocopying center; photograph developing and printing; restaurant (not including a drive-in restaurant or a restaurant with drive-through facility); and shoe shine or repair service, provided that the following limitations are satisfied: such uses are auxiliary to the permitted uses(s), in that they are designed to primarily serve the needs of the corporate campus occupants and to secondarily serve the general public provided that they are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- Warehouse and distribution uses within a corporate campus are permitted auxiliary to permitted manufacturing use(s) on the lot to the extent all warehouse and distribution auxiliary uses within the corporate campus shall not occupy more than 30% of the gross floor area of all of the buildings on the lot, except that the buildings' occupant's storage of raw materials and finished products assembled or produced on the site shall be exempt from this 30% requirement, the building façade area of dock doors is limited to a total of 25% of any building's exterior walls, and such uses are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

Plan Commission recommends that the Village Board to approve the Zoning Text Amendment as presented.



**ORD. NO. 18-07**

**ORDINANCE TO AMEND  
THE VILLAGE ZONING ORDINANCE (CHAPTER 420-125.2)  
RELATED TO USES IN THE M-5, PRODUCTION MANUFACTURING DISTRICT  
IN THE VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN**

**THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF PLEASANT PRAIRIE,  
KENOSHA COUNTY, WISCONSIN, DO HEREBY ORDAIN THAT SECTION 420-125.2  
OF THE VILLAGE ZONING ORDINANCE IS HEREBY AMENDED AS FOLLOWS:**

1. **Section 420-125.2 B (6) related to permitted uses is created to read as follows:**

(6) Medical office facility (operation of a health center for the provision of medical, surgical, dental, psychiatric and behavioral care, whether inpatient or outpatient, and related uses, including, without limitation, a hospital, outpatient surgery center, urgent care, medical offices, health club, pharmacy, laboratory, auxiliary uses such as temporary overnight lodging for employees for use while on duty only, and complimentary retail uses, such as gift shop, food and beverage and similar uses reasonably auxiliary to the operation of a health center) with approval of a Payment in Lieu of Taxes (PILOT) Agreement acceptable to the Village, if any portion of the property is exempt from paying Village of Pleasant Prairie real estate taxes.

2. **Sections 420-125.2 C related to auxiliary permitted uses are amended to read as follows:**

C. Auxiliary permitted uses. The following listed auxiliary principal uses, and certain unspecified auxiliary principal uses as approved pursuant to Subsection C~~(4)~~ (5) below, are allowed as permitted uses in the M-5 District:

- (1) Retail auxiliary permitted uses. The retail sale of any of the following goods or products shall be an auxiliary permitted use in a principal office building or medical office facility in the M-5 District: bakery goods; books; candy; cards; clothing; electronics; handbags; ice cream; jewelry; leather goods; newspapers and magazines; office supplies; pharmaceuticals; sundries; shoes; and tobacco, provided that the following limitations are satisfied: such uses are auxiliary to the permitted office uses(s), in that they are located in the principal office building, and are designed to serve the needs of the occupants of the principal office building, and have no dedicated outside entrance to such building, and have no signage visible from the exterior of such building, and further provided that all retail and service auxiliary permitted uses in a principal office building together shall not occupy more than 10% of the gross floor area of such building, all subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- (2) Service auxiliary permitted uses. The following service uses shall be auxiliary permitted uses in a principal office building or medical office facility in the M-5 District: barbershop; coffeehouse; dry-cleaning service; financial institution; museum; photocopying center; photograph developing and printing; restaurant (not including a drive-in restaurant, or a restaurant with drive-through facility, a restaurant with outdoor seating, or a restaurant serving or selling alcoholic beverages); and shoe shine or repair service, provided that the following limitations are satisfied: such uses are

auxiliary to the permitted office uses(s), in that they are located in the principal office building, and are designed to serve the needs of the occupants of the principal office building, and have no dedicated outside entrance to such building, and have no signage visible from the exterior of such building, and further provided that all service and retail auxiliary permitted uses in a principal office building together shall not occupy more than 10% of the gross floor area of such building, all subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

(3) Warehouse and distribution auxiliary **permitted** uses. The warehouse and distribution auxiliary uses which are **allowed permitted** in the M-5 District are uses classified as Storage Group S in Section 311 of the 2006 IBC that are not classified as a Group H Hazard pursuant to Section 307 of the 2006 IBC shall be auxiliary permitted uses in a building in the M-5 District, provided that all of the following limitations shall be satisfied:

- (a) Such uses are auxiliary to the permitted manufacturing or research and development use(s), in that they are located in the principal building;
- (b) All warehouse and distribution auxiliary permitted uses in a principal building together shall not occupy more than 30% of the gross floor area of such building, except that the building occupant's storage of raw materials and finished products assembled or produced on site shall be exempt from this thirty-percent requirement;
- (c) The building façade area of dock doors is limited to a total of 25% of the building exterior walls; and
- (d) Such uses are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

(4) Corporate campus auxiliary permitted uses. The following auxiliary uses are permitted within a corporate campus development. A corporate campus for this section is defined as a development with multiple buildings on a single lot provided that a minimum of 60% of the gross floor area of all of the buildings within the campus development is being developed as permitted uses listed in subsections B (1) and (2) on a single lot with Village approval of a Master Conceptual Plan. As a part of the Master Conceptual Plan, the Village Board, may on a case by case basis, allow for buildings to be constructed and occupied in phases pursuant to an approved development agreement, wherein reasonable conditions for the development construction are made and reasonable time frames for the required permitted uses to be constructed and occupied within the corporate campus development are required.

- (a) Retail auxiliary permitted uses. The retail sale of any of the following goods or products: bakery goods; books; candy; cards; clothing; electronics; handbags; ice cream; jewelry; leather goods; newspapers and magazines; office supplies; pharmaceuticals; sundries; shoes; and tobacco, provided that the following limitations are satisfied: such uses are auxiliary to the permitted uses(s), in that they are designed primarily to serve the needs of the occupants of the

corporate campus occupants and secondarily to serve the needs of the general public, provided that they are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

(b) Retreat center or corporate retreat center, with or without overnight stays in a separate building on the property of the permitted use or within the same building as the permitted use on the property.

(c) Service auxiliary permitted uses. The following service uses: barbershop; coffeehouse; dry-cleaning service; financial institution; museum; photocopying center; photograph developing and printing; restaurant (not including a drive-in restaurant or a restaurant with drive-through facility); and shoe shine or repair service, provided that the following limitations are satisfied: such uses are auxiliary to the permitted uses(s), in that they are designed to primarily serve the needs of the corporate campus occupants and to secondarily serve the general public provided that they are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

(d) Warehouse and distribution uses within a corporate campus are permitted auxiliary to permitted manufacturing use(s) on the lot to the extent all warehouse and distribution auxiliary uses within the corporate campus shall not occupy more than 30% of the gross floor area of all of the buildings on the lot, except that the buildings' occupant's storage of raw materials and finished products assembled or produced on the site shall be exempt from this 30% requirement, the building façade area of dock doors is limited to a total of 25% of any building's exterior walls, and such uses are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

(4)(5) Unspecified permitted auxiliary uses. The Zoning Administrator shall have authority to approve, as an auxiliary permitted use, a proposed principal use not listed in Subsection C (1), (2) ~~or~~ (3) or (4) above, if the proposed use is similar in character to one or more of the listed auxiliary permitted uses in the M-5 District, the use satisfies all of the limitations of this Subsection C above and is free of potential problems requiring special regulation. The Zoning Administrator shall make written findings supporting any such decision. Notwithstanding the foregoing authorization, the following uses shall not be construed to be auxiliary permitted uses in the M-5 District:

- (a) Any adult-oriented uses, including, without limitation, an adult bookstore, adult cabaret, adult club, adult dry cabaret, adult movie theater, adult video rental store, adult video store or adult viewing facility.
- (b) Anhydrous ammonia (bulk storage facility or retail sale).
- (c) Asbestos (storage of).
- (d) Animal hospitals, kennels and pounds.

- (e) Any cabaret.
- (f) Car wash (commercial).
- (g) Concrete and asphalt batch plants.
- (h) Dry cabaret.
- (i) Fertilizer (production, sales, storage, mixing or blending).
- (j) Feed mills.
- (k) Fireworks (manufacturing, storage or sale).
- (l) Flea markets.
- (m) Gas stations with or without a car wash (commercial).
- (n) Greenhouse.
- (o) Hotel.
- (p) Liquor store.
- (q) Livestock sale facilities.
- (r) Motel.
- (s) Nursery.
- (t) Pawnshop.
- (u) Petroleum bulk stations and terminals.
- (v) Psychic/tarot card/astrology reading.
- (w) Refuse incineration.
- (x) Slaughterhouse.
- (y) Tavern.
- (z) Tires (production or bulk storage).
- (aa) Truck stop and/or truck service facility.
- (bb) Wrecking, junk, demolition and scrap yards.

**Adopted this 19<sup>th</sup> day of February, 2018.**

VILLAGE OF PLEASANT PRAIRIE

ATTEST:

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John P. Steinbrink  
Village President

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Jane C. Snell  
Village Clerk

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

07-m-5 district amend final

## **§ 420-125.2. M-5 Production Manufacturing District.**

### **A. Purpose and characteristics.**

(1) The M-5 Production Manufacturing District is intended to provide for manufacturing, assembly, office, and research and development uses with limited warehouse and distribution uses within an enclosed structure wherein no high hazard uses are allowed and the method of manufacturing is not injurious to the point of constituting a nuisance to the occupants of adjacent properties by reason of the emission or creation of noise, vibration, smoke, dust or particle matters, toxic or noxious materials, odors, fire or explosive hazards, glare or heat and located in those areas where the relationship to surrounding land uses would create few problems of compatibility. This district also allows for office parks or individual office buildings and ancillary uses, which may or may not include space for manufacturing, assemblies, or research and development but provides direct services to the employees or customers or other uses in the area. It is anticipated that these areas would be developed in an attractive corporate parklike setting with landscaping, consistent signage, and similar or compatible building materials and designed to present an integrated image to customers. No such district shall be established unless it is in compliance with Village adopted or amended comprehensive, neighborhood and conceptual plans.

(2) Some of the uses allowed in the M-5 District are based on the Use and Occupancy Classification specified in Chapter 3 of the 2006 International Building Code (2006 IBC), as may be amended from time to time. Where a use is proposed for a purpose that is not specifically provided in Chapter 3 of the 2006 IBC and is not specifically listed as a prohibited use in the M-5, District, such use shall be classified in the group that the occupancy most clearly resembles, according to the firesafety and relative hazard involved. The Zoning Administrator shall make the final determination if the use is allowed within the M-5 District.

**B. Permitted uses.** The following listed principal uses and certain unspecified principal uses approved pursuant to Subsection C below are allowed as permitted uses in the M-5 District, subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

- (1) Uses classified as Factory Group F in Section 306 of the 2006 IBC, including assembling, disassembling, fabricating, finishing, manufacturing, packaging, distributing [pursuant to Subsection C(3) below], repair or processing operations that are not classified as a Group H Hazard or Group S Storage pursuant to Sections 307 and 311 of the 2006 IBC; provided, however, the use is not listed as a prohibited use in Subsection C below.
  - (a) Factory Industrial F-2 Low-hazard uses that involve the fabrication or manufacturing of noncombustible materials which during finishing, packing or processing do not involve a significant fire hazard, as determined by the Village Fire & Rescue Chief, including but not limited to beverages (up to and included twelve-percent alcohol content); brick and masonry; ceramic products; foundries; glass products; gypsum; ice; and metal products (fabrication and assembly).
  - (b) Factory Industrial F-1 Moderate-hazard uses which are not classified as Factory Industrial F-2 Low-hazard uses, including but not limited to aircraft; appliances; athletic equipment; automobiles and other motor vehicles; bakeries; beverages (over twelve-percent alcohol content); bicycles; boats, building; brooms or brushes; business machines; cameras and photo equipment; canvas or similar fabric; carpet and rug (including cleaning); clothing; construction and agricultural machinery; disinfectants, dry cleaning and dyeing; electronics; engines (including rebuilding); food processing; furniture; hemp products; jute products; laundries; leather products; lighting products; machinery; metals; millwork (sash and door); motion pictures and television filming (without spectators); musical instruments; optical goods; paper mills or products; photographic film; plastic products; printing or publishing; recreational vehicles; shoes; soaps and detergents; textiles; tobacco; trailers; upholstering; wood, distillation; woodworking (cabinets).
- (2) Corporate, business and professional office uses.
- (3) Commercial communication structures (as a principal or accessory use per § 420-89). **[Added 4-7-2014 by Ord. No. 14-08]**

- (4) Stormwater detention or retention facilities. **[Added 4-17-2017 by Ord. No. 17-12]**
  - (5) Water storage tanks, towers and reservoirs and related appurtenances. **[Added 4-17-2017 by Ord. No. 17-12]**
- C. Auxiliary permitted uses. The following listed auxiliary principal uses, and certain unspecified auxiliary principal uses as approved pursuant to Subsection C(4) below, are allowed as permitted uses in the M-5 District:
- (1) Retail auxiliary uses. The retail sale of any of the following goods or products shall be an auxiliary permitted use in a principal office building in the M-5 District: bakery goods; books; candy; cards; ice cream; newspapers and magazines; office supplies; pharmaceuticals; sundries; and tobacco, provided that the following limitations are satisfied: such uses are auxiliary to the permitted office uses(s), in that they are located in the principal office building, and are designed to serve the needs of the occupants of the principal office building, and have no dedicated outside entrance to such building, and have no signage visible from the exterior of such building, and further provided that all retail and service auxiliary permitted uses in a principal office building together shall not occupy more than 10% of the gross floor area of such building, all subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
  - (2) Service auxiliary uses. The following service uses shall be auxiliary permitted uses in a principal office building in the M-5 District: barbershop; coffeehouse; dry-cleaning service; financial institution; photocopying center; photograph developing and printing; restaurant (not including a drive-in restaurant, a restaurant with drive-through facility, a restaurant with outdoor seating, or a restaurant serving or selling alcoholic beverages); and shoe shine or repair service, provided that the following limitations are satisfied: such uses are auxiliary to the permitted office uses(s), in that they are located in the principal office building, and are designed to serve the needs of the occupants of the principal office building, and have no dedicated outside entrance to such building, and have no signage visible from the exterior of such building, and further provided that all service and retail auxiliary permitted uses in a principal office building together shall not occupy more than 10% of the gross floor area of

such building, all subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

- (3) Warehouse and distribution auxiliary uses. The warehouse and distribution auxiliary uses which are allowed in the M-5 District are uses classified as Storage Group S in Section 311 of the 2006 IBC that are not classified as a Group H Hazard pursuant to Section 307 of the 2006 IBC shall be auxiliary permitted uses in a building in the M-5 District, provided that all of the following limitations shall be satisfied:
  - (a) Such uses are auxiliary to the permitted manufacturing or research and development use(s), in that they are located in the principal building;
  - (b) All warehouse and distribution auxiliary permitted uses in a principal building together shall not occupy more than 30% of the gross floor area of such building, except that the building occupant's storage of raw materials and finished products assembled or produced on site shall be exempt from this thirty-percent requirement;
  - (c) The building façade area of dock doors is limited to a total of 25% of the building exterior walls; and
  - (d) Such uses are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- (4) Unspecified permitted auxiliary uses. The Zoning Administrator shall have authority to approve, as an auxiliary permitted use, a proposed principal use not listed in Subsection C(1), (2) or (3) above, if the proposed use is similar in character to one or more of the listed auxiliary permitted uses in the M-5 District, the use satisfies all of the limitations of this Subsection C above and is free of potential problems requiring special regulation. The Zoning Administrator shall make written findings supporting any such decision. Notwithstanding the foregoing authorization, the following uses shall not be construed to be auxiliary permitted uses in the M-5 District:
  - (a) Any adult-oriented uses, including, without limitation, an adult bookstore, adult cabaret, adult club, adult dry cabaret, adult movie theater, adult video rental store, adult video store or adult viewing facility.



- (b) Anhydrous ammonia (bulk storage facility or retail sale).
- (c) Asbestos (storage of).
- (d) Animal hospitals, kennels and pounds.
- (e) Any cabaret.
- (f) Car wash (commercial).
- (g) Concrete and asphalt batch plants.
- (h) Dry cabaret.
- (i) Fertilizer (production, sales, storage, mixing or blending).
- (j) Feed mills.
- (k) Fireworks (manufacturing, storage or sale).
- (l) Flea markets.
- (m) Gas stations with or without a car wash (commercial).
- (n) Greenhouse.
- (o) Hotel.
- (p) Liquor store.
- (q) Livestock sale facilities.
- (r) Motel.
- (s) Nursery.
- (t) Pawnshop.
- (u) Petroleum bulk stations and terminals.
- (v) Psychic/tarot card/astrology reading.
- (w) Refuse incineration.
- (x) Slaughterhouse.
- (y) Tavern.
- (z) Tires (production or bulk storage).
- (aa) Truck stop and/or truck service facility.
- (bb) Wrecking, junk, demolition and scrap yards.

- D. Unspecified permitted uses. The Zoning Administrator shall have authority to approve as a permitted use in the M-5 District a proposed principal use not listed in Subsection B or C above if the proposed use is similar in character to one or more of the listed permitted uses in the M-5 District and is free of potential problems requiring special regulation. The Zoning Administrator shall make written findings supporting any such decision. Any use so approved shall be subject to all requirements of Subsection B or C above. Notwithstanding the foregoing authorization, the following uses shall not be construed to be permitted uses in the M-5 District:
- (1) Any listed permitted use or conditional use or unspecified permitted use specified in any other district that is not expressly listed in Subsection B above.
  - (2) Any use involving the serving or selling of alcoholic beverages that is not specifically listed in Subsection B or C above.
  - (3) Any adult-oriented uses, including, without limitation, an adult bookstore, adult cabaret, adult club, adult dry cabaret, adult movie theater, adult video rental store, adult video store or adult viewing facility.
  - (4) Any use classified as a High-Hazard Group H uses pursuant to Section 307 of the 2006 IBC that involve the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard in quantities in excess of those allowed in control areas constructed and located as required in Section 414 of the 2006 IBC.
- E. Conditional uses. The following uses may be permitted as conditional uses in the M-5 District (as principal uses or accessory uses, as appropriate) pursuant to and in accordance with Article XVIII of this chapter, subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes:
- (1) Retail or wholesale of merchandise manufactured or stored within the building, provided that the retail or wholesale use is not classified as a High-Hazard Group H pursuant to Section 307 of the 2006 IBC.
  - (2) Day-care facilities, either for children or adults.
  - (3) Miscellaneous uses. The following miscellaneous uses may be permitted as conditional uses in the M-5 District:

- (a) (Reserved)<sup>1</sup>
  - (b) Electric power or gas metering substation (only as a principal use on its own lot).
  - (c) Heliport pad.<sup>2</sup> **[Added 4-17-2017 by Ord. No. 17-12]**
  - (d) Outside storage.
  - (e) Transmission line (electric power or natural gas).
  - (f) Utility substation building (only as a principal use on its own lot).
  - (g) Wind energy conversion systems.
- F. Special licensed uses. Some uses require a special license approved by the Village Board and may only be operated pursuant to and in accordance with such license. The granting of a Village license by the Village Board is not assured either by permitted use status or by the granting of a conditional use permit or of any other permit or approval under this chapter.
- G. Combination of uses. Except as otherwise specifically provided for in this section, two or more principal uses and their related accessory uses may be located and conducted in the same principal building in the M-5 District, subject to Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes, in accordance with each of the following restrictions to the extent such restrictions are applicable:
- (1) Permitted uses allowed in the M-5 District and their related accessory uses may be located separately or together, and may be conducted separately or together, with other such permitted uses and their related accessory uses in the same principal building in the M-5 District.
  - (2) Conditional uses allowed in the M-5 District and their related accessory uses may be located separately or together, and may be conducted separately or together, with other such conditional uses and their related accessory uses in the same principal building in the M-5 District; provided, however, that the area of a building occupied by a conditional use and any related accessory uses shall be a physically separate defined

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1. **Editor's Note: Former Subsection E(3)(a), concerning commercial communication antennas and like devices, was repealed 4-7-2014 by Ord. No. 14-08.**

2. **Editor's Note: Former Subsection E(3)(c), concerning freestanding commercial communication structures, was repealed 4-7-2014 by Ord. No. 14-08.**

area in which any proposed new use of any kind (or any use of any kind existing as of the time when the conditional use permit for such conditional use or any amendment of such permit is approved) shall be allowed only pursuant to and in accordance with the conditional use permit issued for such conditional use under Article XVIII of this chapter.

- (3) Permitted uses allowed in the M-5 District and their related accessory uses and conditional uses allowed in the M-5 District and their related accessory uses may be located separately or together, and may be conducted separately or together, in the same principal building in the M-5 District; provided, however, that the area of a building occupied by a conditional use and any related accessory uses shall be a physically separate defined area in which any proposed new use of any kind (or any use of any kind existing as of the time when the conditional use permit for such conditional use or any amendment of such permit is approved) shall be allowed only pursuant to and in accordance with the conditional use permit issued for such conditional use under Article XVIII of this chapter.
- (4) Nonconforming uses existing in the M-5 District as of the effective date of Ordinance No. 13-22 (June 17, 2013) and any related accessory uses existing as of such date may be continued in the same principal building along with other existing agricultural related uses; provided, however, that no nonconforming use and no accessory use to a nonconforming use may be extended or expanded into new areas, and no new accessory use related to such nonconforming use (and no prior accessory use to such nonconforming use that has been discontinued as an actively conducted use for a period of 12 or more consecutive months) may be commenced or recommenced, and further provided that the area of a building occupied by a nonconforming use and any related accessory uses shall be a physically separate defined area in which any proposed new use of any kind shall be prohibited.

#### H. Accessory uses.

- (1) Except as otherwise specifically provided in this chapter, accessory uses to principal uses allowed in the M-5 District are allowed, subject to Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes, as follows:

- (a) Accessory uses to principal permitted uses in the M-5 District are allowed.
  - (b) Accessory uses to principal conditional uses allowed in the M-5 District are allowed, but only pursuant to and in accordance with a conditional use permit issued under Article XVIII of this chapter.
- (2) New proposed accessory uses to nonconforming uses (and any prior accessory uses to a nonconforming use that have been discontinued as actively conducted uses for 12 or more consecutive months) are prohibited.
- (3) In the event of any issue about whether a particular use is properly an accessory use, the Zoning Administrator shall have authority to decide. The Zoning Administrator shall make written findings to support any such decision.
- I. Temporary uses. Temporary uses may be allowed in the M-5 District pursuant to § 420-140.1 of this chapter.
- J. Prohibited uses. Uses that are not specifically allowed in the M-5 District by this chapter as specified in the foregoing sections are prohibited in the M-5 District. However, where a use is proposed for a purpose that is not specifically provided in Chapter 3 of the 2006 IBC and is not specifically listed as a prohibited use in the M-5 District regulations, such uses shall be classified in the group that the occupancy most clearly resembles, according to the firesafety and relative hazard involved. The Zoning Administrator shall make the final determination if the use is allowed within the M-5 District.
- K. Dimensional standards. Except as specifically provided in this chapter, and without limitations, all uses, sites, buildings and structures in the M-5 District shall comply with the following dimensional standards to the extent applicable.
  - (1) Lot size: two acres minimum, except that the minimum lot size for a freestanding commercial communication structure or a utility substation building shall be as prescribed by § 420-148 of this chapter, and further provided that no minimum lot size shall be applicable to transmission lines.
  - (2) Lot frontage. Lot frontage on a public street: 150 feet minimum; however, that on a substantial curve or cul-de-sac, the public street frontage may be reduced as necessary to an absolute minimum of 100 feet if all other requirements are satisfied, except that the minimum lot frontage on a public

street for a freestanding communication structure or a utility substation building shall be as prescribed by § 420-148 of this chapter, and further provided that no minimum lot frontage on a public street shall be applicable to transmission lines.

- (3) Open space: 25% minimum.
- (4) Building standards:
  - (a) Gross floor area. No maximum or minimum building area shall be required in the M-5 District due to the variety of uses within this district and the diverse building demands of each use.
  - (b) Principal building height: 60 feet maximum; however, the height of a principal building or part thereof may be increased to a maximum of 100 feet in height, provided that for every one foot above 60 feet, said principal structure shall be set back an additional 1.5 feet from all property lines. **[Amended 4-17-2017 by Ord. No. 17-12]**
  - (c) Accessory building height: 30 feet maximum.
  - (d) Setbacks. The following setbacks shall be considered to be minimum setbacks; greater setback may be required by state building codes.
    - [1] Street setback: minimum of 65 feet from arterial streets or highways and a minimum of 40 feet from nonarterial streets or private roads for buildings.
    - [2] Shore setback: 75 feet minimum.
    - [3] Wetland setback: 25 feet minimum.
    - [4] Side setback: 45 feet minimum for all buildings.
    - [5] Rear setback: 45 feet minimum for all buildings.
    - [6] Separation distance between all buildings: 45 feet minimum.
- L. Design standards. Except as otherwise specifically provided in this chapter, and without limitation, all uses, sites, buildings and structures in the M-5 District shall comply with the following design standards to the extent applicable:
  - (1) Number of principal structures per lot: no limit.

- (2) Number of detached accessory buildings: no limit.
- (3) Fences may be allowed pursuant to § 420-81; however, chain-link fences shall be vinyl coated and the color shall be black, earth tones or complementary to the color of the building.
- (4) Dock doors shall not face a public street.
- (5) All accessory uses or structures shall be on the same lot or approved site as the principal use.
- (6) Principal building standards. All facades that are visible to and facing the public street and any portions of the building with office uses shall provide architectural details and elements such as but not limited to varying roof heights, varying fenestration and other appropriate architectural elements. In addition, the office area of the building shall have an appearance of a two-story building.
- (7) Principal office building standards (for stand-alone corporate, business, professional office buildings where no manufacturing, distribution and/or warehouse activities are conducted in the office building):
  - (a) Each principal office building shall have a minimum of two floors above grade.
  - (b) The gross floor area of a principal office building shall be a minimum of 24,000 square feet, and each of the first two floors above grade shall have a gross floor area of at least 10,000 square feet.
  - (c) The gross floor area for all auxiliary permitted uses within a principal office building shall not exceed 10% of the gross floor area of such building.
  - (d) Height: 30 feet minimum.
- (8) Site and operational plan requirements pursuant to Article IX of this chapter, except as provided below:
  - (a) Buildings shall comply with the façade design requirements in this subsection. The Village Zoning Administrator shall have the discretion to adjust the minimum glazed area percentages set forth below among various facades of a building so long as all facades, taken together, satisfy the minimum glazed area percentages (for example, any individual façade may be less than the minimum so long as one or more of the other facades

exceeds the minimum such that the total glazed area for all facades equals or exceeds the minimum glazed area percentages); provided, however, that the glazing on the sides visible from the public streets or highways outside the district shall not be less than stated minimum percentages.

- [1] Manufacturing. Portions of the building used for manufacturing or directly related warehousing and/or distribution uses, as defined in Subsection C(3)(b) above, shall have a minimum glazed area (calculated on the basis of all manufacturing or directly related warehousing and/or distribution building facade areas) of 5%.
  - [2] Office building(s). Portions of the building used for business office or research and development uses shall have a minimum glazed area (calculated on the basis of all office or research and development building facade areas) of 25%.
  - [3] Parking garages. Parking garages shall have entry and exit stairwells and lobbies that are visible from the exterior, and any such areas visible from the exterior shall have a minimum glazed area of 25%.
  - [4] Utility substations; utility substation building. Utility substations and utility substation buildings shall have no minimum glazing requirement.
- (b) Construction materials. Principal buildings, accessory buildings, parking garages and any penthouse areas associated with such building or structure shall comply with the following requirements for construction materials:
- [1] Glazed area. The following requirements apply to all glazed areas:
    - [a] Glazed areas may be tinted or clear glass. Mirrored glass is prohibited.
    - [b] Anodized or powder-coated aluminum curtain wall systems, storefront systems and accents are allowed.



[c] Stainless steel, bronze or brass curtain wall systems. Storefront systems and accents are allowed.

[d] Anodized or powder-coated aluminum metal panels or other metal panels are allowed if integral to window wall or curtain wall systems or if used for trim, soffits, canopy, sun protection systems or mechanical penthouses.

[e] Door frames. Door frames shall complement window frames in material, finish and color.

[f] Nonglazed area. The nonglazed areas of any building in this district shall comply with the standard in § 420-57H(2)(g). Additionally, architectural precast concrete panels, through the application/addition of certain finishing elements (e.g., reveals, relief, and dimension), finish, shape, color or texture shall contribute to the architectural form, style and aesthetics or the structure. Architectural precast concrete may be structural (e.g., load-bearing element) and/or decorative (e.g., building cladding) and may be conventionally reinforced or prestressed. Architectural precast concrete panels shall not result in plain, blank walls.

[2] Roofs (architectural features). Section 420-57H(2)(i) shall not apply. Architectural roof features or forms shall be copper or zinc-coated aluminum metal panels or slate or architecturally painted metal panels.

(9) Parking, access and traffic requirements pursuant to Article VIII of this chapter.

(10) Sign requirements pursuant to Article X of this chapter.

(11) Fence requirements pursuant to Article XI of this chapter.

(12) Each use, site, building and structure shall be designed, laid out, constructed and maintained in full compliance with the approved site and operational plan, any required conditional use permit, any required license and all other applicable provisions of this chapter and of all other Village ordinances and codes.

- M. Operational standards. Except as otherwise specifically provided in this chapter, and without limitation, all uses, sites, buildings and structures in the M-5 District shall comply with the following operational standards to the extent applicable:
- (1) Hours of operation (when the public is allowed to enter or remain on site for business purposes):
    - (a) From 5:00 a.m. to 12:00 midnight maximum for corporate, business and professional office uses, and service or retail uses allowed as auxiliary permitted uses; for any day-care facilities, either for children or adults, as may be allowed by a conditional use permit.
    - (b) All other uses: no limit.
  - (2) Hours for deliveries, or any other activities outside the principal building (e.g., outside loading or unloading, the arrival of deliveries, idling of delivery trucks, beeping of backing vehicles, and garbage pickup), except for snow removal:
    - (a) 6:00 a.m. to 10:00 p.m. maximum for corporate, business and professional office uses, and service or retail uses allowed as auxiliary permitted uses; for any day-care facilities, either for children or adults, as may be allowed by a conditional use permit.
    - (b) All other uses: no limit.
  - (3) Except as otherwise specifically permitted by this chapter under a conditional use granted by the Village, all activities shall be conducted within a building.
  - (4) No on-site residential uses are allowed.
  - (5) Each use, site, building and structure shall comply with all applicable performance standards set forth in § 420-38 of this chapter.
  - (6) Each site, building and structure shall be maintained in a neat, presentable, aesthetically pleasing, structurally sound and nonhazardous condition. All litter and debris shall be promptly removed.
  - (7) Each use, site, building and structure shall be operated in full compliance with the approved site and operational plan, any required conditional use permit, any required license and all

other applicable provisions of this chapter and of all other Village ordinances and codes.

- N. Authorized sanitary sewer system. See § 420-32 of this chapter.
- O. Authorized water supply system. See § 420-33 of this chapter.



**PARTIAL TERMINATION OF THE  
MEMORANDUM OF UNDERSTANDING AND WAIVER  
OF SPECIAL ASSESSMENT NOTICES AND HEARING**

**Return Document to:**

Village of Pleasant Prairie  
9915 39<sup>th</sup> Avenue  
Pleasant Prairie, Wisconsin 53158

**Parcel Number:**

91-4-122-081-0204

THIS PARTIAL TERMINATION OF THE MEMORANDUM OF UNDERSTANDING AND WAIVER OF SPECIAL ASSESSMENT NOTICES AND HEARING is made as of this 19<sup>th</sup> day of February, 2018, by the Village of Pleasant Prairie, a Wisconsin municipal corporation, ("Village").

- A. The Village and V.K. Development Corporation ("the Developer"), entered into a Memorandum of Development Agreement and Waiver of Special Assessment Notices and Hearing ("the Agreement") dated as of August 13, 2007 regarding the WI DOT MOU which summarizes the current and future STH 50 Transportation Improvements Agreement between the Village and the WI DOT for the developable lands within Prairie Ridge development located south of STH 50 and between 88<sup>th</sup> and 104<sup>th</sup> Avenues in the Village affecting certain real property located in Kenosha County, Wisconsin and more particularly described on **Exhibit A** attached hereto and made a part hereof.
- B. Prairie Ridge Edge LLC owns real property described in **Exhibit B** attached hereto ("the Property").
- C. All of the Developer's obligations under the Agreement with respect to the Property have been fulfilled and all amounts due there under have been paid or discharged from the Property.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledge, the Village declares, covenants and agrees that all obligation of the Agreement with respect the Property have been satisfied in their entirety and all amounts due thereunder have been paid or discharged and the Agreement is of no future force or effect whatsoever with respect to the Property.

IN WITNESS WHEREOF, the Village Board hereby authorizes the partial termination and release on this 19<sup>th</sup> day of February, 2018.

*[Signature on next page]*

**VILLAGE OF PLEASANT PRAIRIE**

---

John P. Steinbrink  
Village President

ATTEST:

---

Jane C. Snell  
Village Clerk

THIS INSTRUMENT WAS DRAFTED BY:  
Jean M. Werbie-Harris  
Community Development Director  
Village of Pleasant Prairie  
9915 39<sup>th</sup> Avenue  
Pleasant Prairie, Wisconsin 53158

Chick-Fil-A-2007 MOU re STH 50 Imp  
DEV1802-002

**EXHIBIT A**

Parcel 1:

Parcel 1 of Certified Survey Map No. 2175 recorded in the Kenosha County Register of Deeds office on March 1, 2000 as Document No. 1174606, being a redivision of Outlot 17 in Prairie Ridge, a recorded subdivision being part of the Northeast ¼ of Section 8, Town 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin.

Parcel 2:

Outlot 18 of Prairie Ridge, a subdivision recorded in the Kenosha County Register of Deeds office on March 12, 1998, as Document No. 1088727, being a part of the Northeast ¼ of Section 8, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin.

Parcel 3:

Outlot 20 of Prairie Ridge, a subdivision recorded in the Kenosha County Register of Deeds office on March 12, 1998, as Document No. 1088727, being a part of the Northeast ¼ of Section 8, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin.

Parcel 4:

Outlot 21 of Prairie Ridge, a subdivision recorded in the Kenosha County Register of Deeds office on March 12, 1998, as Document No. 1088727, being a part of the Northeast ¼ of Section 8, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin.

Parcel 5:

Outlot 22 of Prairie Ridge, a subdivision recorded in the Kenosha County Register of Deeds office on March 12, 1998, as Document No. 1088727, being a part of the Northeast ¼ of Section 8, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin, **EXCEPTING THEREFROM:** Parcel 1 of Certified Survey Map No. 2063, recorded in the Kenosha County Register of Deeds office on September 21, 1998 as Document No. 1113314, being a redivision of part of Outlot 22 of Prairie Ridge, a recorded subdivision in Section 8 and being a part of the Southwest ¼ and Northwest ¼ of the Northeast ¼ of Section 8, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin.

**EXHIBIT B**

**The Property**

Lot 2 of Certified Survey Map 2838 (formerly known as a part of Outlot 20 of the Prairie Ridge Subdivision) located in U.S. Public Land Survey Section 8, Township 1 North, Range 22 East lying and being in the Fourth Principal Meridian, in the Village of Pleasant Prairie, Kenosha County Wisconsin.



▷ 420 North Front Street | Suite 100 | McHenry, IL 60050  
Main 815.385.1778 + Fax 815.385.1781

▷ [HRGREEN.COM](http://HRGREEN.COM)

February 5, 2018

Village of Pleasant Prairie  
Attn: Peggy Herrick, Planning Department  
9915 39<sup>th</sup> Avenue  
Pleasant Prairie, WI 53158

RE: Agreement Termination Request  
HR Green Job No.: 160465

Dear Ms. Herrick:

On behalf of our client Chick-fil-A, we would like to request the Village terminate the Memorandum of Understanding and Waiver of Special Assessment agreement with respect to the property with tax parcel number 91-4-122-081-0204 as all of the obligations of the agreement have been fulfilled and all amounts due thereunder have been paid or discharged. A copy of the agreement in question is attached for reference. Please place this request on the next regularly scheduled Village Board meeting for consideration.

If you have any questions or need additional information to process this request, please contact me at 815-759-8363.

Sincerely,

HR GREEN, INC.

A handwritten signature in black ink, appearing to read 'Joseph F. Vavrina'.

Joseph F. Vavrina, PE LEED AP  
Sr. Project Manager – Land Development

JFV/dmw

Attachment



**Memorandum of Understanding and Waiver of Special  
Assessment Notices and Hearing Under Section  
66.0703, Wisconsin Statutes**

Document Title Above

27-



DOCUMENT

1539378

RECORDED  
At Kenosha County, Kenosha, WI 53140  
Louise I. Principe, Register of Deeds  
on 11/09/2007 at 4:27PM \$27.00  
70054340

REGDEED2 JANK

Return to Name and Address Below:

Village of Pleasant Prairie

9915 39<sup>th</sup> Avenue

Pleasant Prairie, WI 53158

- 91-4-122-081-0131
- 91-4-122-081-0105
- 91-4-122-081-0200
- 91-4-122-081-0210
- 91-4-122-081-0221

Parcel ID Number(s)

**MEMORANDUM OF UNDERSTANDING  
AND WAIVER OF SPECIAL ASSESSMENT  
NOTICES AND HEARING UNDER SECTION  
66.0703, WISCONSIN STATUTES**

**Return to:**

Village of Pleasant Prairie  
9915 39<sup>th</sup> Avenue  
Pleasant Prairie, WI 53158

**Tax Parcel Numbers:**

91-4-122-081-0131  
91-4-122-081-0105  
91-4-122-081-0200  
91-4-122-081-0210  
91-4-122-081-0221

**THIS MEMORANDUM OF UNDERSTANDING AND WAIVER OF SPECIAL ASSESSMENT NOTICES AND HEARING UNDER SECTION 66.0703, WISCONSIN STATUTES** (the "Memorandum") is made by the **Village of Pleasant Prairie**, (the "Village"), a Wisconsin municipal corporation with offices located at 9915 39th Avenue, Pleasant Prairie, Wisconsin 53158, and **V.K. Development Corporation**, ("the Developer"), a Wisconsin Corporation with a business address of 19275 W. Capitol Drive, Brookfield, WI 53045 regarding the State Trunk Highway 50 ("STH 50") Phase 3 Transportation Improvements.

**WITNESSETH:**

**WHEREAS**, the Village and the Wisconsin Department of Transportation ("WI DOT") have entered into a Memorandum of Understanding dated as of the 13<sup>th</sup> day of August, 2007 (the "WI DOT MOU"), which summarizes the current and future STH 50 Transportation Improvements Agreement between the Village and WI DOT for the developable land within the Prairie Ridge Development located south of STH 50 and between 88<sup>th</sup> and 104<sup>th</sup> Avenues in the Village.

**WHEREAS**, pursuant to the terms of the WI DOT MOU, the STH 50 Transportation Improvements are divided into Phase 1, Phase 2, and Phase 3 Improvements as defined in the WI DOT MOU.

**WHEREAS**, the Developer, the Village, GB-MA Pleasant Prairie, LLC, and Target Corporation have entered into a Development Agreement dated as of August 13, 2007 (the "Development Agreement") which details the construction activities, responsibilities and obligations of Developer for the Phase 1 and Phase 2 Improvements as described in the Development Agreement relating to the development of that certain real property located within the Village, the legal description of which is attached to the Development Agreement and incorporated herein by reference (the "On-Site Parcel(s)").

**WHEREAS**, the Developer is the owner of that certain real property being approximately thirty-six (36) acres located in the Village and more particularly described in the attached **Exhibit A** (the "Off-Site Parcel(s)").

**WHEREAS**, the purpose of this Memorandum is to set forth the Developer's obligations for the Phase 3 Improvements.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which the Developer and the Village hereby acknowledge, the Developer and the Village hereby agree as follows:

1. The Developer shall complete the construction and installation of the Phase 3 Improvements in accordance with a future development agreement to be entered into between the Developer, its successors or assigns and the Village at the time of the development of the Off-Site Parcel(s). Notwithstanding the foregoing, the Phase 3 Improvements shall not be constructed, inspected, dedicated and accepted until the earlier of: (i) 50% build out (based on the proposed number of trips as determined by ITE Trip Generation) of the Off-Site Parcel(s), or (ii) 10 years after the full build out of the On-Site Parcel(s). The Village acknowledges and agrees that Developer's cost share for the Phase 3 Improvements whenever constructed shall not exceed 50% of the total costs of the Phase 3 Improvements, including engineering design, field staking,

inspection and contract related administration, as provided in the Development Agreement. Upon payment by Developer of Developer's obligations with respect to the Phase 3 Improvements, the Village shall execute a Termination and Release of this Memorandum in recordable form terminating this Memorandum and releasing this Memorandum of record from the Off-Site Parcel(s). Developer agrees that construction of the Phase 3 Improvements shall not commence until Developer has fully paid 50% of the Updated Total Construction Costs, as defined and determined under Paragraph 2, below, including engineering design, field staking, inspection and contract related administration.

2. The Developer acknowledges and admits that the Phase 3 Improvements will specifically benefit, in part, the Off-Site Parcel(s). The Developer, in the event the Developer has not timely completed Developer's obligations with respect to the Phase 3 Improvements described in Paragraph 1, above, consents to the levying of special assessments under Section 66.0703 of the Wisconsin Statutes for 50% of the cost of the Phase 3 Improvements, as described in Paragraph 1, above, against the remaining Off-Site Parcel(s) not previously released from this Memorandum. The amount to be levied in the special assessments includes but is limited to the amounts for which the Developer is responsible under Paragraph 1 above (i.e. 50% of the costs of the Phase 3 Improvements as described in Paragraph 1). If the Developer does not timely complete its obligations as described in Paragraph 1 above, the Developer agrees the Village may immediately levy such special assessments in such amount as described herein against the remaining Off-Site Parcel(s) not previously released from this Memorandum. In accordance with Section 66.0703(7)(b) of the Wisconsin Statutes, the Developer hereby waives all special assessment notices and hearings required by Section 66.0703 of the Wisconsin Statutes relating solely to the levying of special assessments for the Developer's share of the costs of the Phase 3 Improvements as described in this Memorandum and only against the remaining Off-Site Parcel(s) not previously released from this Memorandum. The Developer further agrees and admits that the benefits to the Off-Site Parcel(s) from the construction of the Phase 3 Improvements is in proportion to the acreage thereof. The foregoing consent by the Developer to the levying

of special assessments and the Developer's waiver of notice and hearing under Section 66.0703(7)(b) of the Wisconsin Statutes is limited solely to the levying of special assessments relating to 50% of the costs of the Phase 3 Improvements as described herein, and is not and shall not be construed as a consent to special assessment or waiver of notice and/or hearing for a special assessment for any special assessment(s) now contemplated or contemplated in the future by the Village against any part or all of the Off-Site Parcel(s).

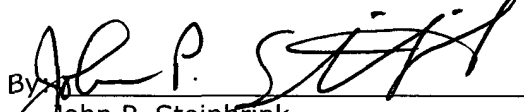
3. In the event the Developer wishes to sell or transfer any portion of the Off-Site Parcel(s) before the Developer has paid all of its obligations for Phase 3 Improvements in accordance with this Memorandum, the Developer shall apply to the Village for a release of such portion from the terms of this Memorandum. The Village shall release such portion of the Off-Site Parcel(s) from the terms of this Memorandum; but only if the Developer provides to the Village, as determined by the Developer, either (i) a letter of credit in a form satisfactory to the Village, in its sole discretion, or (ii) an escrow deposit. The amount of the letter of credit or escrow deposit to be provided by the Developer under this Memorandum shall be determined by taking fifty percent (50.00%) of the total Updated Estimated Construction Costs of the Phase 3 Improvements, as defined below, divided by the latest known total assessed value of the Off-Site Parcel (s) which have not been developed by that time, multiplied by the latest known assessed value of the Off-Site Parcel(s) being sold or transferred by Developer. The Developer and the Village hereby acknowledge and agree that the construction costs for the Phase 3 Improvements attached hereto as **Exhibit B** show the estimated construction costs for the Phase 3 Improvements if such Phase 3 Improvements were currently constructed. In determining the amount of the letter of credit or escrow deposit described in this Paragraph 2, the estimated construction costs shown in **Exhibit B** shall be updated by the Developer at the time of the sale or transfer of all or a part of the Off-Site Parcel(s) (the "Updated Estimated Construction Costs") for use in determining the amount of the letter of credit or escrow deposit as provided herein. The Village shall, upon receipt of the Letter of Credit or escrow deposit from Developer execute and provide to the Developer a Termination and Release of this Memorandum in recordable form

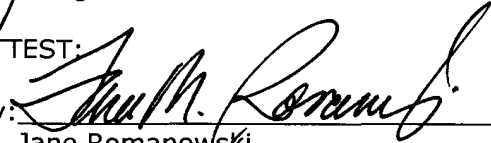
terminating and releasing those portions of the Off-Site Parcel(s) being sold or transferred by the Developer upon which such letter of credit or escrow deposit is based.

4. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS CONTAINED IN THIS MEMORANDUM SHALL HAVE THE MEANING SET FORTH IN THE DEVELOPMENT AGREEMENT.
5. The obligations under this Memorandum and the Waiver of Special Assessment Notices and Hearing under Section 66.0703 of the Wisconsin Statutes are obligations which run with the Off-Site Parcel(s) until released as provided herein, and shall be binding upon the Developer, its successors, assigns, and future owners of all or part of the Off-Site Parcel(s) unless and until such Off-Site Parcel(s) is released from this Memorandum as provided herein.

**IN WITNESS WHEREOF**, the Developer and the Village have caused this Memorandum to be signed and dated as of this 13th day of August, 2007.

**VILLAGE OF PLEASANT PRAIRIE**

By:   
\_\_\_\_\_  
John P. Steinbrink  
Village President

ATTEST:  
By:   
\_\_\_\_\_  
Jane Romanowski  
Village Clerk

**V.K. DEVELOPMENT CORPORATION**

By:   
\_\_\_\_\_  
Vincent Kuttemperoor  
President

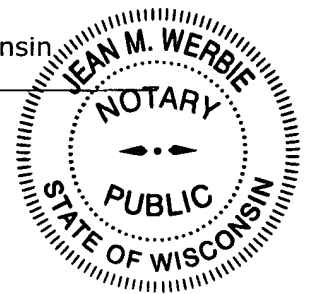
By:   
\_\_\_\_\_  
Ajay Kuttemperoor  
Vice President

*[Notary Seal/Signatures Appear on the Next Page]*

STATE OF WISCONSIN )  
                                  )SS  
KENOSHA COUNTY      )

This Agreement was acknowledged before me this 13<sup>th</sup> day of August, 2007 by **John P. Steinbrink, Village President, and Jane M. Romanowski, Village Clerk**, of the Village of Pleasant Prairie.

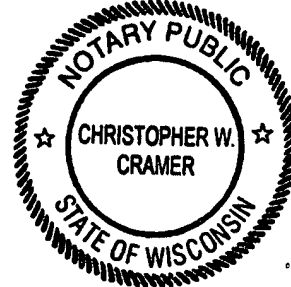
Jean M. Werbie  
**Print Name:** Jean M. Werbie  
**Notary Public:** Kenosha County, State of Wisconsin  
**My Commission Expires:** 1-17-2010



STATE OF WISCONSIN )  
                                  )SS:  
WAUKESHA COUNTY      )

This Agreement was acknowledged before me this 13<sup>th</sup> day of August, 2007 by **Vincent Kuttemperoor, President and Ajay Kuttemperoor, Vice President of V.K. Development Corporation**.

Christopher W. Cramer  
**Print Name:** Christopher W. Cramer  
**Notary Public:** Waukesha County, State of Wisconsin  
**My Commission** is permanent



**This Memorandum Agreement Drafted by:**

Christopher W. Cramer, Esq.  
V.K. Development Corporation  
19275 W. Capitol Drive, #100  
Brookfield, WI 53045 and

Thomas Camilli  
Godin Geraghty and Puntillo  
Green Bay Road  
Kenosha, Wisconsin 53142

## EXHIBIT A

### Parcel 1:

Parcel 1 of Certified Survey Map No. 2175 recorded in the Kenosha County Register of Deeds office on March 1, 2000 as Document No. 1174606, being a redivision of Outlot 17 in Prairie Ridge, a recorded subdivision being part of the Northeast  $\frac{1}{4}$  of Section 8, Town 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin.

### Parcel 2:

Outlot 18 of Prairie Ridge, a subdivision recorded in the Kenosha County Register of Deeds office on March 12, 1998, as Document No. 1088727, being a part of the Northeast  $\frac{1}{4}$  of Section 8, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin.

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Outlot 20 of Prairie Ridge, a subdivision recorded in the Kenosha County Register of Deeds office on March 12, 1998, as Document No. 1088727, being a part of the Northeast  $\frac{1}{4}$  of Section 8, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin.

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**EXHIBIT B**

Estimated Current Construction Costs: \$3,000,000.00\*

Developer Responsibility of Estimated Current Construction Costs: \$1,500,000.00

Any assessment against Developer pursuant to this Memorandum shall be based upon the percentages specified below:

**Village of Pleasant Prairie  
 Special Assessments for STH 50 Improvements  
 \$1,500,000.00 (Developer's Share)**

Parcel	Parcel Identification	2007 Assessed Value	Pct.	Assessment (50% Current Costs)
1	91-4-122-081-0131	\$1,733,700	20.19%	\$302,850.00
2	91-4-122-081-0105	\$940,900	10.96%	\$164,400.00
3	91-4-122-081-0200	\$1,934,700	22.54%	\$338,100.00
4	91-4-122-081-0210	\$919,300	10.71%	\$160,650.00
5	91-4-122-081-0221	\$3,056,200	35.60%	\$534,000.00
<b>Total</b>		<b>\$8,584,800</b>	<b>100.00%</b>	<b>\$1,500,000.00</b>

\* Estimated Current Construction Costs are the total estimated costs agreed upon by Developer and the Village based upon an estimate prepared by Graef Anhalt Schloemer and Associates on July 18, 2007.



February 12, 2018

**To:** Village Board  
Village of Pleasant Prairie

**Copy:** Tom Shircel

**From:** Kevin M. Long

**Re:** **Settlement of Claims Brought by the Village of Pleasant Prairie in Kenosha County Case No. 14-CV-423**

After realizing significant problems with the performance of the Geothermal Heating, Ventilation and Air Conditioning (HVAC) System at the RecPlex Aqua Arena, the Village investigated and ultimately brought suit in 2014 against several contractors, equipment suppliers and design professionals associated with the project, along with their insurers. All defendants raised defenses, which included blaming other defendants and the Village, and several defendants brought other defendants into the suit. During the suit, a problem with the building envelope was also discovered, and additional defendants brought into the suit. The investigation by the Village and experts retained by the Village did ultimately result in a significant improvement of the operation of Geothermal HVAC System at the RecPlex Aqua Arena. Carol Willke, the former Director of Recreation for the Village (and present Village Human Resources Director) and RecPlex Facilities Director Tom Patrizzi were instrumental in identifying and working with the experts to get the problems fixed.

Non-insurance defendants included Partners in Design Architects, Inc., Arnold & O'Sheridan, Inc., Riley Construction Company, Inc., Van's Roofing, Inc., Mid-State Concrete Industries, Inc., Cardinal Fabrication Corporation, Olympic Wall Systems, Inc., J.F. Ahern, Inc. Trane U.S. Inc. and DJ Burbach Insulation Company, Inc. Many of those defendants have

insurance companies who were brought into the suit as well. Those included RLI Insurance Company, Beazley Insurance Company, the Travelers Indemnity Company, Zurich American Insurance Company, SECURA INSURANCE, a Mutual Company, Old Republic Insurance Company, the Cincinnati Insurance Company and General Casualty Company.

A principal defendant, Arnold & O'Sheridan, Inc. went out of business after the suit started. A key product manufacturer went out of business before the suit started. The insurer of Arnold & O'Sheridan as well as the insurer of Partners in Design Architects, Inc. both claimed that they owed no insurance coverage for those defendants because the defendants failed to timely report the claims to them. As noted above, all defendants claimed that they were not at fault.

The Village claimed damages totaling over \$3.2 million, which included costs to repair the Geothermal HVAC System, costs to repair the building envelope defects, lost energy efficiency, lost administrative time and damage to equipment. Counsel kept the Village Board informed about settlement options throughout a series of protracted negotiations during the litigation in closed sessions, pursuant to Wis. Stats. §19.85(1)(g). A global resolution of the matter was able to be reached in stages working through a mediator. That resolution required all parties, including the Village to not know the precise contributions of all parties to the settlement, but to know of course the financial impact of the settlement on the Village.

The financial impact of the settlement to the Village is a benefit of \$1,504,500. This includes payments to the Village totaling \$679,500, and repair work performed by settling defendants, who will be paid \$825,000 from other settlement sources (i.e. insurers and other defendants who funded a pool to pay for the repair work). The Village has already received \$550,000 and \$129,500 will be paid in the coming months.

The work will be performed this spring by Riley Construction Company, Inc. and Van's Roofing, Inc. under two separate contracts. Because those contracts require no payment by the Village, public bidding for that work is not required. The work will be coordinated by Village Director of Public Works John Steinbrink, Jr. and take place in the spring.

In executive session, the Village Board previously authorized Interim Village Administrator Tom Shircel to enter into settlement agreements accomplishing this settlement, and he has done so. The settlement was recommended by Village counsel Quarles & Brady LLP. The rationale for that recommendation was that on a net value basis, when factoring in risk, delay and costs of future litigation, it was the judgment of counsel that settlement on this basis at this time gave the Village its best financial outcome, while accomplishing the repair of a long-term Village asset. Elements of risk material to that recommendation included the fact that insurance coverage defenses and insolvency of key defendants made possible an outcome where the Village would be awarded a judgment against a responsible party who would have been unable to pay. As is typical in these settlements, the settlement is not to be construed as an admission of fault by any party.

In this meeting, we are asking the Village Board to ratify the execution by Interim Village Administrator Tom Shircel of two settlement agreements which accomplish this settlement, and authorize the entry into the two repair contracts.

## SETTLEMENT AGREEMENT AND FINAL *PIERRINGER* RELEASE OF ALL CLAIMS

This Settlement Agreement and Final *Pierringer* Release of All Claims (the “Settlement Agreement”) is voluntarily entered into by and between the Village of Pleasant Prairie, Partners In Design Architects, Inc., RLI Insurance Company, Arnold & O’Sheridan, Inc., a dissolved corporation, and Beazley Insurance Company, Inc. (collectively, the “Parties” and each, individually, a “Party”).

### Definitions

The following definitions shall govern throughout this Settlement Agreement unless otherwise indicated:

1. **The “Village”** means the Village of Pleasant Prairie and its past and present affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities’ past, present and future associates, representatives, owners, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, managers, management entities, directors, officers, employees, attorneys, agents, members, and persons acting by, through, under, or in concert with any of the foregoing persons.

2. **“PID”** means Partners In Design Architects, Inc. and its past and present affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities’ past, present and future associates, representatives, owners, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, managers, management entities, directors, officers, employees, attorneys, agents, members, and persons acting by, through, under, or in concert with any of the foregoing persons.

3. **“RLI”** means RLI Insurance Company and its past and present affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities’ past, present and future associates, representatives, owners, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, managers, management entities, directors, officers, employees, attorneys, agents, members, and persons acting by, through, under, or in concert with any of the foregoing persons.

4. **“A&O”** means Arnold & O’Sheridan, Inc. and its past and present affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities’ past, present and future associates, representatives, owners, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, managers, management entities, directors, officers, employees, attorneys, agents, members, and persons acting by, through, under, or in concert with any of the foregoing persons.

5. **“Beazley”** means Beazley Insurance Company, Inc. and its past and present affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities’ past, present and future associates, representatives, owners, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, managers, management entities, directors, officers, employees, attorneys, agents, members, and persons acting by, through, under, or in concert with any of the foregoing persons.

6. **The “Lawsuit”** means the entire civil lawsuit filed as Case No. 14-CV-423 in Kenosha County, Wisconsin and captioned *Village of Pleasant Prairie v. Partners in Design Architects, Inc., et al.*

7. **“Claim” or “Claims”** means any and all claims, actions, rights, liabilities, obligations, demands, lawsuits, judgments, liens, promises, payments, loss, fees, costs, expenses, interest, damages, suits, complaints, cross-claims, counterclaims, third-party claims, garnishments, orders, causes of action, or proceedings or requests of every kind and nature, whether asserted or not asserted, whether brought or not brought, whether known or unknown, whether anticipated or unanticipated, whether accrued or un-accrued, whether based in law, equity, tort, contract, statutory or common law (including without limitation, breach of contract, negligence, misrepresentation, breach of warranty, bad faith, contribution, indemnification, subrogation) and whether seeking compensatory damages, attorneys’ fees, costs, interest, punitive damages, exemplary damages, extra-contractual damages, or any other remedy or relief.

8. **The “Project”** means the design and construction of the AquaArena expansion to the Village’s RecPlex, as more fully described in Paragraphs 15-18 of its Second Amended Complaint.

9. **“Effective Date”** shall mean the date the final signature is affixed to this Settlement Agreement resulting in a fully-executed document.

### **Agreement**

For full and valuable consideration, including relief from the expense, uncertainty and distress of future litigation, and on the terms, conditions and covenants contained in this Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. Purpose and Scope.**

The purpose of this Settlement Agreement is to forever resolve any and all Claims that were or could have been asserted between the Parties in the Lawsuit or arising from PID’s or A&O’s work on the Project, including all disputes about insurance coverage for PID and A&O arising from such Claims.

## **2. Settlement Payments.**

Within 15 business days after the Effective Date, and contingent upon the Village providing a suitable W-9 form to all other Parties, (a) RLI shall pay \$275,000 to the Village; and (b) Beazley shall pay \$275,000 to the Village. These settlement payments shall be directed to the Village via checks made payable to the Village and delivered to its counsel, Quarles & Brady LLP. RLI and PID have agreed to a confidential allocation of the \$275,000 payment to the Village, which will be memorialized in a separate letter agreement between RLI and PID that incorporates the releases and other essential terms of this Settlement Agreement.

## **3. Village's *Pierringer* Release to PID, RLI, A&O, and Beazley.**

By entering into this Agreement, PID, RLI, A&O, and Beazley intend to (a) obtain a full release of all Claims held by the Village, including without limitation, Claims relating in any way to any of the transactions, occurrences, or other matters alleged (or which could have been alleged) in the Lawsuit and (b) obtain full protection from any claims for contribution or indemnity by any other person related to the Project, to the fullest extent allowed by law and pursuant to the principles of *Pierringer v. Hoger*, 21 Wis. 2d 182, 124 N.W.2d 106 (1963). The Village has the same intent to provide a full release of Claims against PID, RLI, A&O and Beazley while providing those parties protection against the claims of any other person arising from the Project.

Accordingly, the Village hereby forever and fully releases and discharges PID, RLI, A&O, and Beazley, separately and jointly, of and from any and all Claims the Village has, may have had in the past, or may have in the future for any reason whatsoever against PID, RLI, A&O and Beazley, including without limitation any Claims arising out of, or in any way relating to, the Project or the Lawsuit. Consistent with the intent and purpose of a *Pierringer* release, the Village releases, discharges, credits and satisfies only that fraction, portion or percentage of the Village's total Claims for damages, which may by trial or other disposition be adjudicated or determined to be the sum of the fractions, portions or percentages of liability, whether in tort, contract, or otherwise, for which PID, RLI, A&O, and Beazley are responsible.

The Parties recognize and agree that in the *Pierringer* case, the only theories of liability at issue were based on negligence claims. The claims that have been made in the Lawsuit are based on a variety of legal theories, including but not limited to, negligence, breach of contract, breach of warranty, misrepresentation, indemnification, and contribution. Therefore, the intended effect of this release is to have a broader application than the release utilized in the *Pierringer* case. This release is intended to resolve that fraction or percentage of the Village's total Claims against each and every released party that were, or that could have been, asserted by the Village against the released parties in the Lawsuit regardless of theory and whether based in tort, contract, contribution, indemnity/indemnification, under any statute including the Wisconsin Statutes and Federal Statutes, under any administrative or regulatory code including the Wisconsin

Administrative Code and the Code of Federal Regulations, in equity, or under any other theory of recovery, in any manner or form.

Consistent with the dictates of *Pierringer*, the Village shall defend, indemnify and hold harmless PID, RLI, A&O, and/or Beazley from any and all Claims asserted or entered against them, or any of them, by any other person relating to PID's or A&O's work on the Project (including any alleged defects or deficiencies arising thereof). This indemnification specifically includes indemnifying PID, RLI, A&O, and Beazley from their own allegedly deficient, defective, or negligent work or services related to the Project. If the Village fails to immediately satisfy any judgment against PID, RLI, A&O, and/or Beazley, the Village consents and agrees that, upon the filing of a copy of this Settlement Agreement with the applicable court, an order may be entered (without notice) directing the clerk to satisfy the judgment to the extent of such fraction, portion or percentage of fault as found against PID, RLI, A&O and/or Beazley and discharged under this *Pierringer* release.

**4. PID's Release to the Village, A&O and Beazley.**

In exchange for the consideration set forth in this Settlement Agreement, PID hereby releases, remises, acquits and forever discharges the Village, A&O, and Beazley of and from any and all Claims that PID has, may have had in the past, or may have in the future arising out of, or in any way relating to, the Project or the Lawsuit.

**5. A&O's Release to the Village, PID, Beazley, and RLI.**

In exchange for the consideration set forth in this Settlement Agreement, A&O hereby releases, remises, acquits and forever discharges the Village, PID, Beazley, and RLI of and from any and all Claims that A&O has, may have had in the past, or may have in the future arising out of, or in any way relating to, the Project or the Lawsuit.

**6. Beazley's Release to the Village, PID, RLI, and A&O.**

In exchange for the consideration set forth in this Settlement Agreement, Beazley hereby releases, remises, acquits and forever discharges the Village, A&O, PID, and RLI of and from any and all Claims that Beazley has, may have had in the past, or may have in the future arising out of, or in any way relating to, the Project or the Lawsuit.

**7. PID and RLI's Mutual Release Relating to Insurance Coverage.**

In exchange for the consideration set forth in this Settlement Agreement and their side agreement governing the allocation of RLI's settlement payment to the Village, RLI and PID hereby release, remise, acquit, and forever discharge each other of and from any and all Claims RLI or PID has, may have had in the past, or may have in the future arising out of insurance coverage relating to the Project or the Lawsuit. This release includes, without limitation, a release of all Claims that (1) RLI may have for recoupment of defense fees and costs paid in connection



with the Lawsuit and recoupment of the settlement payment identified in Section 1 and (2) PID may have for recoupment of any fees or costs, for bad faith, or any other extracontractual remedy.

**8. Unknown Claims.**

With respect to the releases set forth in Sections 3-7 of this Settlement Agreement, the Parties expressly understand, acknowledge and assume the risk that claims and/or liabilities may exist but presently be unknown, or that losses resulting from such claims or liabilities may presently be unknown or overestimated or underestimated in amount or severity, and the Parties have taken the possibility of unknown, underestimated or overestimated claims and liabilities into account in determining the amount of consideration to be paid in exchange for the releases provided herein. The Village, PID, RLI, A&O, and Beazley waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of any statute or principle of common law of the United States or any other state, territory or country, which narrowly construes releases purporting by their terms to release such unknown or underestimated or overestimated claims and/or liabilities in whole or in part, restricts or prohibits the releasing of such claims and/or liabilities or otherwise relates to the release of unknown claims.

**9. Stipulated Dismissal of the Lawsuit.**

For and in consideration of the releases set forth above, relief from the expense, uncertainty, and distress of future litigation and other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Village, PID, RLI, PID, and Beazley agree, upon payment of the settlement funds as set forth in Section 2 of this Settlement Agreement, to enter a stipulated dismissal of the Lawsuit, including all claims asserted therein, with prejudice and without costs. Such stipulation will be filed with the Circuit Court of Kenosha County no later than seven (7) days from the Village's receipt of all the settlement payments identified in Section 2.

**10. Compromise of Disputed Claims**

The Parties acknowledge and agree that this Settlement Agreement is entered into for the sole purpose of resolving certain disputes and that neither the execution nor the performance of any of the terms of this Settlement Agreement will constitute or be construed as an admission by any Party of any liability, an admission of coverage or lack of coverage for the Lawsuit, or an admission of the validity or enforceability of any matters that are released pursuant to this Settlement Agreement. The Parties also acknowledge and agree that this Settlement Agreement will not be taken or used, nor will this Settlement Agreement be admissible in evidence, in any action, cause of action or proceeding, except in an action to enforce the terms of this Settlement Agreement.

## **11. Beneficiaries and Assignability**

This Settlement Agreement is binding on, and shall inure to the benefit of, the Parties, their representatives, insurers, reinsurers, transferees, principals, estates, administrators, predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, directors, officers, directors, and shareholders.

## **12. Choice of Law**

Except as otherwise provided in this Settlement Agreement, its interpretation, performance and enforcement will be governed exclusively by the laws of the State of Wisconsin without reference to that jurisdiction's choice of law standards.

## **13. Jurisdiction**

The Parties agree that the Wisconsin Circuit Court for the County of Kenosha shall retain jurisdiction for the purposes of enforcing the terms of this Settlement Agreement.

## **14. Severability**

The sections entitled "Jurisdiction" and "Choice of Law" are severable. All other provisions are non-severable.

## **15. Authority**

The Parties represent and warrant that they possess full authority to enter into this Settlement Agreement, that the appropriate corporate resolutions or other consents have been passed and/or obtained, and each Party may lawfully and effectively release the other signatories as set forth herein, free of any rights of settlement, approval, subrogation, or other condition or impediment.

## **16. Entire Agreement**

The Parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them, and that this Settlement Agreement is fully integrated, supersedes all prior agreements and understandings between the Parties, and contains the entire agreement between the Parties.

## **17. Voluntary and Informed Assent**

The Parties represent and agree that they each have read and fully understand this Settlement Agreement, that they are fully competent to enter into and sign this Settlement Agreement, and that they are executing this Settlement Agreement as a voluntary act, free of any duress or coercion.

**18. Mutual Non-disparagement**

The Parties agree they will not, at any time, make any comments about each other that are disparaging or derogatory or that paint the other Party/Parties (including their officers, directors, owners, employees, products, policies, practices, insurers, or reinsurers) in a negative light. However, if the Village or any Village official is asked about this matter, they may respond as follows without violating this provision: "The Village brought claims against numerous parties about the design and construction of the Aqua Arena at the RecPlex. The position of the Village is of public record and the Village stands by that position. The Defendants contested those claims. The Village and the Defendants reached a mutually satisfactory settlement of the claims."

**19. Retention**

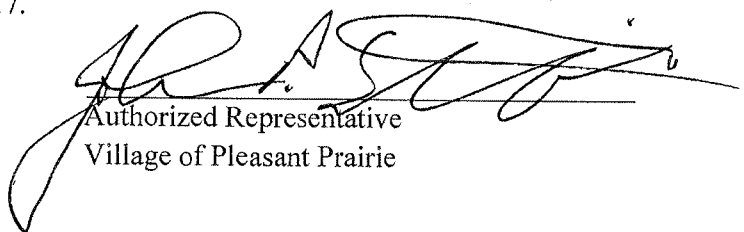
Beazley's settlement payment to the Village is made subject to the explicit understanding that Beazley is not waiving its right to apply the Each Claim Retention applicable to any other matter currently pending against A&O under any Policy issued by Beazley to A&O. The Parties understand it is Beazley's position that the applicable Each Claim Retention otherwise remains in full force and effect under all Policies issued by Beazley to A&O with respect to any and all other matters involving A&O.

**20. Execution in Counterparts and by PDF**

This Settlement Agreement may be executed in counterparts and execution tendered via a PDF or copied signature is as binding as if an original signature were tendered.

**THIS IS A FINAL SETTLEMENT AND RELEASE OF ALL CLAIMS AS SET FORTH  
HEREIN. I HAVE READ AND UNDERSTAND EACH AND EVERY ONE OF THE  
TERMS OF THE ABOVE RELEASE, AND THE TERMS OF THE RELEASE HAVE  
BEEN EXPLAINED TO ME BY MY ATTORNEY.**

Agreed to this 15<sup>th</sup> day of November, 2017.

  
Authorized Representative  
Village of Pleasant Prairie

Agreed to this \_\_\_\_\_ day of November, 2017.

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Authorized Representative  
Partners in Design Architects, Inc.

Agreed to this \_\_\_\_\_ day of November, 2017.

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Authorized Representative  
RLI Insurance Company

Agreed to this 16 day of November, 2017.

*Brad Hanna*  
\_\_\_\_\_  
Authorized Representative  
Arnold & O'Sheridan, Inc.

Agreed to this \_\_\_\_\_ day of November, 2017.

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Authorized Representative  
Beazley Insurance Company, Inc.

Agreed to this \_\_\_\_\_ day of November, 2017.

\_\_\_\_\_  
Authorized Representative  
Partners in Design Architects, Inc.

Agreed to this \_\_\_\_\_ day of November, 2017.

\_\_\_\_\_  
Authorized Representative  
RLI Insurance Company

Agreed to this \_\_\_\_\_ day of November, 2017.


\_\_\_\_\_  
Authorized Representative  
Arnold & O'Sheridan, Inc.

Agreed to this 15<sup>th</sup> day of November, 2017.



\_\_\_\_\_  
Authorized Representative  
Beazley Insurance Company, Inc.

Agreed to this 30<sup>th</sup> day of November, 2017

  
Authorized Representative  
Partners in Design Architects, Inc.

Agreed to this 22<sup>nd</sup> day of November, 2017.

  
Authorized Representative  
RLI Insurance Company

Agreed to this \_\_\_\_\_ day of November, 2017.

\_\_\_\_\_  
Authorized Representative  
Arnold & O'Sheridan, Inc.

Agreed to this \_\_\_\_\_ day of November, 2017.


\_\_\_\_\_  
Authorized Representative  
Beazley Insurance Company, Inc.

Agreed to this \_\_\_\_\_ day of November, 2017.

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Authorized Representative  
Partners in Design Architects, Inc.

Agreed to this 22<sup>nd</sup> day of November, 2017.



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Authorized Representative  
RLI Insurance Company

Agreed to this \_\_\_\_\_ day of November, 2017.

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Authorized Representative  
Arnold & O'Sheridan, Inc.

Agreed to this \_\_\_\_\_ day of November, 2017.

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Authorized Representative  
Beazley Insurance Company, Inc.

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is fully effective as of January 18, 2018, and is entered into by the following parties on behalf of themselves and their respective successors, assigns, predecessors, agents, employees, representatives, all of their respective past, present, and future officers, directors, members, managers, partners, shareholders, owners, subsidiaries, parents, affiliates, attorneys, assigns and insurers, indemnitors, and any other person or entity claiming by or through them, whether named or unnamed (individually a "Party" and collectively the "Parties"):

- A. Village of Pleasant Prairie (hereinafter referred to as "the Owner" or "the Village");
- B. Riley Construction Company, Inc. ("Riley");
- C. Van's Roofing, Inc. ("Van's");
- D. Mid-States Concrete Industries, LLC ("Mid-States Concrete");
- E. Cardinal Fabrication Corporation ("Cardinal");
- F. Olympic Wall Systems, Inc. ("Olympic");
- G. J.F. Ahern Co. ("Ahern");
- H. Trane U.S. Inc. ("Trane");
- I. DJ Burbach Insulation Company, Inc. and Grace V. Burbach (collectively "Burbach");
- J. The Travelers Indemnity Company, incorrectly identified in the Second Amended Complaint as Travelers Commercial Casualty Company ("Travelers");
- K. Zurich American Insurance Company ("Zurich");
- L. SECURA INSURANCE, A Mutual Company ("Secura");
- M. Old Republic Insurance Company ("Old Republic");
- N. The Cincinnati Insurance Company ("Cincinnati"); and
- O. General Casualty Company of Wisconsin, Inc. ("General Casualty").

The Parties identified in Paragraphs B through I above are hereinafter collectively referred to as the "Contractors." The Parties identified in Paragraphs J through O above are hereinafter collectively referred to as the "Insurance Carriers." The Contractors and Insurance Carriers are sometimes hereinafter collectively referred to as the "Defendants."



## RECITALS

A. The Owner commenced an action in Kenosha County, Wisconsin, Court File No. 14-CV-423 (the "Action") against the Contractors, Insurance Carriers and others claiming damages to real property as a result of alleged defects in the design, materials, and construction of an addition beginning in 2008 to the Village of Pleasant Prairie RecPlex, located at 9900 Terwall Terrace, Pleasant Prairie, WI 53158 (hereinafter the "Project").

B. The Contractors and Insurance Carriers denied all liability for all claims, third-party claims, and cross-claims alleged and for all damages claimed by any and all parties in the Action.

C. The Parties now desire to settle all of the Released Claims and Additional Released Claims as those terms are hereinafter defined. The Village has separately reached agreement in principle with other parties, including Partners In Design Architects, Inc., RLI Insurance Company, Arnold & O'Sheridan, Inc. and Beazley Insurance Company (hereinafter "Design Defendants"). The Design Defendants are not included within the definition of Contractors, Defendants or Parties in this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, the Parties agree as follows:

1. **BINDING EFFECT.**

The terms of this Agreement shall be binding upon, shall be enforceable against, and shall inure to the benefit of the Parties hereto jointly and severally and their respective successors, assigns, predecessors, agents, employees, representatives, all of their respective past, present, and future officers, directors, members, managers, partners, shareholders, owners, subsidiaries, parents, affiliates, attorneys, assigns and insurers, indemnitors, and any other person or entity claiming by or through them, whether named or unnamed. The Parties hereto acknowledge that this Agreement was the result of a December 22, 2016 mediation session and ongoing settlement discussions conducted by John M. Harens (the "Mediator") and that they each received in writing the statutory mediation disclosures including the following:

- the Mediator has no duty to protect their interests or provide them with information about their legal rights;

- signing a mediated settlement agreement may adversely affect their legal rights; and
- they should consult an attorney before signing a mediated settlement agreement if they are uncertain about their rights.

In entering this Agreement, each of the Parties represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal consequences of the Agreement; that the terms of the Agreement have been completely read and explained to each Party by their attorneys; and that the terms of this Agreement are fully understood and voluntarily accepted.

**2. RELEASE OF CLAIMS.**

A. In consideration of the obligations, sums, and work described in the exhibits identified in Paragraph 3 below, the sufficiency of which is hereby acknowledged, the Owner hereby unconditionally releases and forever discharges the Defendants and their respective successors, assigns, predecessors, agents, employees, representatives, all of their respective past, present, and future officers, directors, members, managers, partners, shareholders, owners, subsidiaries, parents, affiliates, attorneys, assigns and insurers, indemnitors, and any other person or entity claiming by or through them, whether named or unnamed from any and all known and unknown and all past, present, and/or future claims, actions, causes of action, suits, demands, rights, and damages of whatever kind or nature, whether based in Tort, Contract, Equity, or any other theory, that were or could have been asserted in the Action against any of the Contractors or any of the Insurance Carriers (but only in their role as insurers of the Contractors, and specifically not in any role they may have as an insurer of a Design Defendant) concerning or arising out of or in any way relating to the Project and any work of the Contractors on the Project, including, but not limited to, such claims for (i) property damage; (ii) bodily injury; (iii) compensatory, consequential or punitive damages; (iv) costs or expenses; (v) derivative claims; (vi) attorney's fees; and (vii) any other compensation or damages of any kind or nature. All of the claims released shall be referred to as the "Released Claims." The damages released hereby shall include all damages, past, present, or future, known or unknown, arising out of the Released Claims. The Parties agree these releases shall be on a *Pierringer* basis and shall be construed in accordance with the interpretation of the

*Pierringer* releases in *Pierringer v. Hoger*, 21 Wis.2d 182, 124 N.W.2d 106 (1963), whether based in Tort, Contract, Equity, or any other theory. The Parties also acknowledge the principles respecting contribution set forth in *Kafka v. Pope*, 194 Wis.2d 234, 533 N.W.2d 491 (1995) and confirm that the purpose, intent and legal effect of the Agreement is to shield the Defendants from liability for contribution or indemnity of any kind in any way related to their work on the Project from Owner and Design Defendants, whether the common liability be based on Tort, Contract, or Equity.

Neither the Released Claims set forth above in this Section 2.A. nor the Additional Released Claims set forth in Section 2.C. below shall include claims regarding the enforcement or breach of any obligations created by this Agreement, or as relates the Owner and Riley, or the Owner and Van's, the obligation in the repair contracts that will become Exhibit A.1 and Exhibit A.2 to this Agreement. The repair contract that will become Exhibit A.1 to this Agreement does not bind any of the Parties except for the Owner and Riley, and the repair contract that will become Exhibit A.2 to this Agreement does not bind any of the Parties except for the Owner and Van's, and nothing in Exhibit A.1 or Exhibit A.2 limits in any way the release of the Parties, but for the Owner and Riley and the Owner and Van's.

Consistent with the dictates of *Pierringer*, the Village shall defend, indemnify and hold harmless Riley, Van's, Mid-States Concrete, Cardinal, Olympic, Ahern, Trane and/or Burbach and any of the Insurance Carriers from any and all Claims asserted or entered against them, or any of them, by any other persons and/or corporations relating to Riley, Van's, Mid-States Concrete, Cardinal, Olympic, Ahern, Trane and/or Burbach's prior work on the Project (including any alleged defects or deficiencies arising thereof), except for claims reserved in section 2. E below. This indemnification specifically includes indemnifying Riley, Van's, Mid-States Concrete, Cardinal, Olympic, Ahern, Trane, Burbach and the Insurance Carriers from their own allegedly deficient, defective, or negligent work or services related to the Project and any claim against any of them for contractual indemnification and/or additional insured coverage for that prior work. There is no indemnification obligation related to claims that might arise out of the repair contract that will become Ex. A. If the Village fails to immediately satisfy any judgment against Riley, Van's, Mid-States Concrete, Cardinal, Olympic, Ahern, Trane, Burbach and/or any of the Insurance Carriers, the Village consents

and agrees that, upon filing of a copy of this Settlement Agreement with the applicable court, an order may be entered (without notice) directing the clerk to satisfy the judgment to the extent of such fraction, portion or percentage of fault as found against Riley, Van's, Mid-States Concrete, Cardinal, Olympic, Ahern, Trane, Burbach and/or any of the Insurance Carriers and discharged under this *Pierringer* release.

B. For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Defendants hereby unconditionally and mutually release and forever discharge each other, and their respective successors, assigns, predecessors, agents, employees, representatives, all of their respective past, present, and future officers, directors, members, managers, partners, shareholders, owners, subsidiaries, parents, affiliates, attorneys, assigns and insurers, indemnitors, and any other person or entity claiming by or through them, whether named or unnamed, from the Released Claims.

C. The Parties also mutually release the following additional claims, heretofore referred to as "Additional Released Claims":

- (i) claims and cross-claims for defense, indemnity or contribution, whether based on Tort, Contract, or Equity, by any Party against any other Party to the extent the defense, indemnity or contribution obligation arises out of one or more Released Claims, the Action and/or or the Project;
- (ii) claims and cross claims by any Party against any other Party based on the allegation of failure to procure proper insurance coverage for the benefit of the Party making such claim or for the benefit of another Party to the extent the insurance at issue is claimed to provide a defense or indemnity for one or more Released Claims; and
- (iii) claims and cross-claims by any Party against the insurance carrier or carriers of another Party for defense or indemnity, including but not limited to claims based on additional insured status to the extent that the insurance at issue is claimed to provide a defense or indemnity for one or more Released Claims.

D. The Parties acknowledge that no promise or inducement has been made or offered except as set forth herein, that the Parties execute this Agreement without reliance upon

representations or statements by anyone as to the nature and extent of the losses, injuries or damages or the possible consequences thereof.

E. Notwithstanding any other provision, term or agreement contained herein, this Agreement shall not constitute a release of any obligation that Travelers' or Zurich's respective Named Insured, Insured, or their affiliate or subsidiary companies may have, based solely upon any self-insurance, deductible, retrospectively rated premium, and/or reinsurance obligation or agreement. Travelers and Zurich do not release any respective Named Insured, Insured, including any parent, affiliate or subsidiary companies, reinsurers, or any other person or entity that has a contractual or financial obligation to Travelers and/or Zurich arising out of the amounts paid by Travelers or Zurich as described herein based solely upon any self-insurance, deductible, retrospectively rated premium, and/or reinsurance obligation or agreement.

**3. CONSIDERATION.**

A. Consideration by the Parties. Each of the Parties agrees to accept or pay the consideration described in its respective exhibit described below in exchange for the Releases set forth in Paragraph 2 herein, and for such other terms and conditions of this Agreement. The consideration being exchanged between Burbach and Olympic will not be included as an exhibit. Each of said exhibits will be separately executed by each respective Party. All exhibits shall be held by the Mediator in accordance with the terms of paragraph 3.B below.

- Exhibit A.1 – Contract between the Owner and Riley
- Exhibit A.2 – Contract between the Owner and Van's
- Exhibit B1 – Consideration extended by Riley
- Exhibit B2 – Consideration extended by Travelers
- Exhibit B3 – Consideration extended by Zurich
- Exhibit C – Consideration extended by the Owner
- Exhibit D – Consideration extended by Van's and Secura
- Exhibit E – Consideration extended by Cardinal
- Exhibit F – Consideration extended by Olympic
- Exhibit G – Consideration extended by Mid-States Concrete and Cincinnati
- Exhibit H – Consideration extended by Ahern

- Exhibit I - Consideration extended by Trane

B. Confidentiality of Consideration. All Parties acknowledge the sufficiency of the consideration for this Agreement, but further agree that such consideration shall be kept confidential in accordance with the following terms:

- (1) Exhibits B through I shall be held in escrow by the Mediator and shall not be disclosed to any of the other Parties unless and until the Mediator determines, in his sole discretion, that it is necessary to disclose the contents of one or more of said exhibits in order to effectuate and enforce the terms of this Agreement.
- (2) Upon receipt of a fully-executed Settlement Agreement, the Mediator may make a partial distribution of whatever collected funds he has from the Parties.

C. Timeliness of Consideration. The Parties reached an agreement on the terms of this settlement on January \_\_, 2018. Within 30 days of that date, the Parties shall send: 1) any settlement contribution; 2) their executed confidential exhibit; and 3) their executed signature page to this Agreement to the Mediator, John M. Harens of Harens Mediation Center, LLC (Tax ID. No. 46-0795573), where the money will be held and disbursed according to the terms stated herein or in accordance with the payment provisions in Exhibit A.1 and/or Exhibit A.2 hereto.

**4. NO ADMISSION OF LIABILITY.**

The Parties recognize and agree that this settlement is the compromise of disputed claims and that the consideration accepted and paid hereunder is not intended nor shall it be construed by anyone to be an admission of liability by or on behalf of any of the Parties, by whom all such liability is expressly denied, said Parties intending by this settlement merely to avoid litigation and buy their peace.

**5. LIABILITY OF SETTLING PARTIES EXTINGUISHED.**

It is understood and agreed that the purpose, intent and legal effect of this Agreement is to extinguish the entire liability of the Defendants to the Owner and one another arising out of or connected with the work on or design for the Project and to bar forever any recovery by way of contribution or indemnification of any kind against the Defendants regarding the Released Claims by any third person or entity. Such extinguishment shall not extend to

obligations of the Owner, Riley, or any subcontractors to Riley, for or arising out of work under Exhibit A.1; it being understood that the obligations of the Owner and Riley created under Exhibit A.1 hereto, and any obligations created by sub-agreements to Exhibit A.1, are not released by this Agreement, and said Exhibit A.1, and any sub-agreements to Exhibit A.1, take precedence to this Agreement as it relates to any terms, conditions, or warranties related to the work under Exhibit A.1 or any sub-agreements to Exhibit A.1. Likewise, such extinguishment shall not extend to obligations of the Owner, Van's, or any subcontractors to Van's, for or arising out of work under Exhibit A.2; it being understood that the obligations of the Owner and Van's created under Exhibit A.2 hereto, and any obligations created by sub-agreements to Exhibit A.2, are not released by this Agreement, and said Exhibit A.2, and any sub-agreements to Exhibit A.2, take precedence to this Agreement as it relates to any terms, conditions, or warranties related to the work under Exhibit A.2 or any sub-agreements to Exhibit A.2. It is further understood however that all liability for any conditions or defects associated with the Project uncovered as part of work performed in accordance with Exhibits A.1 and A.2, not otherwise within the scope of Exhibits A.1 and A.2, is hereby released by the terms of this Agreement.

This Agreement is subject to the following:

- (1) It is the intention of the Parties that the release of the Defendants shall be construed in accordance with the principles set forth in *Pierringer v. Hoger*, 21 Wis.2d 182, 124 N.W.2d 106 (1963) and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978), and to have that same impact whether the claims and cross-claims are based in Tort, Contract, or Equity. The consideration extended by the Defendants is not intended as full compensation for damages claimed by the Owner. However, by this Agreement, the Owner agrees to settle and satisfy that percentage of its total claims for damages attributable to the Defendants arising out of the work of the Contractors that shall by further trial or other disposition of this or any other action be determined to be the percentage of causal fault or causal responsibility attributable to the Contractors. It is the intention of the Owner to extinguish any potential liability on the part of the Contractors arising out of the work of the Contractors for contribution and/or

indemnification, whether the claims or cross-claims are based in Tort, Contract, or Equity, that might be claimed by any other Party or entity in the Action or any third persons and/or corporations.

- (2) It is the intention of the Defendants that the Owner may pursue and prosecute any and all claims that it may have against any person or entity other than the Defendants for liability arising out of the work on the Project, and it may collect all damages to which it is legally entitled to recover from any party, person or entity, except any fraction, portion or percentage attributable to the Contractors and Insurance Carriers regarding the Released Claims.
- (3) It is understood and agreed that the purpose, intent and legal effect of this Agreement is to extinguish the entire liability of the Defendants arising out of or connected with the Project and the Action, and to bar forever any recovery by way of contribution and/or indemnification against the Defendants by any person, party or entity regarding the Released Claims. If any Party to this Agreement makes or continues any claim against another Party to this Agreement or against a third person or entity or against a party to the Action that is not party to this Agreement, which claim arises out of the Released Claims, then the Party making such claims shall to the fullest extent permitted by law indemnify, and hold harmless the other Parties to this Agreement from any claims for contribution and/or indemnification.

**6. DISMISSAL OF ACTION.**

The Parties hereby authorize and direct their attorneys of record to dismiss all claims, counterclaims or cross-claims that were or could have been asserted among and between each other in the Action, with prejudice and without costs, disbursements or attorney's fees, upon receipt by Mediator of the consideration described in the exhibits identified in Paragraph 3 herein.

**7. ENTIRE AGREEMENT.**

The Parties further understand and agree that this Agreement contains the entire agreement between the Parties with respect to the Action, and that the terms of this Agreement are contractual and not a mere recital. By their signatures below the Parties each represent that



they have carefully read this Agreement, know and understand the terms and effect hereof, have fully discussed the terms and effect of this Agreement with their attorneys, and have signed this Agreement as their free and considered act. This Agreement includes thirteen separate signature pages and eleven exhibits (Exhibits A, B1, B2, B3, C, D, E, F, G, H and I) in the possession of the Mediator. This Agreement may be executed in counterparts.

Date: 1/18/18

Village of Pleasant Prairie

By [Signature]

Its INTERIM VILLAGE ADMINISTRATOR

Date: 1-19/18

Riley Construction Company, Inc.

By [Signature]

Its Chairman

Date: \_\_\_\_\_

Van's Roofing, Inc.

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

Mid-States Concrete Industries, LLC

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

Cardinal Fabrication Corporation

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Village of Pleasant Prairie**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Riley Construction Company, Inc.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Van's Roofing, Inc.**

By Mike Varuchena

Its VICE PRESIDENT

Date: \_\_\_\_\_

**Mid-States Concrete Industries, LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Cardinal Fabrication Corporation**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Village of Pleasant Prairie**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Riley Construction Company, Inc.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Van's Roofing, Inc.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Mid-States Concrete Industries, LLC**

By \_\_\_\_\_

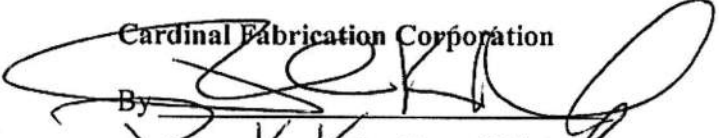
Its \_\_\_\_\_

Date: 1/24/2018

**Cardinal Fabrication Corporation**


By \_\_\_\_\_

Its PAUL K. KACZYNSKI, PRESIDENT

  
Handwritten signature of Paul K. Kaczynski, President of Cardinal Fabrication Corporation.

Date: 2/6/18

**Olympic Wall Systems, Inc.**

By 

Its Attorney

Date: \_\_\_\_\_

**J.F. Ahern Co.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**The Travelers Indemnity Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Zurich American Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**SECURA INSURANCE, A Mutual Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

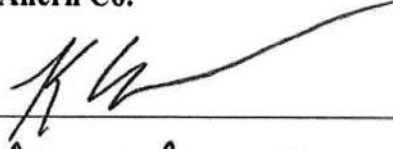
**Olympic Wall Systems, Inc.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: 2/2/18

**J.F. Ahern Co.**

By  \_\_\_\_\_

Its General Counsel

Date: \_\_\_\_\_

**The Travelers Indemnity Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Zurich American Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**SECURA INSURANCE, A Mutual Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

Olympic Wall Systems, Inc.

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

J.F. Ahern Co.

By \_\_\_\_\_

Its \_\_\_\_\_

Date: 2/2/18

The Travelers Indemnity Company

By Dawn McKeever

Its Major Case Specialist

Date: \_\_\_\_\_

Zurich American Insurance Company

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

SECURA INSURANCE, A Mutual Insurance Company

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Olympic Wall Systems, Inc.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**J.F. Ahern Co.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**The Travelers Indemnity Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Zurich American Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: 1/24/18

**SECURA INSURANCE, A Mutual Insurance Company**

By Crystal H. Uebelaker

Its Supervisor of Litigation



Date: 2/8/18

**Old Republic Insurance Company**

By Elizabeth L. Bingel  
Its Claim Specialist, ORRM

Date: \_\_\_\_\_

**Trane U.S., Inc.**

By \_\_\_\_\_  
Its \_\_\_\_\_

Date: \_\_\_\_\_

**DJ Burbach Insulation Company, Inc. and  
Grace V. Burbach**

By \_\_\_\_\_  
Its \_\_\_\_\_

Date: \_\_\_\_\_

**The Cincinnati Insurance Company**

By \_\_\_\_\_  
Its \_\_\_\_\_

Date: \_\_\_\_\_

**General Casualty Company of Wisconsin**

By \_\_\_\_\_  
Its \_\_\_\_\_

Date: \_\_\_\_\_

**Old Republic Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: January 22, 2018

**Trane U.S., Inc.**

By Nicole M. Buson

Its Senior Corporate Counsel

Date: \_\_\_\_\_

**DJ Burbach Insulation Company, Inc. and  
Grace V. Burbach**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**The Cincinnati Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**General Casualty Company of Wisconsin**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Old Republic Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Trane U.S., Inc.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**DJ Burbach Insulation Company, Inc. and  
Grace V. Burbach**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: 1/18/18

**The Cincinnati Insurance Company**

By \_\_\_\_\_

Its Andrew Holland *sec. Superintendent  
Casualty Claims*

Date: \_\_\_\_\_

**General Casualty Company of Wisconsin**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Old Republic Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**Trane U.S., Inc.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**DJ Burbach Insulation Company, Inc. and  
Grace V. Burbach**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**The Cincinnati Insurance Company**

By \_\_\_\_\_

Its \_\_\_\_\_

Date: Feb 7, 2018

**General Casualty Company of Wisconsin**

By Anne M Power

Its AVP

EXHIBIT A.1

DRAFT AIA Document A101™ - 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the «Sixteenth» day of «January» in the year «Two Thousand Eighteen»  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

«Village of Pleasant Prairie» « »  
«9915 39th Avenue »  
«Pleasant Prairie, WI 53144-2296»  
« »  
« »

and the Contractor:  
(Name, legal status, address and other information)

«Riley Construction Company, Inc.» « »  
«5301 99th Avenue »  
«Kenosha, WI 53144 »  
«Telephone: 262-658-4381 »  
«Facsimile: 262-658-0312 »

for the following Project:  
(Name, location and detailed description)

«Aquaplex Enclosure Renovation»  
«9900 Terwill Terrace »  
«Pleasant Prairie, WI 53158»  
« »

The Architect:  
(Name, legal status, address and other information)

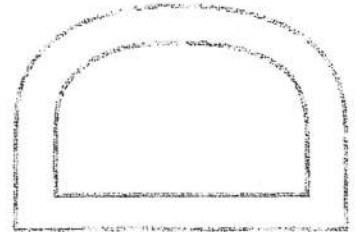
«Thornton Tomasetti» « »  
«330 N. Wabash Ave. »  
«Chicago, IL 60611-7622»  
« »  
« »

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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# EXHIBIT A.1

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work specifically described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.) Spring 2018*

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than «Ninety» ( «90.» ) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

# EXHIBIT A.1

N/A. »

## Portion of Work

## Substantial Completion Date

« »

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

« »

## ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be «Three Hundred and Ninety-Eight Thousand Six Hundred Dollars and Zero Cents» (\$ «398,600.00»), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

«All portions of the Scope of Work set forth in Thornton Tomasetti plans and specifications show on Exhibit A, including specification revised and dated, January 5, 2018, other than that portion set forth in the Roofing & Architectural Sheet Metal Scope identified in the Van's Roofing, Inc.»

§ 4.3 Unit prices, if any:

*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price Per Unit (\$0.00)
« »		

§ 4.4 Allowances included in the Contract Sum, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price
« »	

## ARTICLE 5 PAYMENTS

### § 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

The Contract Sum shall be paid from funds currently held in the trust account of John Harens of Harens Mediation Center, LLC. The Contract Sum shall be Three Hundred Ninety Eight Thousand Six Hundred Dollars and Zero Cents, (\$398,600.00), subject to additions and deductions as provided in the Contract Documents. Where in Article 4 or 5 reference is made to the Owner making Payment, all parties acknowledge that the \$398,600.00 of payments will come from Harens Mediation Center, and that Owner may direct Harens Mediation Center to make such payments via an email communication from the Owner's representative John Steinbrink, Jr. to John Harens.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

## EXHIBIT A.1

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~«10th»~~ day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the ~~«25th»~~ day of the ~~«same»~~ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~«twenty»~~ (~~«20»~~) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, adding any portion of the Contract Sum attributable to start-up or mobilization for any portion of the Work, less retainage of «Ten» percent (~~«10.00»~~ %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site or offsite for subsequent incorporation in the completed construction ~~(or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (~~construction, less retainage of «Ten» percent (~~«10.00»~~ %)~~)~~;
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

~~«At such time as the Work is fifty percent (50%) complete, no further retainage shall be withheld.»~~

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site-site or the Contractor's offsite location. Notwithstanding the foregoing, the Owner shall approve the payment of deposits required by Subcontractors, sub-subcontractors or suppliers for custom materials or fabrication.

### § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when



# EXHIBIT A.1

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect will ~~Each Party shall identify an authorized Company representative possessing the requisite authority to act on its behalf regarding resolution of claims and issues arising out of the Agreement or the Contract Documents and serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties mutually agree to appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~

↓

«John Steinbrink, Jr.»  
«9915 39th Avenue»  
«Pleasant Prairie, WI 53144-2296»

« »  
« »

### § 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

[ « » ] Arbitration pursuant to Section 15.4 of AIA Document A201-2007

[  « » ] Litigation in a court of competent jurisdiction

[ « » ] Other *(Specify)*

—« »

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

«~~% Prime Rate as published in the Wall Street Journal plus four percent (4%)~~»« »

# EXHIBIT A.1

§ 8.3 The Owner's representative:  
(Name, address and other information)

«John Steinbrink, Jr.»  
«9915 39th Avenue»  
«Pleasant Prairie, WI 53144-2296»  
« »  
« »  
« »  
« »

§ 8.4 The Contractor's representative:  
(Name, address and other information)

«David Riley»  
« »  
« »  
« »  
« »  
« »

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

« »

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction. These General Conditions are being utilized for both this Contract, as well as the Contract between the Owner and Van's Roofing, Inc.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »	« »	« »	« »

§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« All Specifications Shown on Exhibit A »

Section	Title	Date	Pages
« »	« »	« »	« »

§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« All Drawings Shown on Exhibit A »

Number	Title	Date
« »	« »	« »

EXHIBIT A.1

Number	Date	Pages
« »	« »	« »

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:


- .1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:  
« »
- .2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*  
« »

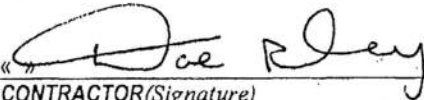
ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.  
*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
« »	« »

This Agreement entered into as of the day and year first written above.

« »   
 OWNER (Signature)  
 « » « » THOMAS G. SHIRCEL  
 (Printed name and title)  
 INTERIM VILLAGE ADMINISTRATOR

« »   
 CONTRACTOR (Signature)  
 « » « » David Riley « », Chairman  
 (Printed name and title)

# DRAFT AIA Document A101™ - 2007

*Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the «Sixteenth» day of «January» in the year «Two Thousand Eighteen»  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

«Village of Pleasant Prairie»  
«9915 39th Avenue»  
«Pleasant Prairie, WI 53144-2296»  
« »  
« »

and the Contractor:  
(Name, legal status, address and other information)

«Van's Roofing, Inc.»  
«3901 - 13th Ave.»  
«Pleasant Prairie, WI 53158»  
« »

for the following Project:  
(Name, location and detailed description)

«Aquaplex Enclosure Renovation»  
«9900 Terwall Terrace»  
«Pleasant Prairie, WI 53158»  
« »

The Architect:  
(Name, legal status, address and other information)

«Thornton Tomasetti»  
«330 N. Wabash Ave»  
«Chicago, IL 60611-7622»  
« »  
« »

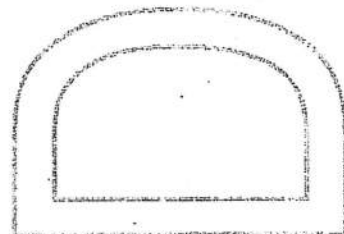
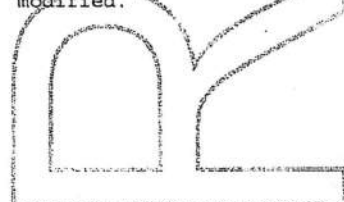
The Owner and Contractor agree as follows.



ADDITIONS AND DELETIONS; The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



ELECTRONIC COPYING of any portion of this AIA Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

# EXHIBIT A.2

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work specifically described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.) Spring 2018*

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than «Ninety» ( «90» ) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

EXHIBIT A.2

N/A

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be «Four Hundred and Sixteen Thousand Dollars and Zero Cents» (\$ «416,000.00»), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

«All portions of the Scope of Work set forth in Thornton Tomasetti plans and specifications show on Exhibit A, including specification revised and dated, January 5, 2018, set forth in the Roofing & Architectural Sheet Metal Scope identifiable as follows: By reference to Van's Revised Proposal Per Construction Drawings Dated 12/1/17, set forth in December 13, 2017 letter to Riley Construction, as clarified by the revisions to scope set forth in the January 5, 2018 Specifications created by Thornton Tomasetti.

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
« »		

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
« »	

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

The Contract Sum shall be paid from funds currently held in the trust account of John Harens of Harens Mediation Center, LLC. The Contract Sum shall be Four Hundred Sixteen Thousand Dollars and Zero Cents, (\$416,000.00), subject to additions and deductions as provided in the Contract Documents. Where in Article 4 or 5 reference is made to the Owner making Payment, all parties acknowledge that the \$416,000.00 of payments will come from Harens Mediation Center, and that Owner may direct Harens Mediation Center to make such payments via an email communication from the Owner's representative John Steinbrink, Jr. to John Harens.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

## EXHIBIT A.2

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~«10th»~~ day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the ~~«25th»~~ day of the ~~«same»~~ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~«twenty»~~ (~~«20»~~) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, adding any portion of the Contract Sum attributable to start-up or mobilization for any portion of the Work, less retainage of ~~«Ten»~~ percent (~~«10.00»~~ %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site or offsite for subsequent incorporation in the completed construction ~~(or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing)~~, less retainage of ~~percent~~ (~~construction, less retainage of «Ten» percent~~ (~~«10.00»~~ %));
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

~~«At such time as the Work is fifty percent (50%) complete, no further retainage shall be withheld.»~~

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site-site or the Contractor's offsite location. Notwithstanding the foregoing, the Owner shall approve the payment of deposits required by Subcontractors, sub-subcontractors or suppliers for custom materials or fabrication.

## EXHIBIT A.2

### § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

### ARTICLE 6 DISPUTE RESOLUTION

#### § 6.1 INITIAL DECISION MAKER

~~The Architect will~~ Each Party shall identify an authorized Company representative possessing the requisite authority to act on its behalf regarding resolution of claims and issues arising out of the Agreement of the Contract Documents and serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties mutually agree to appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

John Steinbrink, Jr.  
9915 39th Avenue  
Pleasant Prairie, WI 53144-2296

#### § 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other *(Specify)*

——

### ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*



## EXHIBIT A.2

«% Prime Rate as published in the Wall Street Journal plus four percent (4%)»«»

§ 8.3 The Owner's representative:  
(Name, address and other information)

«John Steinbrink, Jr.»  
«9915 39th Avenue»  
«Pleasant Prairie, WI 53144-2296»

§ 8.4 The Contractor's representative:  
(Name, address and other information)

«Mike Vanohena»

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction. These General Conditions are being utilized for both this Contract, as well as the Contract between the Owner and Riley Construction Corporation.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
«»	«»	«»	«»

§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« All specifications shown in Exhibit A »

Section	Title	Date	Pages
«»	«»	«»	«»

§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« All drawings shown on Exhibit A »

EXHIBIT A.2

Number	Title	Date
« »		

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
« »		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

« »

- .2 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

« »

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
« »	

This Agreement entered into as of the day and year first written above.

« » Thomas G. Simerce  
OWNER (Signature)

« » « » THOMAS G. SIMERCE  
(Printed name and title)  
INTERIM VILLAGE ADMINISTRATOR

« » Mike Vanchena  
CONTRACTOR (Signature)

« » Mike Vanchena « » Vice President  
(Printed name and title)

**EXHIBIT C**

**Consideration Village of Pleasant Prairie Agrees to Contribute**

\$70,500 (Seventy Thousand Five Hundred Dollars and No/100), which will be taken from the \$200,000 (Two Hundred Thousand Dollars and No/100) received by the mediator from Trane. Thus, the mediator will be providing to the Village \$129,500 upon receipt of all consideration from other parties.

Ahern and the Village agree that the Village may disclose the amount paid by Ahern to Trane for the limited purpose of the Village seeking a settlement with Trane, and failing such settlement, for the additional limited purpose of the Village prosecuting against Trane the claims it received from Ahern as consideration for the settlement between Ahern and the Village.

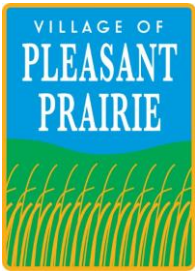
Date: 1/18/18

Village of Pleasant Prairie

By 

Its INTERIM VILLAGE ADMINISTRATOR

Confidential Exhibit to Village of Pleasant Prairie Settlement Agreement



**To:** Thomas Shircel, Interim Village Administrator and Members of the Village Board  
**From:** John Steinbrink Jr., Director of Public Works  
**Subject:** Village of Pleasant Prairie 2018 Annual Paving Program – Project #84101  
**Date:** February 19, 2018

Sealed bids for the above referenced project were received until 10:00 a.m. on Friday, February 9th, 2018, at the Village of Pleasant Prairie Public Works Dept.; 8600 Green Bay Rd., Pleasant Prairie, WI. 53158. The bids were publicly opened and read aloud.

The 2018 Paving Project, as bid, consists of eight (8) work sections generally described as follows:

- Section 1A: Woodlawn Terrace & 52<sup>nd</sup> Avenue – (2-inch Overlay) – Spot asphalt patching and base repair, furnish and place 2-inches of new asphaltic pavement, and road shouldering. (8,000 square yards, est. qty.)
- Section 1B & 1C: 51<sup>st</sup> Avenue & 73<sup>rd</sup> Street - (Pulverize & Relay) – Pulverize existing asphaltic pavement, grade, and compact (3,400 square yards, est. qty.), furnish and place 5-inches of new asphaltic pavement, base repair, manhole adjustments, and road shouldering.
- Section 2: Old Green Bay Road (104<sup>th</sup> Street to CTH ML) – (2-inch Overlay, Pulverize & Relay) – Spot asphalt patching and base repair, widening of roadway for the addition of bike lanes, and road shouldering. (25,000 square yards, est. qty.) Pulverize existing asphaltic pavement, grade, and compact (2,300 square yards, est. qty.), furnish and place 5-inches of new asphaltic pavement, base repair, manhole adjustments, and road shouldering. Surface course is deleted by Change Order #1 and deferred until a later date.
- Section 3A: Park Drive - (2-inch Overlay, Parking areas) – Spot asphalt patching and base repair, furnish and place 2-inches of new asphaltic pavement, and road shouldering. (15,500 square yards, est. qty.) Prepare existing foundation, install curb & gutter, furnish and place 4-inches of new asphaltic pavement. (2,000 square yards est. qty.) Change Order #1 increases parking.

- Section 3B: 93<sup>rd</sup> Place - (Ultra-Thin Overlay) – Spot asphalt patching and base repair, spot curb & gutter repair, mill & dispose of asphaltic pavement, furnish and place ultrathin overlay pavement (5,200 square yards, est. qty.)
- Section 4: 48<sup>th</sup> Avenue - (2-inch Overlay) – Spot asphalt patching and base repair, furnish and place 2-inches of new asphaltic pavement, and road shouldering. (1,200 square yards, est. qty.)
- Section 5: Piche – (2-inch Overlay, Reconstruct) – Spot asphalt patching and base repair, widening of roadway for the addition of bike lanes, furnish and place 2-inches of new asphaltic pavement, and road shouldering. (11,000 square yards, est. qty.) Reconstruct 113<sup>th</sup> Street, excavate, grade, and compact (650 square yards, est. qty.), furnish and place 5-inches of new asphaltic pavement, and road shouldering.
- Section 6A: Foxmoor - (Ultra-Thin Overlay) – Spot asphalt patching and base repair, spot curb & gutter repair, mill & dispose of asphaltic pavement, furnish and place ultrathin overlay pavement (26,300 square yards, est. qty.)
- Section 6B: Rambling Trails & 32<sup>nd</sup> Avenue – (2-inch Overlay) – Spot asphalt patching and base repair, furnish and place 2-inches of new asphaltic pavement, and road shouldering. (11,600 square yards, est. qty.)
- Section 7: Benz Lift Station – Prepare existing foundation, furnish and place 5-inches of new asphaltic pavement. (350 square yards est. qty.)
- Section 8: Greenway Court Cul-De-Sac – Prepare existing foundation, furnish and place 3-inches of new asphaltic pavement, lower layer only. (1,250 square yards est. qty.)

A total of two (2) bids were received for this project:

<u>Contractor</u>	<u>Bid (as read)</u>
Payne & Dolan, Inc.	\$1,979,617.09
Stark Asphalt Paving	\$2,162,307.50

The low bidder, Payne & Dolan, Inc. has completed several pavement projects for the Village in the past, including the 2016 and 2017 Paving Program project.

The 2018 General Fund budget is \$1,499,999.00. Change Order #1 decreases the contract price by \$175,738.32. It is recommended that the Village award this project to Payne & Dolan, Inc. in the amount of \$1,803,878.77. The project breakdown is as follows:

<b>2018 PAVING PROGRAM BUDGET ALLOCATION</b>					
<b>PROJECT NUMBER</b>	<b>84101</b>	<b>56102</b>	<b>56705</b>	<b>46101</b>	
<b>DESCRIPTION</b>	<b>Paving Program (General Fund)</b>	<b>Paving Sewer Adjustments</b>	<b>Clean Water Utility</b>	<b>Pave Sewer Sites</b>	<b>TOTAL</b>
<b>BUDGET</b>	\$1,499,999.00	\$80,500.00	\$377,000.00	\$10,000.00	\$1,967,499.00
<b>ORIGINAL BID</b>	\$1,556,818.00	\$116,226.50	\$ 290,507.39	\$16,065.20	\$1,979,617.09
<b>CHANGE ORDERS TO-DATE</b>	(\$175,738.32)				(\$175,738.32)
<b>ADJUSTED PO AMOUNT</b>	<b>\$1,381,079.68</b>	<b>\$116,226.50</b>	<b>\$290,507.39</b>	<b>\$16,065.20</b>	<b>\$1,803,878.77</b>

Following the formal award by the Village Board, staff will prepare the necessary documents for execution of the contract by the Village and the Contractor.

# 2018 VILLAGE OF PLEASANT PRAIRIE PAVING PROGRAM



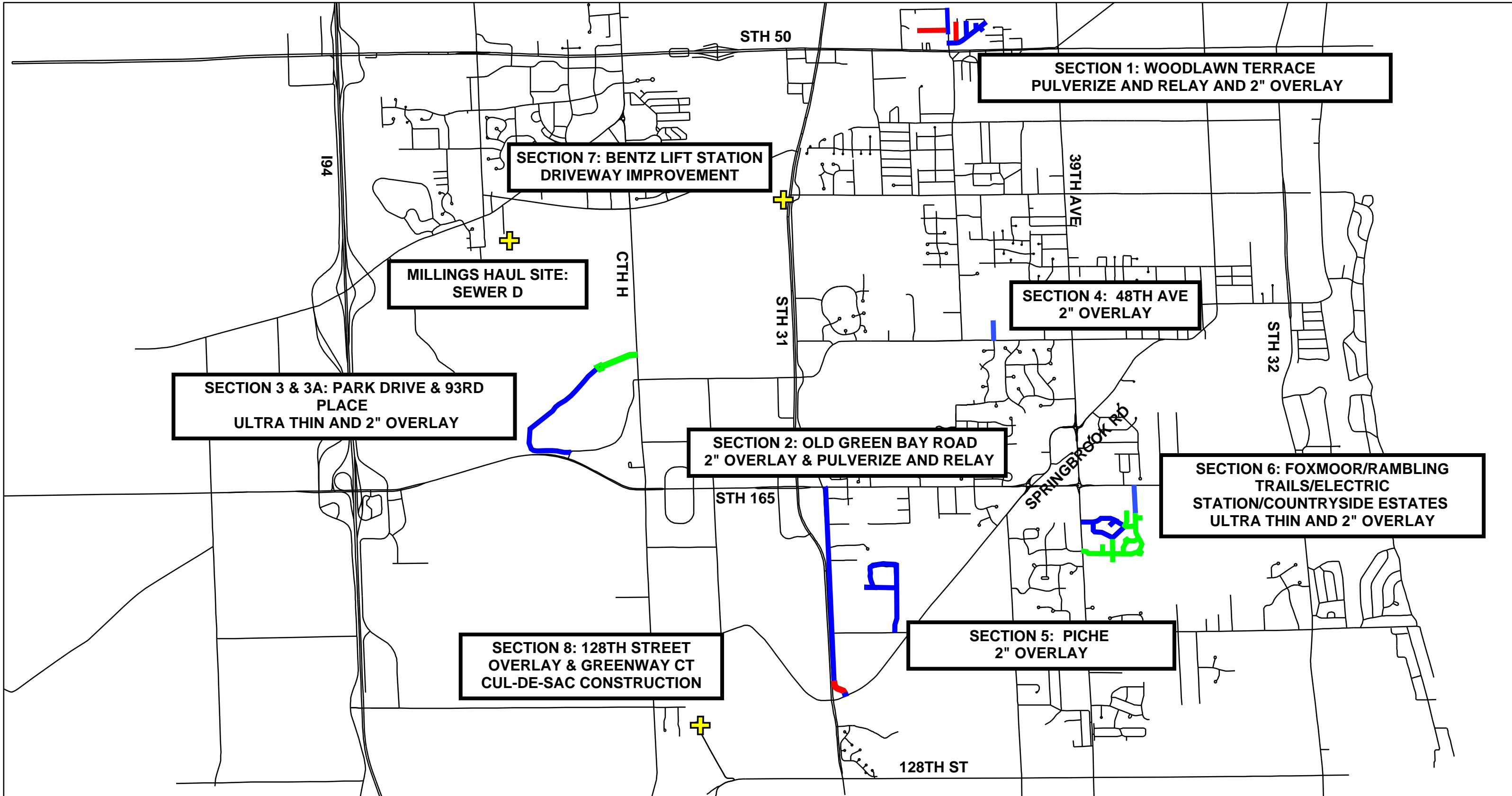
PULVERIZE AND RELAY



OVERLAY - 2"



OVERLAY - ULTRA THIN



The Village of Pleasant Prairie makes no representations concerning the accuracy or validity presented on this map. Information is for general informational purpose only and is not to be used for system design purposes by others.

0 0.5 1 Miles



# AGREEMENT

THIS AGREEMENT is by and between the Village of Pleasant Prairie (hereinafter called Owner) and Payne and Dolan, Inc. (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

## ARTICLE 1. WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Furnishing all labor, equipment, tools, supervision, machinery, supplies, and materials necessary to complete the Work on the 2018 Paving Program.

## ARTICLE 2. THE PROJECT

2.01 The Project for which the Work under Contract Documents may be the whole or only part of is generally described as follows.

**2018 PAVING PROGRAM  
VILLAGE OF PLEASANT PRAIRIE  
KENOSHA COUNTY, WISCONSIN**

## ARTICLE 3. ENGINEER

3.01 The Engineer for this project as referenced in the agreement is the Owner or it's designee as represented by the Village of Pleasant Prairie Department of Public Works who is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

## ARTICLE 4. CONTRACT TIMES

4.01 Time of the Essence.

A. All time limits for Milestones, if any, substantial completion, and final completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Dates for Substantial Completion and Final Completion.



- A. The Work shall be completed in a continuous manner without interruption until all Work is finished. The Work shall be substantially completed on or before October 19, 2018. Final completion of the Work including all punch list items shall be completed on or before November 2, 2018. Contractor shall make their application for final payment with all accompanying documentation as required by the Contract Documents in accordance with Paragraph 15.06 of the General Conditions within 90 days of the final completion date.

#### 4.03 Liquidated Damages.

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed in a continuous manner or within the times and as specified in the Paragraph 4.02 above, plus any extension thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$500, for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete.

After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.02 above for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay OWNER \$500, for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment.

After final completion of the Work including all punch list items, if Contractor shall neglect, refuse, or fail to make their application for final payment with all accompanying documentation within the time specified in Paragraph 4.02 for application for final payment, Contractor shall pay Owner \$500, for each day that expires after the time specified in Paragraph 4.02.

- 4.04 Permitting Contractor or Surety to continue and finish the Work or any part of the Work after the times specified for completion, or after the date which the times for completion may have been extended, shall in no way operate as a waiver on the part of the Owner of its rights under the Contract.

**ARTICLE 5. CONTRACT PRICE**

5.01 Owner shall pay Contractor for the completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A and B below:

- A. For all Work, at the prices stated in the Contractor’s Bid.
  
- B. The Bid prices for Unit Price Work set forth as the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 10.06 of the General Conditions.

- 1. Base Bid: \$ 1,979,617.09
  
- 2. Alternates: None
  
- 3. Combination Bid: None
  
- 4. Final Contract Amount: \$1,979,617.09

**ARTICLE 6. PAYMENT PROCEDURES**

6.01 Submittal and Processing Payments.

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Application for Payment will be processed by the Engineer as provided in the General Conditions.
  
- B. Owner reserves the right to make payments to the Contractor and its subcontractors in accordance with Wis. Statute 779.14(1)(1m)(d).

6.02 Progress Payments; Retainage.

- A. Owner will make monthly progress payments on account of the Contract Price on the basis of Contractor’s Application for Payment as recommended by Engineer each month during the construction as provided below. All progress payments will be on the basis of the progress of Work measured by the schedule of values established in Paragraph 2.05 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

- B. After each Application for Payment has been found acceptable by the Owner, Owner will pay 95% of the estimated value less any previous payments to Contractor until the project is 50% complete. At 50% completion, further progress payments will be made in full to Contractor and no additional amounts will be retained unless Engineer determines that the character and progress of the Work is not proceeding satisfactorily. Amounts previously retained shall not be paid to Contractor. At 50% completion or any time thereafter when the character and progress of the Work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the Work completed.
- C. Upon Substantial Completion of the Work, the amount retained may be reduced. When the Work has been Substantially Completed except for Work which cannot be completed because of weather conditions, lack of materials or other reason which, in the judgment of Owner are valid reasons for non-completion, Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed or corrected.

#### 6.03 Final Payment.

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06.B.1 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.B.1, less liquidated damages as provided in Paragraph 4.03 above.

### **ARTICLE 7. CONTRACTORS REPRESENTATIONS**

- 7.01 Contractor has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and other related data identified in the Bidding Documents.
- 7.02 Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance and furnishing of Work.
- 7.03 Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- 7.04 Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 5.03.A of the General Conditions. Contractor accepts the determination set forth in Paragraph SC 5.03 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which

Contractor is entitled to rely as provided in Paragraph 5.03 of the General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures or construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 7.05 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.06 Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 7.07 Contractor hereby covenants and agrees to pay all claims for labor, services, materials, plans, or specifications performed, furnished, procured, used, or consumed that pertains to the public improvement or public work.
- 7.08 Contractor agrees to extent practicable, to maintain a list of all subcontractors, suppliers, and service providers performing, furnishing, or procuring labor, services, materials, plans, or specifications under the Contract.
- 7.08.1 Subcontractor, supplier, or service provider means the following: Any person who has direct contractual relationship, expressed or implied, with the Prime Contractor or with any subcontractor of the Prime Contractor to perform, furnish, or procure labor, services, materials, plans, or specifications.

## **ARTICLE 8. CONTRACT DOCUMENTS**

8.01 The Contract Documents which comprise the entire Agreement between Owner and Contractor concerning the Work consists of the following:

- A. This Agreement.
- B. Exhibits to this Agreement (bid form, documentation submitted by Contractor prior to Notice of Award).
- C. Performance, Payment and other Bonds.
- D. Notice of Award.
- E. Notice to Proceed. (issued separately)
- F. General Conditions.
- G. Supplemental Conditions.
- H. Special Provisions.
- I. Drawings.
- J. Addenda number 1-3, inclusive.
- K. State and local forms.
- L. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto: Work Change Directives, and Change Order(s).

## **ARTICLE 9. MISCELLANEOUS**

9.01 All references to the General Conditions in any Contract Document shall be interpreted to include reference to the corresponding Article of Supplementary Conditions, whether stated or unstated in such reference.

9.02 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.03 No assignment by a party hereto of any rights under of interests in the Contract Documents will be binding on another party hereto without the written consent of the

party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.04 Owner and Contractor each bind itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR.

This Agreement will be effective on \_\_\_\_\_(which is the effective Date of the Agreement).

Attest:

\_\_\_\_\_  
(CONTRACTOR)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name and Title)

\_\_\_\_\_  
(Typed or Printed Name and Title)

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If CONTRACTOR is a corporation, attach Evidence of authority to sign.)

CONTRACTOR'S License No. \_\_\_\_\_(If required by state or municipal law).

Attest:

Village of Pleasant Prairie

(OWNER)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name and Title)

John P. Steinbrink, Village President

(Typed or Printed Name and Title)

Address for giving notices:

Village of Pleasant Prairie

9915 39<sup>th</sup> Avenue

Pleasant Prairie, WI 53158

**CHANGE ORDER No. 1**

**DATE OF ISSUANCE:** February 13, 2018

**OWNER:** Village of Pleasant Prairie

**CONTRACTOR:** Payne and Dolan

**CONTRACT:** 2018 Paving Program

**OWNER's PROJECT NO.:** 84101

You are directed to make the following changes in the Contract Documents:

**Description**

(Include itemized increase (decrease) price of work):

1 SECTION 2 - DEDUCT SURFACE COURSE

2 SECTION 2 DEDUCT STRIPING

3 SECTION 3A - PARK DRIVE, INCREASE PARKING ON SOUTH SIDE OF PARK DRIVE

#	Item	Qty. Add	Qty. Deduct	Unit	Unit Cost	Total
1-1	DEDUCT LINE 52 PAVEMENT, TYPE LT, 2" UPPER LAYER		3125	TON	\$56.80	(\$177,500.00)
1-2	DEDUCT LINE 55 PAVEMENT MARKING EPOXY 18"		60	LF	\$9.25	(\$555.00)
1-3	DEDUCT LINE 56 PAVEMENT MARKING EPOXY 4"		31052	LF	\$0.33	(\$10,247.16)
1-4	DEDUCT LINE 57 PAVEMENT MARKING ARROWS BIKE (EPOXY)		12	EA	\$80.00	(\$960.00)
1-5	DEDUCT LINE 58 PAVEMENT MARKING SYMBOLS BIKE (EPOXY)		12	EA	\$95.00	(\$1,140.00)
1-6	DEDUCT LINE 59 PAVEMENT MARKING WORDS BIKE LANE (EPOXY)		12	EA	\$105.00	(\$1,260.00)
1-7	ADD QTY, LINE 66, HMA PAVEMENT LOWER	62		TON	\$82.04	\$5,086.48
1-8	ADD QTY, LINE 67, HMA PAVEMENT UPPER	37		TON	\$58.86	\$2,177.82
1-9	ADD QTY, LINE 71, PRPEARE FOUNDATION FOR ASPHALTIC PAVING	474		SY	\$4.21	\$1,995.54
1-10	ADD QTY, LINE 72, CONCRETE CURB AND GUTTER 18" TYPE D	238		LF	\$22.00	\$5,236.00
1-11	ADD QTY, LINE 73, PAVEMENT MARKING PAINT 4"	357		LF	\$4.00	\$1,428.00
<b>TOTAL THIS CHANGE ORDER</b>						<b>(\$175,738.32)</b>

**Reason for Change Order No. 1**

1, 2: Reduction due to budget.  
 3: Increased parking along Park Drive

Prepared Date: 2/13/18



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**CHANGE ORDER NO.: 1**

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2018 Paving Program

<b>CHANGE IN CONTRACT PRICE:</b>
<b>Contract Price prior to this Change Order:</b>  <p style="text-align: center;">\$1,979,617.09</p>
<b>Net increase (decrease) of this Change Order:</b>  <p style="text-align: center;">(\$175,738.32)</p>
<b>Net increase (decrease) of this Change Order:</b>  <p style="text-align: center;">\$1,803,878.77</p>

<b>CHANGE IN CONTRACT TIMES:</b>
<b>Contract Times prior to this Change Order:</b>  Substantial Completion:                      October 19, 2018  Ready for final payment:                      November 2, 2018
<b>Net increase (decrease) of this Change Order:</b>  Substantial Completion:                      0  Ready for final payment:                      0
<b>Net increase (decrease) of this Change Order:</b>  Substantial Completion:                      October 19, 2018  Ready for final payment:                      November 2, 2018

---

Approved by ENGINEER / OWNER

Date

(Authorized Signature)

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Accepted by CONTRACTOR

Date

(Authorized Signature)

**CHANGE ORDER No. 1**

**DATE OF ISSUANCE:** February 13, 2018

**OWNER:** Village of Pleasant Prairie

**CONTRACTOR:** Payne and Dolan

**CONTRACT:** 2018 Paving Program

**OWNER's PROJECT NO.:** 84101

You are directed to make the following changes in the Contract Documents:

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(Include itemized increase (decrease) price of work):

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<b>TOTAL THIS CHANGE ORDER</b>						<b>(\$175,738.32)</b>

**Reason for Change Order No. 1**

1, 2: Reduction due to budget.  
 3: Increased parking along Park Drive

Prepared Date: 2/13/18

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**CHANGE ORDER NO.: 1**

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2018 Paving Program

<b>CHANGE IN CONTRACT PRICE:</b>
<b>Contract Price prior to this Change Order:</b>  <p style="text-align: center;">\$1,979,617.09</p>
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<b>CHANGE IN CONTRACT TIMES:</b>
<b>Contract Times prior to this Change Order:</b>  Substantial Completion:                      October 19, 2018  Ready for final payment:                      November 2, 2018
<b>Net increase (decrease) of this Change Order:</b>  Substantial Completion:                      0  Ready for final payment:                      0
<b>Net increase (decrease) of this Change Order:</b>  Substantial Completion:                      October 19, 2018  Ready for final payment:                      November 2, 2018

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Approved by ENGINEER / OWNER

Date

(Authorized Signature)

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Accepted by CONTRACTOR

Date

(Authorized Signature)

# SECTION 2: OLD GREEN BAY RD

SPRINGBROOK ROA TO 104TH STREET



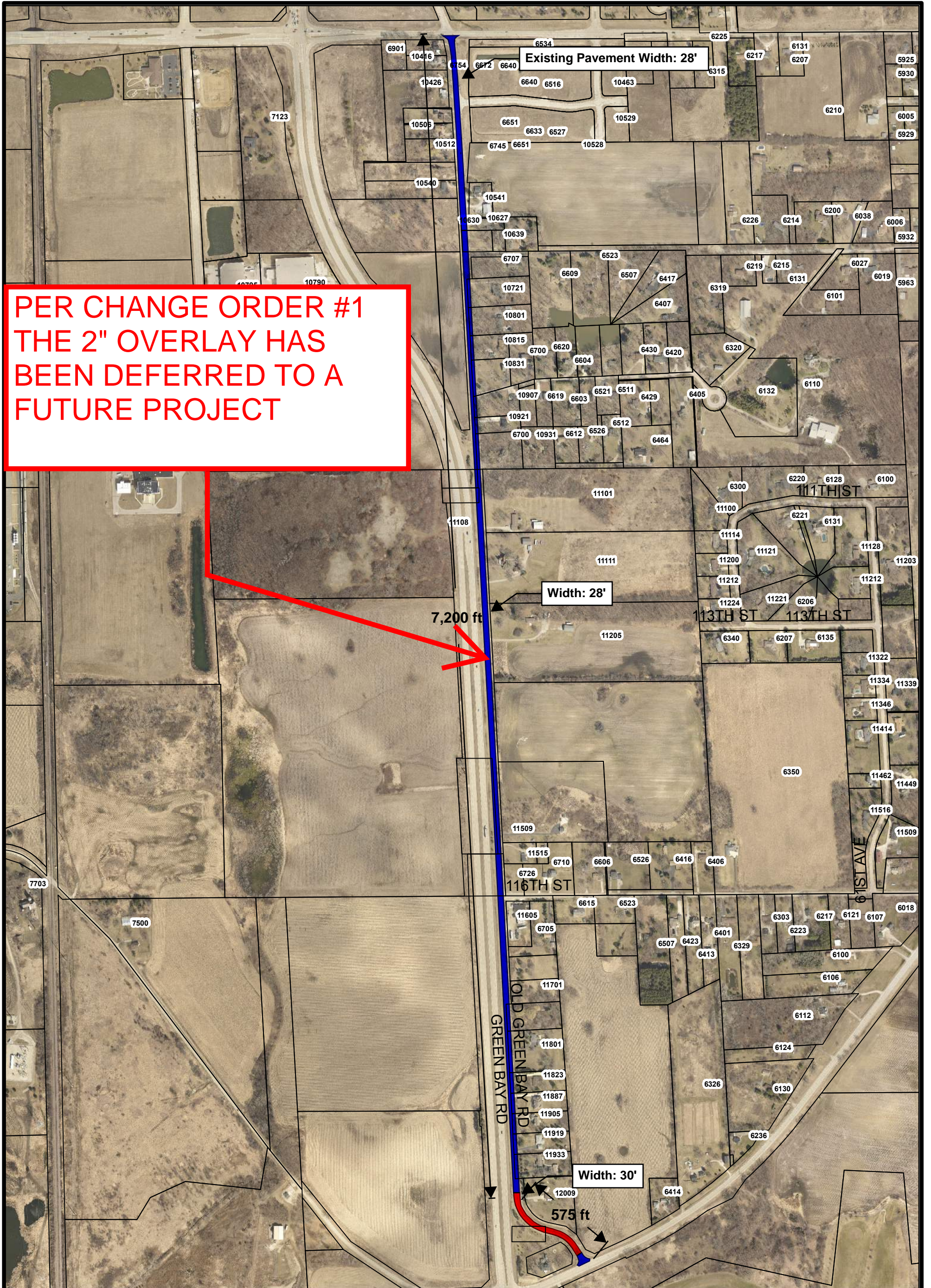
2" OVERLAY

ESTIMATE: 23,125 SQ YD

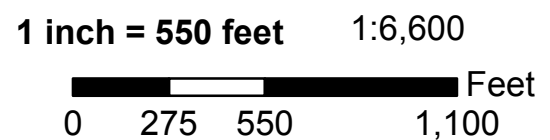


PULVERIZE AND RELAY

ESTIMATE: 2,040 SQ YD



The Village of Pleasant Prairie makes no representations concerning the accuracy or validity presented on this map. Information is for general informational purpose only and is not to be used for system design purposes by others.



# SECTION 2: OLD GREEN BAY ROAD PAVEMENT

## MARKING (EXISTING)

SPRINGBROOK ROAD TO STH 165

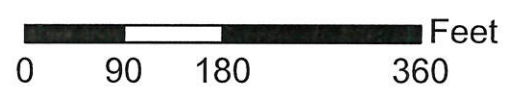


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A-5.1  
ADDENDUM 3

1 in = 175 feet

1:2,100



# SECTION 3A: PARK DRIVE

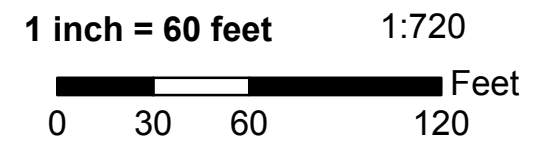
LAKE ANDREA VOLLEYBALL & SURFER LOTS

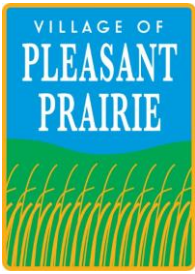
## PARKING STALLS

97 - PARKING STALLS



The Village of Pleasant Prairie makes no representations concerning the accuracy or validity presented on this map. Information is for general informational purpose only and is not to be used for system design purposes by others.





**To:** Thomas Shircel, Interim Village Administrator and Members of the Village Board  
**From:** John Steinbrink Jr., Director of Public Works  
**Subject:** Cash on deposit reduction request - Ayres CSM – Phase I Improvements  
**Date:** February 19, 2018

The Village has conducted a review of the cash on deposit reduction request for Public Improvements for Ayres CSM and recommends approval based on review of project progress and the following considerations:

- Current posted cash security
- Work Completed to date and conformance to plans and specifications
- Field visits by Village of Pleasant Prairie Staff, Inspection reports/Engineer's report, if applicable
- Estimated costs of work remaining
- Payments made to subcontractors for work performed (Original Lien Waivers Provided)

Village Construction Inspection staff have reviewed the request and based on inspection of the site and the construction observation reports, I am recommending a cash payment as follows:

Public Storm Sewer:	\$30,229.50
Public Grading Work:	<u>\$30,100.00</u>
Total of Public Improvements:	\$60,329.50
Contingency 5%	(\$3,016.48)
Engineering Services/Surveying:	<u>\$2,948.75</u>
<b>Total Cash on Deposit Reduction:</b>	<b><u>\$60,261.77</u></b>

Please find the attached exhibits supporting the reduction request.

- Exhibit A - Site Completion Exhibit
- Exhibit B - Spreadsheet itemizing work completed, estimated work remaining and applicable retainage
- Exhibit C - Invoices and Lien Waivers for subject work

Based on the review of the criteria, the proposed improvements meet the requirements of the Village and a cash on deposit reduction request is warranted and recommended.

# AYRES CSM

# EXHIBIT A



Area is graded, seeded, and blanketed.



New RCP storm sewer





**EXHIBIT B**

**AYRES 47TH AVE CSM**

<b>2/19/2018 Cash on deposit Reduction Request</b>				
<b>Improvements</b>	<b>PREVIOUS</b>	<b>THIS REDUCTION</b>	<b>REDUCTIONS TO-DATE</b>	<b>BALANCE HELD</b>
<b>1 Public Improvements</b>				
Public Sanitary Sewer	\$0.00	\$0.00	\$0.00	\$1,800.00
Public Water	\$0.00	\$0.00	\$0.00	\$0.00
Public Storm Sewer	\$0.00	\$30,229.50	\$30,229.50	\$0.00
Public Roadway	\$0.00	\$0.00	\$0.00	\$0.00
Public Grading Work	\$0.00	\$30,100.00	\$30,100.00	\$0.00
	<b>\$0.00</b>	<b>\$60,329.50</b>	<b>\$60,329.50</b>	<b>\$1,800.00</b>
<b>2 VILLAGE OF PLEASANT PRAIRIE</b>				
Sanitary Sewer Cleaning and Televising Cost Estimate	\$0.00	\$0.00	\$0.00	\$0.00
Storm Sewer Catch Basin Cleaning and Televising Cost Estimate	\$0.00	\$0.00	\$0.00	\$500.00
Street Signage Estimate	\$0.00	\$0.00	\$0.00	\$0.00
<b>3 VILLAGE PUBLIC WORKS/NIELSEN MADSEN BARBER SC</b>				
Village Inspection and Construction Services Estimate	\$0.00	\$0.00	\$0.00	\$6,000.00
Nielsen Madsen Barber Engineering Services/Surveying	\$0.00	\$2,948.75	\$2,948.75	\$2,051.25
<b>4 WE ENERGIES</b>				
Public Street Lighting Charges for Street Lights	\$0.00	\$0.00	\$0.00	\$0.00
<b>5 PUBLIC STREET TREES</b>	\$0.00	\$0.00	\$0.00	\$0.00
<b>SUM OF PUBLIC IMPROVEMENTS/ENGINEERING SERVICES</b>	<b>\$0.00</b>	<b>\$63,278.25</b>	<b>\$63,278.25</b>	<b>\$10,351.25</b>
<b>Contingency 5%</b>	\$0.00	(\$3,016.48)	(\$3,016.48)	
<b>Total Cash on Deposit</b>	<b>\$0.00</b>	<b>\$60,261.77</b>	<b>\$60,261.77</b>	<b>\$21,395.68</b>



# EXHIBIT C

Nielsen Madsen + Barber  
CIVIL ENGINEERS AND LAND SURVEYORS

January 5, 2018

James and Bonita Ayres  
11806 47<sup>th</sup> Avenue  
Pleasant Prairie, WI 53158

RE: Grassman Lawn Service- Pay Request No. 1  
Ayres CSM – Phase I Improvements  
File No. 2016.0098.02

Dear James & Bonnie:

Enclosed please find Pay Request No. 1 from Grassman Lawn Service, Inc. for the above-referenced project. Based on our recent inspection of the site and review of the attached Application for Payment, I am recommending payment as follows:

Original Contract Amount:	\$60,329.50
Work Completed to Date:	\$60,329.50
Less Retainage :	-\$3,016.48
Less Previous Payments:	<u>    \$0.00</u>
<b>Recommended Payment:</b>	<b>\$57,313.03</b>

An original lien waiver in the amount of \$57,313.03 shall be furnished by the contractor in exchange for payment.

Please review at your earliest convenience and contact our office with any questions you may have.

Mark D. Eberle, P.E.

File G:\2016 Docs\22016.0098.01\ Pay Requests\ Pay Request No. 1



# EXHIBIT C



Grassman Lawn Service Inc.  
1520 136th Ave.  
Union Grove, WI 53182  
(262) 859-0567

## Invoice

James and Bonita Ayres  
11806- 47th Ave  
Pleasant Prairie, WI 53158

PO Number		Invoice #	035064		
Property Balance	\$60,329.50	Invoice Date	1/3/2018	Due Date	1/3/2018
Item	Description	Quantity	Rate	Amount	
Service - Non	Mobilization	1	1,500.00	1,500.00	
Service - Non	Traffic Control	1	1,500.00	1,500.00	
Service - Non	Erosion Control	1	900.00	900.00	
Service - Non	Clearing and Grubbing (Within Disturbed area)	1	1,500.00	1,500.00	
Service - Non	Clearing and Grubbing (Remainder of New Lots)	1	1,500.00	1,500.00	
Service - Non	Earthwork/ Site grading	1	18,500.00	18,500.00	
Service - Non	Restoration (Topsoil/Seed/Fertilizer/Mulch)	1	3,500.00	3,500.00	
Service - Non	Erosion Mat	1	1,200.00	1,200.00	
Service - Non	75 Linear Feet- Storm Sewer Removal	1	1,410.00	1,410.00	
Service - Non	Catch Basin Modification	1	723.10	723.10	
Service - Non	Catch Basin Removal	1	1,410.06	1,410.06	
Service - Non	32 Linear Feet- 6" PVC	1	1,319.04	1,319.04	
Service - Non	258 Linear Feet- 24" RCP Class III	1	16,026.96	16,026.96	
Service - Non	60" Diameter catch basin	1	4,224.77	4,224.77	
Service - Non	48" Diameter Manhole	1	2,399.98	2,399.98	
Service - Non	Outlet Control Structure	1	2,715.59	2,715.59	
			<b>Subtotal</b>	<b>\$60,329.50</b>	
			<b>Sales Tax (0.0%)</b>	<b>\$0.00</b>	
			<b>Total</b>	<b>\$60,329.50</b>	
			<b>Balance Due</b>	<b>\$60,329.50</b>	

Please remit payment with invoice number indicated to:  
Grassman Lawn Service Inc.  
1520 136th Ave.  
Union Grove, WI 53182

**EXHIBIT C**

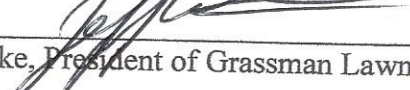
**Waiver of Lien**

**Know All Men By These Presents:**

That I, the undersigned, Grassman Lawn Service Inc. for and in consideration of (\$57313.63) fifty seven thousand three hundred and fifteen  $\frac{0}{100}$  and other good and valuable consideration, to me paid, the receipt whereof is hereby acknowledged, do hereby waive, release, remise and relinquish any and all right to claim any lien or liens for work done or material furnished, or any kind of class of lien whatsoever on the following described property:

Storm Sewer  
Pond Excavating  
Seed & Matting

Title owner of said property: James and Bonita Ayres  
11806 47<sup>th</sup> ave  
Pleasant Prairie WI 53158

X   
Jeff Badtke, President of Grassman Lawn Service, Inc

Date: 2-9-18

# EXHIBIT C



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

## INVOICE

Now Accepting:



James & Bonita (Bonnie) Ayres  
11806 47th Avenue  
Pleasant Prairie, WI 53158

Project Manager Mark Eberle

February 8, 2018

Invoice No: 31106

Project 2016.0098.02 Ayres - Design - CRS & AsBlt - 47th Avenue

**Professional Services thru January 31, 2018**

### Professional Personnel

	Hours	Rate	Amount	
CADD Operator	5.50	90.00	495.00	
Civil Engineer I	1.25	102.00	127.50	
Design Engineer	5.50	62.00	341.00	
Project Manager	5.75	135.00	776.25	
Survey Assistant	7.75	64.00	496.00	
Survey Crew Chief	7.75	92.00	713.00	
Totals	33.50		2,948.75	
<b>Total Labor</b>				<b>2,948.75</b>
		<b>Total this Invoice</b>		<b>\$2,948.75</b>

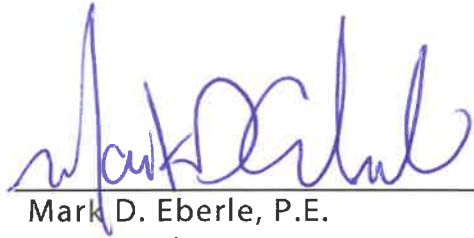


# EXHIBIT C

## WAIVER OF LIEN

February 8, 2018

FOR VALUE RECEIVED, We hereby waive all rights and claims for lien on land and on buildings about to be erected, being erected, erected, altered or repaired and to the appurtenances thereunto, James & Bonita Ayres, Owner, by Nielsen Madsen & Barber, for construction related services, same being situated in the Village of Pleasant Prairie, Kenosha County, State of Wisconsin, described as Part of the NW1/4, Section 35-1-22, for all labor performed and for all material furnished for the erection, construction, alteration or repair of said building and appurtenances through January 31, 2018 in the amount of \$2,948.75.



Mark D. Eberle, P.E.  
Vice-President

Nielsen Madsen & Barber, S.C.



Office of the  
Chief of Fire & Rescue  
Craig Roepke

To: Thomas Shircel  
From: Craig Roepke   
Subject: Fire Vehicle & Appliances Disposal Approval  
Date: February 19, 2018

I am seeking approval to remove the vehicles and fire appliances mentioned below from the Fire department's fleet as they have reached their end of service life.

- 1988 E-One Ladder Truck - 1F9BBBA81J1037334
- 2002 Medtec Ambulance - 1HTMNAAMX2H513631
- 1994 F-350 pickup truck - 2FTHF36M1RCA50991
- 2005 Dodge Durango - 1D4HB38N75F573631
- Assorted old fire nozzles and fire appliances

All of the above vehicles and fire appliances have reached their end of service life and further maintenance expenditures would not be cost effective.

All vehicles will be sent to auction. The appliances will either be bulk auctioned, donated or scraped for their recycle value.

I recommend and request approval to dispose of the items listed above.



**RESOLUTION #18-04**

**RESOLUTION AUTHORIZING THE  
VILLAGE OF PLEASANT PRAIRIE  
TO DISPOSE OF SURPLUS VEHICLES & EQUIPMENT**

**WHEREAS**, the Village of Pleasant Prairie Fire & Rescue Department currently owns a 1988 E1 Ladder fire truck, a 2002 Medtec ambulance, a 1994 F-350 pickup truck, and a 2005 Dodge Durango and

**WHEREAS**, a new E1 aerial platform was purchased in 2017 which replaced the 1988 E1 ladder fire truck; and a new 2018 F-250 pickup truck was purchased in 2018 to replace the 1994 F-350 pickup truck and a new 2016 Horton ambulance was purchased to replace the 2002 Medtec ambulance, and a new 2018 Chevy Tahoe was purchased to replace the 2005 Dodge Durango.

**WHEREAS**, the Village of Pleasant Prairie Fire & Rescue Department currently has a surplus of out of service loose equipment in their emergency vehicle fleet including numerous fire nozzles, three (3) hard suction low level strainers, numerous outdated hose wrenches and (2) Siamese connections.

**WHEREAS**, this equipment is no longer needed to meet the needs of the Village.

**NOW, THEREFORE, BE IT RESOLVED**, the Interim Village Administrator is authorized to sell the 1988 E1 Ladder fire truck, a 2002 Medtec ambulance, a 1994 F-350 pickup truck, and a 2005 Dodge Durango to an authorized automobile auction company for purposes of auction, and to transfer auction, dispose of or donate the above-mentioned surplus, outdated and out of service loose equipment as appropriate.

Passed and adopted this 19<sup>th</sup> day of February, 2018.

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John P. Steinbrink, President

Attest:

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Jane C. Snell, Clerk

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



**RESOLUTION #18-05**  
**VILLAGE OF PLEASANT PRAIRIE**  
**DARK STORE RESOLUTION**

**WHEREAS**, homeowners in Wisconsin pay nearly 70% of the total statewide property tax levy; and

**WHEREAS**, the disproportionate burden of property taxes on homeowners will worsen unless legislators take action to close loopholes in property tax law that some national chain stores use to gain substantial reductions in property taxes; and

**WHEREAS**, lawsuits in Wisconsin are forcing local governments to lower the market value of thriving national chain stores, shifting the tax burden to local businesses, apartment owners and homeowners; and

**WHEREAS**, some national chain stores in Wisconsin have argued in communities across the state that the assessed value of their property for property tax purposes should be only half of its actual value on the open market; and

**WHEREAS**, some national chain stores are using what is known as a “Dark Store” strategy to argue that the assessed value of a new, thriving store should be based on comparing their buildings to vacant or abandoned stores from a different market segment; and

**WHEREAS**, legislation to close these tax loopholes has been drafted, introduced and subject to public hearings by the Wisconsin legislature; and

**WHEREAS**, this legislation has sufficient bipartisan support in both houses of the Wisconsin Legislature to pass with wide margins; and

**WHEREAS**, there is only one more legislative session day remaining in the current legislative calendar;

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Trustees of the Village of Pleasant Prairie does hereby urge the Governor and the Legislature to protect local businesses, apartment owners and homeowners from tax shifts by passing legislation to close the Dark Store and Walgreens property tax loopholes.

**BE IT FURTHER RESOLVED**, that the Board of Trustees of the Village of Pleasant Prairie directs the Village Clerk to immediately send a copy of this Resolution to Governor Scott Walker and the Village of Pleasant Prairie’s legislative delegation.

Passed and adopted this 19<sup>th</sup> day of February, 2018.

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John P. Steinbrink, Village President

Attest:

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Jane C. Snell, Village Clerk