



Wauwatosa, WI

Financial Affairs Committee

Meeting Agenda - Final

7725 W. North Avenue
Wauwatosa, WI 53213

Tuesday, February 13, 2024

7:00 PM

Committee Room #1 and Zoom:
<https://servetosa.zoom.us/j/81144274572>,
Meeting ID: 811 4427 4572

Regular Meeting

HYBRID MEETING INFORMATION

Members of the public may observe and participate in the meeting in-person or via Zoom at the link above. To access the Zoom meeting via phone, call 1-312-626-6799 and enter the Meeting ID.

CALL TO ORDER

ROLL CALL

FINANCIAL AFFAIRS COMMITTEE ITEMS

1. Consideration of request for continuation of self-insurance of Worker's Compensation program [24-0132](#)
2. Consideration of a three-party contract with the Wisconsin Department of Transportation (WisDOT), Kapur and Associates, and the City of Wauwatosa; and a two-party contract with the City of Wauwatosa and Kapur and Associates for design of the Wisconsin Avenue Multi-Use path (CIP #2309) and the Street Light Conversion Project (CIP #2403) [24-0138](#)
3. Consideration of approval of a Lease Agreement for certain portions of the Muellner Building and a Memorandum of Understanding regarding loan issuance terms between the City of Wauwatosa and the Wauwatosa Curling Club [24-0188](#)

ADJOURNMENT

NOTICE TO PERSONS WITH A DISABILITY

Persons with a disability who need assistance to participate in this meeting should call the City Clerk's office at (414) 479-8917 or send an email to tclerk@wauwatosa.net, with as much advance notice as possible.



Wauwatosa, WI

7725 W. North Avenue
Wauwatosa, WI 53213

Staff Report

File #: 24-0132

Agenda Date: 2/13/2024

Agenda #: 1.

Consideration of request for continuation of self-insurance of Worker's Compensation program

Submitted by:

John Ruggini

Department

Finance Department

A. Issue

The State Department of Workforce Development requires municipalities to pass a resolution as authorizing the City to continue to self-insure its Worker's Compensation program.

B. Background/Options

The City is required by law to pay the medical bills and salaries of employees who are injured on the job. The City has self-funded our Worker's Compensation claims for over 30 years. The City pays first dollar of all Worker's Compensation claims until our insured stop loss retention of \$500,000. The City also has the option of fully insuring its Worker's Compensation risk. In this case the insurer would cover all of the claims and salary costs but charge a higher premium. The difference is a trade-off between managing risk and upfront cost. It has been financially advantageous to the City to self-insure. Staff requested an analysis be done by the City's third-party billing administrator, Charles Tayler Co. comparing it's prior 5-year costs as a self-insured plan to the assumed costs over that same period had the City been fully-insured and paying an annual premium to a worker compensation insurer. The table below summarizes 2 different methodologies.

Year	FI Premium	SI Spend (Paid)	Difference	SI Spend (Incurred)	Difference
2018	870,408.00	422,867.06	(447,540.94)	688,204.95	(182,203.05)
2019	817,417.00	887,380.23	69,963.23	979,190.79	161,773.79
2020	776,467.00	720,028.25	(56,438.75)	911,102.19	134,635.19
2021	742,793.00	703,217.49	(39,575.51)	1,267,689.37	524,896.37
2022	1,024,396.00	1,064,426.86	40,030.86	573,983.93	(450,412.07)
	4,231,481.00	3,797,919.89	(433,561.11)	4,420,171.23	188,690.23

The blue "FI Premium" column shows the estimated costs if our workers compensation program had been fully insured between 2018 and 2022. The "SI Spend (Paid)" column shows the costs of the current program based on how much cash was spent in that year (regardless of when the claim occurred). The difference from the fully insured column is shown in the next column - a Fully insured program would have cost \$433,561.11 than our current program. The next column, the SI Spend (incurred) is the amount of total incurred losses by the policy year for claims occurring during the same policy year (i.e. 2018 = losses occurring between 1/1/2018 and 12/31/2018 even if the dollars were paid out in future years). This column is more representative of how we

account for costs. Under this comparison, our self-insured model was \$188,690.23 more expensive than a fully insured model. Details behind this analysis are attached.

While this analysis does show a savings in a fully-insured model, the savings of 4.0% over a 5-year period is not sufficient enough to for the City to give up the flexibility we have in maintaining our own program.

The state requires the City to update its official authorization of the self-funded program every three years. This resolution accomplishes that authorization.

C. Strategic Plan (Area of Focus)

NA

D. Fiscal Impact

The premium for the excess insurance for claims that exceed \$500,000 is budgeted so this recommendation has no negative fiscal impact. They analysis does show that a fully insured model could save the City money over a 5-year period.

E. Recommendation

I recommend that the City continue to self-insure its Worker's Compensation program given that the limited amount of savings possible with a fully insured plan will not offset the value of the flexibility the City maintains with a self-insured plan. Attached is an example of the resolution that the State is requesting be filed with the Department of Workforce Development. Although not recommended, the earliest the City could transition to a first-dollar program would be 2025.

Sample Resolution Reauthorization of Self-insurance

Resolution No. _____

WHEREAS, the (NAME OF POLITICAL SUBDIVISION) is a qualified political subdivision of the State of Wisconsin; and

WHEREAS, the Wisconsin Worker's Compensation Act (Act) provides that employers covered by the Act either insure their liability with worker's compensation insurance carriers authorized to do business in Wisconsin, or to be exempted (self-insured) from insuring liabilities with a carrier and thereby assuming the responsibility for its own worker's compensation risk and payment; and

WHEREAS, the State and its political subdivisions may self-insure worker's compensation without a special order from the Department of Workforce Development (Department) if they agree to report faithfully all compensable injuries and agree to comply with the Act and rules of the Department; and

WHEREAS, the (NAME OF COMMITTEE) at its (DATE OF MEETING) meeting approved the continuation of the self-insured worker's compensation program, in compliance with Wisconsin Administrative Code DWD 80.60(3); and

NOW, THEREFORE, BE IT RESOLVED that the (GOVERNING BODY) of (NAME OF POLITICAL SUBDIVISION) does ordain as follows:

- (1) Provide for the continuation of a self-insured worker's compensation program that is currently in effect.
- (2) Authorize the (PERSON WHO HAS AUTHORITY) to forward certified copies of this resolution to the Worker's Compensation Division, Wisconsin Department of Workforce Development.
- (3) (OTHER CONDITIONS OR STATEMENTS MAY BE ADDED)

DATED: (INSERT DATE)

The above lines are for signatures.

Year	Fully Insured Premium	Paid Losses by CY	Total Incurred by Year	XS Premium	TPA Contract	SI Spend (Paid)	SI Spend (Incurred)
2018	870,408.00	333,762.06	599,099.95	62,310.00	26,795.00	422,867.06	688,204.95
2019	817,417.00	794,737.23	886,547.79	65,848.00	26,795.00	887,380.23	979,190.79
2020	776,467.00	629,388.25	820,462.19	63,845.00	26,795.00	720,028.25	911,102.19
2021	742,793.00	600,096.49	1,164,568.37	76,326.00	26,795.00	703,217.49	1,267,689.37
2022	1,024,396.00	953,274.86	462,831.93	84,357.00	26,795.00	1,064,426.86	573,983.93
	4,231,481.00	3,311,258.89	3,933,510.23	352,686.00	133,975.00	3,797,919.89	4,420,171.23

Fully-Insured Program

Self-Insured Program

Fully Insured Premium	This is the premium developed using the Wisconsin statutory rating scheme. It accounts for your class code injury rate (Rate) and loss experience (Mod/Experience Modification Factor). Premium is greatly affected by the Mod (an algorithm that accounts for expected losses compared to actual losses over a three-year period). After the standard premium is developed, the Mod is factored against the standard premium, resulting in either a credit (under 1.0 = premium decrease) or debit (over 1.0 = premium increase). While not guaranteed, dividends can be earned for favorable loss experience. Dividend plans vary by carrier, insured size, and loss experience - and may not be offered at all. **Except for 2022, policy years 2018-2021 had loss ratios over 50% - a generally accepted breakpoint for dividend offerings.**
------------------------------	---

Paid Losses by CY	This is the amount of paid losses during the respective calendar year, no matter when the claim occurred
Incurred by Year	This is the amount of total incurred losses by the policy year for claims occurring during the same policy year (i.e. 2018 = losses occurring between 1/1/2018 and 12/31/2018)
XS Premium	This is the premium charged for a self-insured workers' compensation policy arranged through CVMIC w/ a \$500,000 self-insured retention (deductible)
TPA Contract	This is the annual flat fee paid to Aegis LLC to administer the city's workers' compensation claims
SI Spend (Paid)	Accumulated spend based on Paid Losses by Calendar Year (Paid Losses by Calendar Year + XS Premium + TPA Contract)
SI Spend (Incurred)	Accumulated spend based on Total Incurred by Year (Total Incurred by Year + XS Premium + TPA Contract)



Staff Report

File #: 24-0138

Agenda Date: 2/13/2024

Agenda #: 2.

Consideration of a three-party contract with the Wisconsin Department of Transportation (WisDOT), Kapur and Associates, and the City of Wauwatosa; and a two-party contract with the City of Wauwatosa and Kapur and Associates for design of the Wisconsin Avenue Multi-Use path (CIP #2309) and the Street Light Conversion Project (CIP #2403)

Submitted by:

Mike Steiner, Assistant City Engineer

Department:

Public Works - Engineering Division

A. Issue

Engineering is requesting approval of a three-party contract with the Wisconsin Department of Transportation (WisDOT), Kapur and Associates, and the City of Wauwatosa; and a two-party contract with the City of Wauwatosa and Kapur and Associates for design of the Wisconsin Avenue Multi-Use path (CIP #2309) and the Street Light Conversion Project (CIP #2403)

B. Background/Options

A multi-use path was planned as part of CIP #2026 repaving of Wisconsin Avenue between 98th and 106th Streets. A Transportation Alternatives Program (TAP) grant was pursued in 2023 to increase bike and pedestrian connectivity by extending the trail to Honey Creek on the east end and Potter Road on the west end. The project will be four times longer than previously planned and will provide connections to key residential, employment, and health care centers.

The City was awarded the grant and entered into a State/Municipal Agreement (SMA) for the Wisconsin Avenue Multi-Use Path Project, from Honey Creek Parkway to Mayfair Road to Potter Road in July of 2023 (R-23-141). The agreement funds up to a maximum of 80% of the total project cost presented in the grant application. The City is responsible for the remainder of costs for the project.

Design proposals were sent out to over 30 firms. The City received 5 proposals. In accordance with the WisDOT's consultant selection process, City staff independently ranked the proposals based on qualifications and selected 3 firms to interview. City staff and a WisDOT representative interviewed the firms and selected Kapur and Associates as the number one qualified consulting firm to perform the design work.

WisDOT, the City, and Kapur scoped the project and negotiated the fees for design work as presented in the attached Three Party Design Engineering Services Contract. Additional scope and costs, above what was estimated at the time the grant application was submitted in April 2023, were added during the recent scoping process. The additional items address real estate services and structural modifications to sidewalk on the north side of the Wisconsin Avenue bridge over Interstate 41 to accommodate a full width path. The scope and costs

for the bridge work is an eligible expense under the TAP grant. The real estate services on this project are entirely the responsibility of the City.

To that end, a second Two Party Contract between Kapur and the City is included in this request. The two party contract provides the City with Kapur's oversight and management of the real estate sub consultant and the costs for the sub consultant.

A separate task to assist the City with review and completion of project forms required for the Carbon Reduction Program (CRP) grant that will help fund the City's planned Street Light Conversion Project (CIP#2403) is included in this two party contract. A SMA for the CRP program was approved by Council in November of 2023 (R-23-208). City staff desires Kapur's assistance on these project forms as they are similar to the ones needed for the Wisconsin Avenue Multi-Use path.

Construction is currently scheduled for 2026 for the multi-use path. The street light conversion project construction is scheduled for summer/fall of 2024.

C. Strategic Plan (Area of Focus)

Priority 2: Public Safety, Goal 2 - Proactively address pedestrian, bicycle and vehicular safety.

Priority 3: Infrastructure, Goal 2 - Ensure the City's infrastructure supports public health through multi-modal transportation and recreation opportunities.

D. Fiscal Impact

The total cost of Kapur's design services under both contracts for the multi-use path is \$459,894.56. Of that amount, \$224,000 is Federal Funds and \$235,894.56 is City funds. Funding for design of this project was not fully known at the time the 2024 to 2028 Capital Improvements Program was adopted, thus no outside design costs were included. There are sufficient funds within CIP #2309, Tosa Trails-Wisconsin Ave Connector, to cover the City's share of the design contract in 2024 and 2025. The total project budget, including updated construction costs, will be re-estimated for the 2025-2029 CIP.

Kapur's design services for the Street Light Conversion Project is \$5,127.91. No Federal funds are included in the Carbon Reduction Program SMA for design. CIP #2403, Street Light Conversion, has sufficient funds in the budget to cover the Kapur's contract amount.

E. Recommendation

Staff recommends the following:

1. Authorize staff to enter into a three party agreement with the Wisconsin Department of Transportation, Kapur and Associates, and the City of Wauwatosa in the amount of \$402,851.39 for design services for the Wisconsin Avenue Multi-Use Path (CIP #2309)
2. Authorize staff to enter into a two party agreement with Kapur and Associates and the City of Wauwatosa in the amount of \$62,171.08 for design services for the Wisconsin Avenue Multi-Use

Path (CIP #2309) and the Street Light Conversion Project (CIP #2403)

THREE PARTY DESIGN ENGINEERING SERVICES CONTRACT
SIGNATURE PAGES

ENGINEERING SERVICES CONTRACT

BETWEEN THE WISCONSIN DEPARTMENT OF TRANSPORTATION,

City of Wauwatosa (MUNICIPALITY)

AND Kapur and Associates, Inc. (CONSULTANT) FOR

Project ID 2994-23-00
Wisconsin Avenue Multi-Use Path
Honey Creek-Mayfair, Wisconsin-Potter
Milwaukee County

This CONTRACT made and entered into by and between the DEPARTMENT, MUNICIPALITY and the CONSULTANT provides for those SERVICES described in the Scope of Services and Special Provisions and is generally for the purpose of providing the SERVICES solicited by the MUNICIPALITY in October 2023 for the construction of a multi-use path on the north side of Wisconsin Avenue and east side of Mayfair Road. This Qualification Based Selection was made based on the CONSULTANT'S Notice of Interest response and any interviews conducted.

The DEPARTMENT and MUNICIPALITY deem it advisable to engage the CONSULTANT to provide certain engineering SERVICES and has authority to contract for these SERVICES under sec. 84.01(13), Wis. Stats.

The DEPARTMENT REPRESENTATIVE is: Michael Baird, Project Manager, 141 NW Barstow Street, Waukesha, WI; michael.baird@dot.wi.gov; (262) 548-5918.

The MUNICIPALITY REPRESENTATIVE is: Mike Steiner; Assistant City Engineer; 7725 West North Avenue, Wauwatosa, WI; msteiner@wauwatosa.net; (414) 479-8974.

The CONSULTANT REPRESENTATIVE is: Aaron Bubb, Project Manager; 7711 North Port Washington Road, Milwaukee, WI; abubb@kapurinc.com; (414) 751-7230.

The CONSULTANT SERVICES will be performed for the DEPARTMENT's Southeast Region office located in Waukesha, WI and will be completed by April 30, 2026. Deliver PROJECT DOCUMENTS to 141 NW Barstow Street, Waukesha, WI unless other directions are given by the DEPARTMENT.

Compensation for all SERVICES provided by the CONSULTANT under the terms of the CONTRACT will be from the:

☒ DEPARTMENT ☐ MUNICIPALITY

For project management, meetings, field survey, data gathering, environmental document preparation, hazardous materials investigation, agency and utility coordination, public involvement, reports, traffic/signals, right of way plat, storm sewer/storm water management, street lighting design, water main, preliminary and final roadway design, structure design, PSE preparation and submittal, actual costs to the CONSULTANT up to \$341,950.85 plus a fixed fee of \$24,967.48, not to exceed \$366,918.33 in total.

THREE PARTY DESIGN ENGINEERING SERVICES CONTRACT
SIGNATURE PAGES

For hazardous materials environmental records search subcontracted to ERIS, the CONSULTANT'S actual cost to ERIS not to exceed \$1,170.00 for units delivered based on rates in the table below.

Item Description	Unit Type	Unit Cost
Environmental Database Report and Fire Insurance Maps	Each	\$290.00
Historical Aerial Photographs	Each	\$170.00
Historical Topographic Maps	Each	\$110.00
City Directory Search	Each	\$600.00

For Archaeological Surveys and Studies, subcontracted to Commonwealth Heritage Group, the CONSULTANT'S actual costs to Commonwealth Heritage Group actual cost up to \$2,706.52 plus a fixed fee of \$194.84, not to exceed \$2,901.36 in total.

For Historical Surveys and Studies, subcontracted to Heritage Research, LTD., the CONSULTANT'S actual cost to Heritage Research, LTD., as compensation for direct labor hours and non-labor directs costs not to exceed \$13,636.70 based on rates in the tables below.

Specific hourly rates to be paid for hours in which Heritage Research, LTD.'s employees are directly engaged in performing services under this CONTRACT:

Employee Name	Classification	Hourly Rate
John Vogel	Senior Historian	\$95.73

Classifications or employees not listed above cannot be invoiced unless added to the contract through an amendment.

The following non-labor direct costs will be reimbursed based on Heritage Research, LTD.'s actual cost:

Item Description	Unit Rate	Total Cost
Mileage	\$0.67/mile	\$234.50

Non-labor direct costs not listed above cannot be invoiced unless added to the contract through an amendment.

For title searches subcontracted to Land Title Services, the CONSULTANT'S actual cost to Land Title Services not to exceed \$18,225.00 for units delivered based on rates in the table below.

Item Description	Unit Type	Unit Cost
Title Search	Each	\$595.00
Title Update	Each	\$75.00

Compensation for all SERVICES provided by the CONSULTANT under the terms of the CONTRACT shall be for an amount not to exceed \$402,851.39.

THREE PARTY DESIGN ENGINEERING SERVICES CONTRACT
SIGNATURE PAGES

The CONSULTANT does and will comply with the laws and regulations relating to the profession of engineering and will provide the desired engineering SERVICES.

This CONTRACT incorporates and the parties agree to all of the standard provisions of the Three Party Design Engineering Services Contract, dated July 1, 2015 and referenced in Procedure 8-15-1 of the State of Wisconsin Department of Transportation Facilities Development Manual. CONSULTANT acknowledges receipt of a copy of these standard provisions.

This CONTRACT incorporates all of the MANUALS defined in the CONTRACT.

The parties also agree to all of the Special Provisions which are annexed and made a part of this CONTRACT, consisting of 28 pages.

Nothing in this CONTRACT accords any third part beneficiary rights whatsoever on any non-party that may be enforced by any non-party to this contract.

For the CONSULTANT

For the DEPARTMENT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

For the City of Wauwatosa (MUNICIPALITY)

By: _____

Dennis McBride
Mayor

Date: _____

Approved as to Form

By: _____

Alan Kesner, City Attorney

Date: _____

Date: March 25, 2020

Page 3 of 4

THREE PARTY DESIGN ENGINEERING SERVICES CONTRACT
SIGNATURE PAGES

By: _____
Steven Braatz, City Clerk

Date: _____

By: _____
John Ruggini, Finance Director

Date: _____

January 31, 2024

Mike Steiner, PE
Assistant City Engineer
City of Wauwatosa
7725 W. North Avenue
Wauwatosa, WI 53213

RE: Contract for Professional Services
Wisconsin Avenue (106th Street to 98th Street)
Real Estate Services

Dear Mr. Steiner:

Kapur & Associates, Inc. (CONSULTANT) is pleased to submit this proposed contract and scope of work to the City of Wauwatosa, WI (CLIENT) for professional services for improvements along Wisconsin Avenue.

SCOPE OF SERVICES

Kapur's scope of services includes the following tasks.

Task A: Project Administration and Coordination

Project administration for carbon reduction program document review and real estate services including subconsultant management and coordination, invoicing and scheduling, providing information as requested to facilitate real estate acquisition, and coordinating with the City of Wauwatosa.

Task B: Carbon Reduction Program Documents

Provide guidance to the CLIENT and review non-traditional project forms completed by the CLIENT for the planned HPS to LED street light conversion project funded by the Carbon Reduction Program grant.

Task C: Real Estate Services (subcontracted to Single Source, Inc.)

- (1) Negotiations/Acquisitions
 - (a) Negotiate all parcels and other acquisition services (assuming up to 15 parcels).
 - i. Up to fifteen (15) acquisitions shall be acquired via appraisal. Additional acquisitions shall be considered extra work.
 - (b) SUBCONSULTANT shall maintain an individual Parcel File Folder on each parcel to be negotiated which will include a negotiation diary of each contact with the property owner and/or action taken in the acquisition process as well as all other pertinent documents/correspondence relating to the negotiations/acquisition of the individual parcel. Individual Parcel Files will contain, as applicable, the following:
 - i. Parcel Check List





- ii. Title Search Report
 - iii. Legal Description for Acquisition Area(s)
 - iv. Copy of Introductory Letter(s)
 - v. Approved "Offering Price Report"
 - vi. Offering Price Letter
 - vii. Negotiation Diary
 - viii. Closing Statement Form
 - ix. Disposition of Real Estate Tax Forms (if applicable)
 - x. Property Remnant Report (if applicable)
 - xi. Property Inventory Report (if applicable)
 - xii. Statement to the Construction Engineer
 - xiii. W-9 Form
 - xiv. Design Study Report
 - xv. Partial Releases (if deemed necessary). Should a bank charge a fee for a partial release, CLIENT shall decide if reasonable and will pay cost. If unreasonable, property will be acquired via a Jurisdictional Offer.
 - xvi. SUBCONSULTANT shall be reimbursed by CLIENT for all recording fees.
- (c) All individual parcel files are considered to be the property of CLIENT and shall be turned over by SUBCONSULTANT upon completion of the project.
- (d) Any appraisal received from property owners shall be handled according to the Real Estate Program Manual (REPM), Chapter 3. SUBCONSULTANT shall submit a copy of such appraisals, with a recommendation for payment or non-payment, to CLIENT for review and approval. To be eligible for payment from CLIENT, the owner's appraisal must be delivered, and date stamped to SUBCONSULTANT within 60 days of the date of delivery of appraisal/offer (post-marked by the due date is acceptable).
- (e) When an 'Administrative Revision' offer appears warranted due to market evidence, errors, design changes, owner's counter-proposal, litigation protection, etc., SUBCONSULTANT shall:
- i. When a minor increase in the approved offer (based on justification) is proposed SUBCONSULTANT shall:
 - 1. On nominal parcels, have owner sign Waiver showing increased amount subject to CLIENT approval.
 - 2. On all others, attempt to secure a signed 'purchase agreement' from the owner for the increased amount, contingent on CLIENT approval.
 - ii. When a significant increase in the approved offer is proposed, SUBCONSULTANT shall discuss the proposed settlement with CLIENT before making any commitments with the owner.
 - iii. SUBCONSULTANT shall present to the owners all approved administrative revisions in writing, amending the previous offer.
- (f) All payment requests, with supporting documentation, shall be submitted to CLIENT for processing.





- (g) On parcels being acquired by "Award", SUBCONSULTANT shall:
 - i. Prepare the Jurisdictional Offer (J.O.) and coordinate with CLIENT for review and approval of the file prior to SUBCONSULTANT forwarding to the property owner and other parties of interest.
 - ii. Upon approval of the Jurisdictional Offer, SUBCONSULTANT will send the Jurisdictional Offer (J.O.) to the property owner, and other parties of interest, via "certified mail, return receipt requested".
 - iii. SUBCONSULTANT shall prepare a "Lis Pendens" and forward, along with a copy of the J.O. and legal description of the property, to the "Register of Deeds" for filing within 14 days of mailing the J.O. to the property owner.
 - iv. At the time the J.O. is mailed to the property owner, an award and payment request shall be submitted to CLIENT for final approval.
 - v. CLIENT will forward the check to SUBCONSULTANT for disposition and final file closing.
- (h) SUBCONSULTANT shall submit monthly progress reports to CLIENT, which shall include, but not limited to, the following:
 - i. A summary of activities for the month.
 - ii. Notification of any problems encountered.
- (i) SUBCONSULTANT shall provide deeds and other documents for recording directly to the appropriate 'Register of Deeds' after the property owner(s) has/have been paid. SUBCONSULTANT shall pay any recording and filing fees.
- (j) SUBCONSULTANT shall assume responsibility for the final disposition of the acquisition(s) to include – payment request, payment, recording, and all condemnation actions required up to the filing of the Award of Damages.
- (k) CLIENT'S responsibilities include:
 - i. CLIENT shall send a "Letter of Introduction" and a "Rights of Landowners Under Wisconsin Eminent Domain Law" brochure to each parcel owner. The letter shall be sent on CLIENT letterhead.
 - ii. CLIENT will approve all offering prices (including nominal parcel payments as necessary), revised offering prices, administrative settlements, and awards. CLIENT agrees to do so in a timely manner.
 - iii. CLIENT will process all payment requests and provide checks to SUBCONSULTANT as indicated on a parcel-by-parcel basis.
 - iv. CLIENT will provide payment for all recording or filing fees (pass through cost).
- (2) Appraisals
 - (a) SUBCONSULTANT will furnish to CLIENT complete and fully documented appraisal reports of fifteen (15) partial acquisitions. Additional acquisitions shall be considered extra work.





- (b) Appraisals will be Standard Abbreviated, "before" & "after" appraisals.
 - (c) SUBCONSULTANT will prepare two (2) copies of the appraisal report (with color photos) for each appraised parcel and shall be delivered to CLIENT with an Offering Price Report for review and approval.
 - (d) CLIENT will review the report, coordinate with SUBCONSULTANT any revisions or clarifications, and notify SUBCONSULTANT when the report has been accepted and approved.
- (3) Relocations
Not included in this CONTRACT.
- (4) Utility Parcels
Not included in this CONTRACT.

SCHEDULE

According to the anticipated schedule for the Wisconsin Avenue Multi-Use Path (Design ID 2994-23-00), real estate services are anticipated to start in November 2024. Based on that schedule, Kapur and Single Source, Inc. will complete the real estate services scope of work by December 2025.

FEES AND BILLINGS

The CONSULTANT will be compensated by the CLIENT for services provided under this CONTRACT on the following basis:

For Tasks A-B performed by Kapur, \$8,471.08 as shown in the attached Fee Breakdown Charts.

For Task C (Real Estate Appraisals and Negotiations/Acquisitions), subcontracted to Single Source, Inc., the CONSULTANT'S actual cost to Single Source, Inc. not to exceed \$53,700.00 for units delivered based on rates in the attached proposal letter.

Compensation in excess of the total contract amount of \$62,171.08 shall not be allowed unless approved by a written contract amendment.

ACCEPTANCE

If this proposed contract is acceptable, please sign and date this original copy on Standard General Contract Terms and return it to our office. Thank you for the opportunity to submit this proposed contract. My team is looking forward to continuing work with you on this project. Should you have any questions, or require further information, please call me at (414) 751-7230.





STANDARD GENERAL CONTRACT TERMS FOR PROFESSIONAL ENGINEER/SURVEY SERVICES

Article 1 Scope of Services

ENGINEER shall provide CLIENT with services in connection with the Project as described in Scope of Services. ENGINEER shall use the standard of care typically exercised in conducting professional practices outlined in the Scope of Services. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with the ENGINEER's service.

Unless otherwise specifically included in the proposal, ENGINEER's scope of services does not include geotechnical or environmental audits for the identification of hazardous wastes, wetlands, floodplains or any other structural or environmental qualities of the land, air or water.

Article 2 Schedule of Services

ENGINEER shall start and complete work as set forth in the Scope of Services. ENGINEER shall conduct the work in an expeditious manner subject to limitations such as weather, information acquisition, communications and other factors outside of ENGINEER's control. Both parties recognize that the schedule of services is subject to factors that may be unknown at the time of this Agreement.

Article 3 CLIENT's Responsibility

CLIENT shall do the following in a timely manner so as not to delay the service of ENGINEER:

3.1 Provide all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints.

3.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project; all of which the ENGINEER may use and rely upon in performing the services under this Agreement. Verification of the accuracy and completeness of any information provided by the CLIENT is beyond the scope of this agreement.

Article 4 Payment Terms

CLIENT agrees to pay all fees within 45 days of the date of the invoice. Balances due over 45 days will be assessed an interest rate of 1.5 % per month. CLIENT agrees to pay for any costs of collection including, but not limited to lien costs, court costs or attorneys' fees involved in or arising out of collecting any unpaid or past due balances.

CLIENT understands and agrees to pay for all services rendered regardless of CLIENT's ability or inability to proceed with the project for any reason, gain governmental approvals or permits or secure financing for the project.

Article 5 Term and Termination

ENGINEER's obligation to render services under this Agreement will extend for a period that may reasonably be required for the services to be provided, including extra work and required extensions. If CLIENT fails to give prompt authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed or suspended by CLIENT for more than three months for reasons beyond ENGINEER's control, ENGINEER may, after giving seven days' written notice to CLIENT, suspend or terminate services under this Agreement.

If payment is not received within 45 days of the date of invoice, ENGINEER reserves the right, after giving seven days' written notice to CLIENT, to suspend services to the CLIENT or to terminate this Agreement. ENGINEER shall not be liable to CLIENT or any third parties for any damages caused by the suspension or termination of work for non-payment. CLIENT may terminate this Agreement for any reason or without cause upon 30 days' written notice to ENGINEER. If any work covered by this Agreement is suspended, terminated or abandoned for any reason other than ENGINEER'S breach of the Agreement, the CLIENT shall compensate the ENGINEER for services rendered to the date of written notification of such suspension, termination or abandonment.

Article 6 Indemnity

CLIENT and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's negligent or intentional acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of CLIENT and ENGINEER, they shall be borne by each party in proportion to its negligence. Nothing contained within this Agreement is intended to be a waiver or estoppel of the contracting municipality CLIENT or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality CLIENT or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

Article 7 Limit of Liability

CLIENT agrees that ENGINEER's total liability, in the aggregate, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, shall not exceed \$500,000.


Article 8 Ownership and Copyright of Documents

All documents prepared or furnished by ENGINEER pursuant to this Agreement are instruments of ENGINEER's professional service, and ENGINEER shall retain an ownership and property interest therein, including all copyrights. ENGINEER grants CLIENT a license to use instruments of ENGINEER's professional service for the purpose of purchasing or identifying property or constructing the project. Reuse or modification of any such documents by CLIENT, without ENGINEER's written permission, shall be at CLIENT's sole risk, and CLIENT agrees to indemnify and hold ENGINEER harmless from all claims, damages and expenses, including attorneys' fees, arising out of such use by CLIENT or by others acting through the CLIENT.

Article 9 Electronic Media

Copies of documents that may be relied upon by the CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by ENGINEER. Files in electronic formats, or other types of information furnished by ENGINEER to CLIENT such as text, data or graphics, are only for the convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic formats, ENGINEER makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software applications packages, operating systems or computer hardware differing from those in use by ENGINEER at the beginning of this project.

ENGINEER: **Kapur**

By: 
Print: Aaron Bubb
Title: Associate / Project Manager
Date: January 31, 2024

The above and foregoing proposal is hereby accepted and ENGINEER is authorized to proceed with the work.

CLIENT: **City of Wauwatosa**

By: _____
Print: _____
Title: _____
Date: _____

2-Party Agreement
Wisconsin Avenue
Real Estate
City of Wauwatosa
Original Contract

Fee Computation Summary by Engineering Task

Task	Activity Code	Direct Labor Costs	Indirect Labor Costs	Fixed Fee	Direct Expenses	Total
PROJECT ADMINISTRATION AND COORDINATION	887	\$1,248.66	\$1,801.19	\$226.32	\$67.00	\$3,343.17
CARBON REDUCTION PROGRAM DOCUMENTS	765	\$1,954.42	\$2,819.25	\$354.24	\$0.00	\$5,127.91
TOTAL		\$3,203.08	\$4,620.44	\$580.56	\$67.00	\$8,471.08

Home Office Overhead Rate: 1.4425

Fixed Fee: 7.25%

2-Party Agreement
Wisconsin Avenue
Real Estate
City of Wauwatosa
Original Contract
Direct Expenses by Item

Item	Activity Code	Unit	Unit Type	Rate	Total Expenses
Mileage (Coordination) - Personal Vehicle Miles	887	100	Miles	\$0.670	\$67.00
TOTAL					\$67.00

2-Party Agreement
Wisconsin Avenue
Real Estate
City of Wauwatosa
Original Contract
Consultant Contract Total Fee Computation

Wisconsin Avenue 2-Party Agreement	Original Contract	Total for Contract
Number of Staff Hours	52	52
Total Direct Labor	\$3,203.08	\$3,203.08
Total Indirect Labor Costs	\$4,620.44	\$4,620.44
Direct Expenses	\$67.00	\$67.00
Subtotal	\$7,890.52	\$7,890.52
Fixed Fee	\$580.56	\$580.56
Subtotal	\$8,471.08	\$8,471.08
Subcontract 1 - Single Source, Inc.	\$53,700.00	\$53,700.00
TOTAL COST	\$62,171.08	\$62,171.08

Home Office Overhead Rate 144.25%

Fixed Fee 7.25%



January 10, 2024

Aaron J. Bubb, PE
Kapur & Associates
Associate / Project Manager
7711 N Port Washington Road, Milwaukee, Wisconsin 53217

**Subject: Project ID 2994-23-00
Wisconsin Avenue Multi-Use Path
Honey Creek-Mayfair, Wisconsin-Potter
Milwaukee County
City of Wauwatosa**

RE: Proposal Letter: Appraisal & Acquisition Services

Dear Mr. Bubb:

Single Source, Inc. shall appraise and acquire 15 partial acquisitions, per right-of-way plat number 2994-23-00. The appraisal reports will incorporate an extraordinary assumption that the improvements equalized assessed value is equivalent to the market value of the improvements. All acquisitions shall be in compliance with WISDOT standards and Chapter 32 of Wisconsin Statutes.

The proposed fees are as follows;

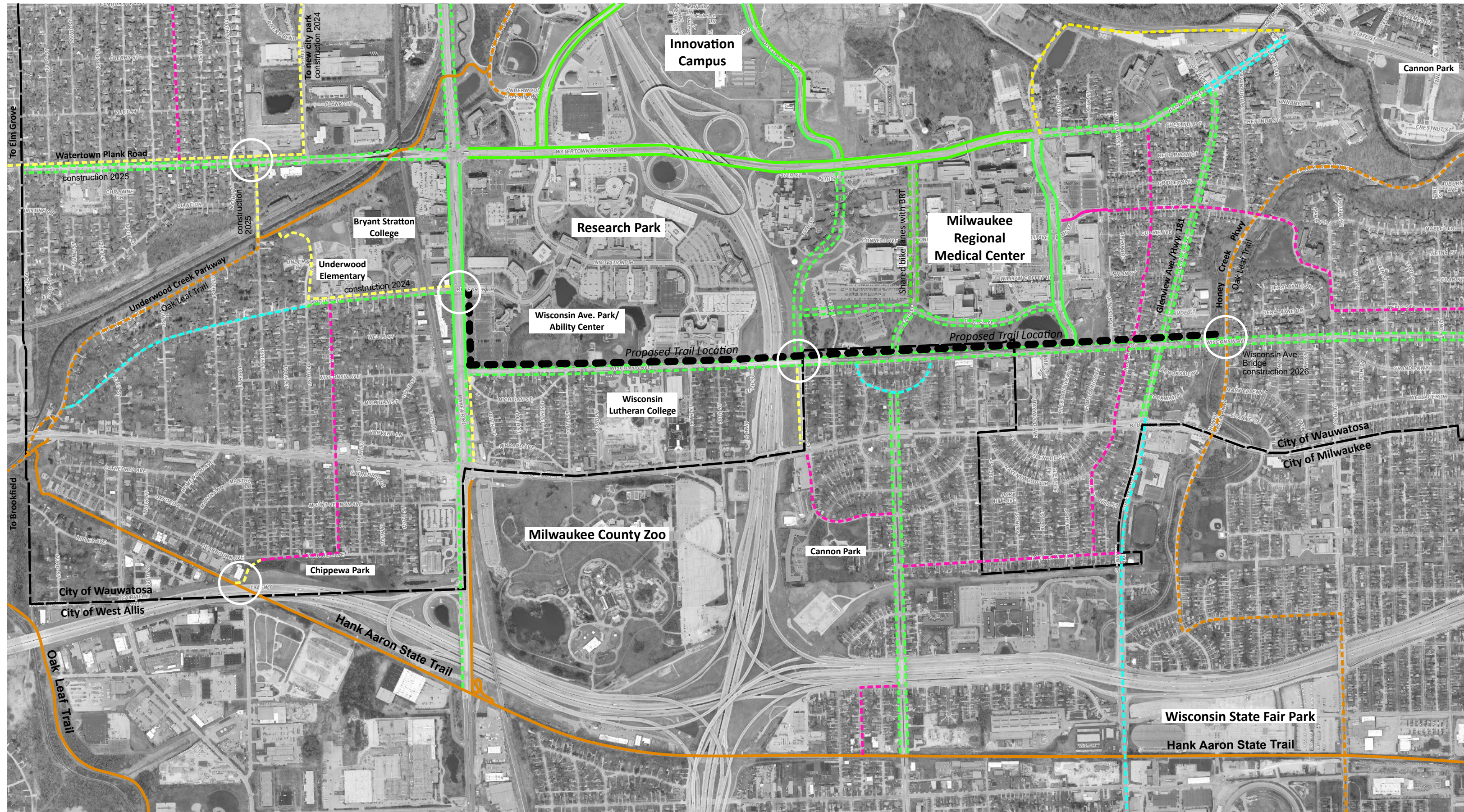
15 Appraisals @ \$2,150 per report =	\$32,250
15 Negotiations @ \$1,200 per negotiation =	\$18,000
15 recordings @ \$30 each =	\$ 450
LPA Certification =	\$ 500
Project Management =	\$ 2,500
	<u>\$53,700</u>

If you have any questions or concerns, please do not hesitate to call; 262-789-8300, X103. We appreciate the opportunity and are looking forward to working with you.


Respectfully,

Single Source, Inc.

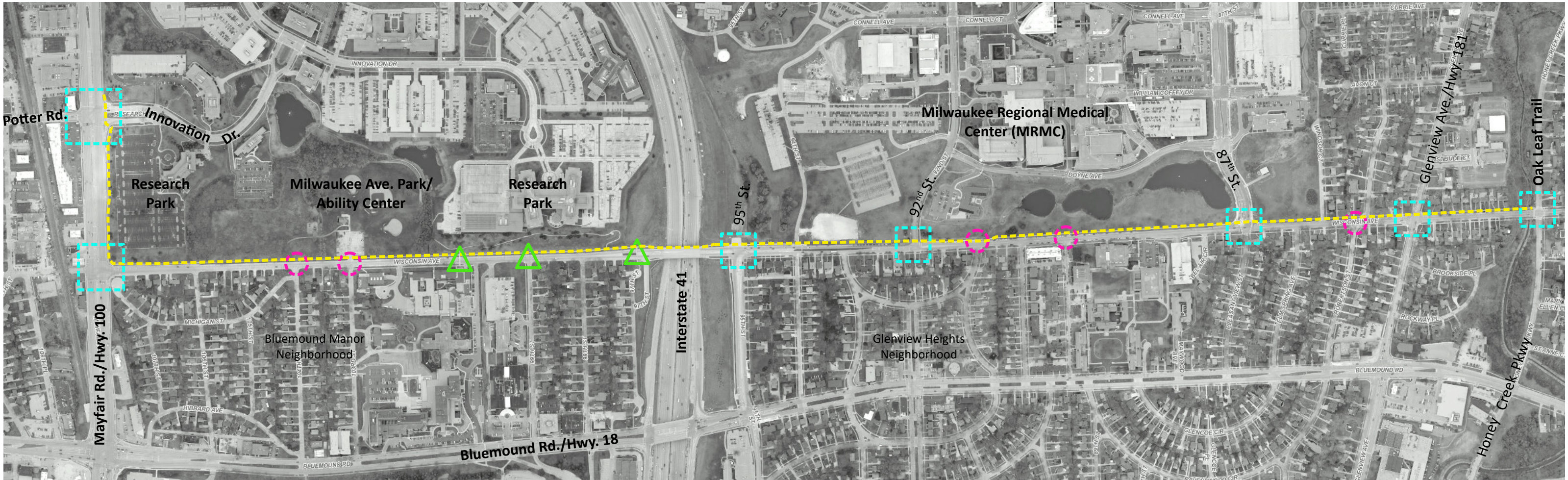
Steve Boll
Principal



- Existing on-street bike lanes
- Proposed on-street bike lanes
- Greenway/Bicycle Boulevard
- Proposed sharrows
- Proposed off-street multi-use trail
- On-street bike route/trail
- Off-street trail
- Proposed off-street trail/TAP Grant Application

 Key bicycle and pedestrian connections

Wisconsin Avenue Multituse Trail Overall Area Map



View north on Mayfair Road.



View east on Wisconsin Ave. Typical existing condition with 5' sidewalk and grass terrace. Terrace varies along corridor.



View east on Wisconsin Avenue.



View east at the intersection with 87th Street.

- Proposed multiuse trail
- Proposed crosswalk and ramp improvements
- Signalized intersection
- △ Existing crosswalk to be improved

Wisconsin Avenue Multiuse Trail

Date : 3.23.2023



Staff Report

File #: 24-0188

Agenda Date: 2/13/2024

Agenda #: 3.

Consideration of approval of a Lease Agreement for certain portions of the Muellner Building and a Memorandum of Understanding regarding loan issuance terms between the City of Wauwatosa and the Wauwatosa Curling Club

Submitted by:

David Simpson

Department

Department of Public Works

A. Issue

The planned remodel of the Muellner Building this year includes significant monetary contributions from the Wauwatosa Curling Club. A long-term lease is necessary in conjunction with these contributions to ensure the Curling Club's investment into the facility aligns with a shared vision of a long-term continued partnership. In conjunction with this project the Wauwatosa Curling Club would like to secure a loan with the City so a Memorandum of Understanding describing proposed loan terms is also attached for review and potential approval.

B. Background/Options

The Wauwatosa Curling Club (WCC) has been an integral part of Hart Park since 1925 when the WCC began curling outdoors at the park. In 1941 the WCC moved to its current indoor home within the Muellner Building and has continued to utilize the facility ever since. The WCC continues to be one of two main users of portions of the Muellner Building with the other being the City's Senior Center. The attached letter from the WCC includes more history about the WCC's partnership with the City as well as their request for approval of the attached lease and memorandum of understanding (MOU).

In 2019 the City and the WCC began working toward a plan to request utilization of tourism funding to improve a portion of the Muellner Building along with funding that would be provided by the WCC through a repayment agreement and a new lease. The COVID-19 Pandemic caused a significant delay in that plan, however, the Common Council's decision to allocate \$2,000,000 of ARPA funds to the Muellner Building has allowed the project to move forward.

Since the initial allocation of ARPA funds from the City, the WCC has committed to funding an additional \$1,500,000 toward the project and the Wauwatosa Tourism Commission has awarded funding of \$500,000 to the project as well. The City's approved Capital Improvement Budget also includes additional funds for furtherance of building efficiency upgrades as well as solar PV on a portion of the building's roof.

The WCC's commitment to fund \$1,500,000 towards the project will be a mix of funds from their fundraising efforts as well as a proposed loan from the City to cover the gap between their fundraising efforts and the \$1.5M commitment. The attached MOU outlines the terms of the proposed loan. If the Common Council approves the

Memorandum of Understanding the Finance Director and City Attorney would be authorized to finalize the loan documentation and issue the loan once the final value of the loan is known.

The proposed lease agreement is also attached which is largely based on the existing lease agreement that has worked well for both parties in the past. The largest change included in the proposed lease is the addition of a Building Reserve that will be funded by the WCC as well as the City. This Reserve would be set aside in a segregated fund that would only be used for future building repair or renovation items. The amount contributed will be determined through a Building Reserve Study that would outline all future expected costs by area within the building. This innovative approach to determining a contribution to the annual lease will allow for continued investment into the historic structure. The other significant change is that the initial term of the lease is 30 years, which allows for the WCC to feel confident that their large investment in the building is secure.

The building renovation project is currently out for bid with a planned bid opening of February 14th and potential award of the contract at the February 20th Common Council meeting. If the Financial Affairs Committee recommends approval of the agreements tonight it would potentially allow for award of the construction contract and these agreements on the same Common Council meeting. By aligning approvals in this fashion, we will know if bids have come back favorably prior to final approvals of these agreements.

The WCC has been a great asset to the Park and the Community so I am excited to see this partnership expand and continue for decades to come.

C. Strategic Plan (Area of Focus)

Priority 1: Economic Development and Financial Resilience; Promote and support local businesses and anchor institutions

Priority 3: Infrastructure

Priority 5: Quality of Life

D. Fiscal Impact

Approval of the lease agreement will require the WCC to contribute to the Building Reserve Fund upon completion of the loan repayment. The City would also contribute if our rental revenue were to increase beyond our budgeted revenue (50% of the increase). We would also contribute to the Building Reserve Fund in an amount equal to that amount contributed by the WCC barring an emergency circumstances or losses in revenue. Approval of the MOU will allow the City to issue a loan to the WCC that would be repaid to the City including interest.

E. Recommendation

Approval of the attached Lease Agreement for certain portions of the Muellner Building and a Memorandum of Understanding regarding loan issuance terms between the City of Wauwatosa and the Wauwatosa Curling Club

LEASE OF PORTIONS OF MUELLNER BUILDING

This Lease of Portions of the Muellner Building (hereafter "Lease") is made between the City of Wauwatosa, a municipal corporation of the State of Wisconsin (hereafter "City"), and Tosa Curl, Inc. dba Wauwatosa Curling Club, a non-profit corporation whose address is 7300 West Chestnut Street, Wauwatosa, WI 53213 (hereafter "Club").

Recitals

WHEREAS, the City owns certain real property known as the Muellner Building (hereafter "Building"); and

WHEREAS, the Club wishes to continue its relationship with the City as the Club invests money to make certain improvements thereto; and

WHEREAS, the City wishes to make the Building available to the Club consistent with its obligations to other organizations and responsibility to the citizens of Wauwatosa;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Premises Leased

- a. Upon the terms and conditions of this Lease, the City has granted and the Club has accepted a right for the Club to use and occupy portions of the Building as set forth in more particular detail on Exhibit A ("Premises") during the period indicated on said Exhibit and subject to the terms and conditions set forth therein.
- b. This Lease is made with the understanding that the Club shall have quiet enjoyment of the Premises, including reasonable rights of and ingress and egress through the halls, passageways, lobbies and corridors of the Building and access to its public restrooms and parking area around the Building subject to the terms and conditions of this Lease, however, the Club shall acquire no other rights in any portion of the Building other than in the portions described above.

2. Purpose of Lease

The Club represents that the Premises described above are to be used by the Club exclusively for the sport of curling and associated activities. The Club may use the Premises to teach and practice curling, to hold tournaments and events involving competitive curling, to serve the Club's membership, to promote the sport of curling, and to educate the public of the advantages of participating in curling.

3. Consideration/Rental

a. Initial Improvement Contribution.

- i. The City and Club have worked in collaboration to design certain initial improvements to the Muellner Building that benefit the Club and the City as shown on the final approved construction plans prepared by Kahler Slater (bid opening date of 2/14/24) and Garland/DBS (bid opening date of 1/30/24).
- ii. The Club will contribute \$1,500,000 to the initial improvements via cash payments to the City and a loan from the City to the Club which will be approved via a separate Loan Agreement.
- iii. The City's Tourism Commission will contribute \$500,000 toward the initial improvements. In recognition of this contribution the Club agrees to actively pursue and host, when possible, significant Curling events/tournaments in Wauwatosa.
- iv. The City will contribute \$2,600,000 toward the initial improvements.
- v. Should the total project costs (soft and hard costs) exceed \$4.6M (total contributions of the Club, Tourism Commission, and City), the City and Club will negotiate coverage of the overage or reduction in project scope in good faith based on all available information at the time of cost overruns.

b. As consideration, the Club agrees to pay to the City as rent for the above-described Premises the following amounts:

- i. The cost of labor expenses incurred during the previous Season, as defined in Exhibit A, by the City in connection with cleaning and maintenance activities as a result of the Club's use. The labor rate shall include the hourly rate paid to the employees as shown in the City's Consolidated Fee Schedule which is updated from time to time by the City's Common Council.
- ii. The cost of utility expenses incurred during the previous Season by the City, attributable to the Club's use of the Premises.

iii. Annual rental fee for use of Premises described in Exhibit A is established as follows:

1. No rent will be required to be paid by the Club until all payments have been made to the City under the terms of the Loan Agreement or the Club is declared in default of the loan.
 - a. Annual Rent owed by the Club will be based on a proportionate share of a Reserve Fund which will be utilized for improvements/replacements/maintenance as outlined in a Reserve Study which will be completed by a

consultant secured by the City, in consultation with the Club, at the City's expense. The Reserve Fund will be held by the City and utilized for improvements/replacements/maintenance of the Muellner Building. The following percentages will be utilized to calculate an annual rent cost based on the Reserve Study. These percentages are based on the Season described in Exhibit A and will be modified accordingly should the length of Season change:

- i. Lower Level (not building mechanicals)-100%
- ii. Tosa Room Interior and Exterior (including roof) - 50%
- iii. Building Envelope - 10%
- iv. Firefly Room, Interior and HVAC - 25%
- v. 1st Floor Restrooms - 10%
- vi. Elevator - 15%
- vii. Building Systems- 10%

2. The City will also contribute to the Reserve Fund, at a minimum, the following annual contributions:
 - a. Following completion of year end accounting for all Muellner Building rental revenue in 2025 and continuing so long as this lease is in force, the City will contribute annually 50% of any rental revenue in excess of budgeted revenue or budgetary increases beyond 2023 budgets.
 - b. When the Club begins contributing to the Reserve Fund the City will match the contribution made.
 - c. Should an emergency repair or significant revenue loss occur (such as a pandemic) the City and the Club reserve the right to reduce the contribution for that year/s.
3. Improvements made utilizing the Reserve Fund will be guided by the Reserve Study. In cases where replacements/repairs are necessary in advance of the timeline described in the Reserve Study the parties shall negotiate in good faith to determine a course of action. While the City reserves final decision-making authority, input from the Club will be weighted more heavily for areas of the building that they use more frequently as indicated by the percentages in section 3.b.iii.1.a.

- iv. Use of any other space not covered by Exhibit A shall be subject to normal park rental policies and fees.
- c. The City shall invoice the Club in advance and no earlier than October 1. Payment shall be made within 30 days of receipt of invoice.

4. Term

- a. The term of this Lease shall be for a thirty-year period, beginning on April 1, 2024 and ending on March 30, 2054, unless sooner ended as provided herein.
- b. Provided that the Club is not in default under this Lease, the Club shall have the option to seek renewal and extension of this Lease for four additional periods of 5 years each (hereafter “Option Periods”), upon City approval of such extension.”). To exercise such an option, the Club must deliver to the City written notice of its election to exercise renewal for the Option Period at least 90 days prior to the last day of the then-current term of the Lease. Upon City’s receipt of each such notice, the City shall seek approval of the Common Council for such renewal, within 30 days of receipt if possible, and provided the Common Council approves the extension, the Lease shall be extended for the Option Period on the same terms and conditions as set forth herein.

5. Taxes

The Club shall pay any and all taxes levied and assessed upon any property, furniture, equipment, inventory and other Improvements belonging to the Club and located upon the Premises, and all leasehold and possessory interest taxes levied or assessed by any proper taxing authority.

6. Community Events During the Season

- a. The Club hosts curling events open to the public throughout the Season, including one community tournament (known in curling as a bonspiel).
- b. The community bonspiel will take place on one day during the holiday break (approx. late December). Exact date will be posted when the Club calendar is created during the month of July that precedes the start of a Season annually.
- c. The Club will be responsible for organizing and staffing the community bonspiel.
- d. The Club will also host a minimum of three (3) other events open to the public over the course of the Season. A minimum of one (1) of the three events will be held in the second half of the Season. The Club will be responsible for organizing and staffing the events.

7. Repairs and Maintenance

- a. The Club represents that the Club has inspected and examined the Premises and accepts them in their present condition and agrees to keep the Premises safe and in good order and condition at all times during the term, and upon expiration of this Lease, or at any sooner termination, the Club will quit and surrender

possession of the Premises peaceably and in as good order and condition as the Premises were at the commencement of the term other than ordinary wear and tear.

- b. The City shall not be responsible for cost of insurance, maintenance or replacement of the Club's ice-making equipment, dehumidification equipment, or any club-owned equipment.
- c. Areas of the Building not regularly and customarily leased for exclusive use of tenants, including, but not limited to, any entranceways and vestibules, common hallways and stairs, parking areas, driveways, walks and landscaped areas adjacent to and accessing the Building shall be used by the Club in common with the City and other tenants (hereafter "Common Areas"). The Club, its employees, customers and invitees, shall have a reasonable, non-exclusive right to use, in common with the City and the other tenants and occupants of the Building, and their respective employees, customers and invitees, and all others to whom City has or may hereafter grant rights to use the same, the public portion of the Common Areas as may from time to time exist. The City shall be responsible for maintaining and repairing all rooms and Common Areas of the Building and Premises, including their exterior walls, roof and foundation, and the mechanical, electrical and plumbing equipment therein other than the Club's ice-making and dehumidification equipment.
- d. In addition, the City will maintain all parking areas and sidewalks around the Building including snow plowing and salting during normal Park hours.
- e. Repairs of the Lower Level Club Room, Tosa Room and Firefly Room Improvements installed by the Club shall be the responsibility of the Club.
- f. Damage to equipment done by city employees due to incorrect operation misuse will be the responsibility of the City.

8. Improvements by the Club

- a. Any fixtures or other real property improvements made by the Club to the Building ("Improvements") shall be at the Club's sole cost and expense. Improvements shall only be made after receiving written permission from the City provided that:
 - i. All work shall be completed in a neat and workmanlike manner in accordance with sound engineering practices, applicable rules, regulations and laws.

- ii. All work shall be performed either by the Club or by a fully qualified independent contractor who carries all insurance required under Paragraph 11 and who has been approved in writing by the City before such contractor has done any work on the Premises. Certificates of all insurance coverages required under this Lease shall be provided to the City by the Club prior to the commencement of any work upon the Premises.
 - iii. Work identified in Exhibit B of this Lease is hereby approved by the City.
- b. Any damage done to the Premises or Building during construction of Improvements shall be immediately repaired by Club at Club's expense and returned to prior condition to City's satisfaction. Club shall promptly remove any claim or lien to be placed against any part of the Premises or Building that arises out of work, labor, material or supplies provided or supplied to Club, its contractors or subcontractors.
- c. Upon termination of the Lease, the Improvements shall become property of the City without any cost to the City except the Club's personal property or Improvements removable without damage from the Premises shall be removed at the end of the Lease term.

9. Club Sponsorship

- a. To support curling activities, the Club may from time to time solicit sponsorship by various individuals, groups, associations and businesses. In recognition of said sponsors the Club may place acknowledgements of sponsorship in the Lower Level Club room, on the ice rink floor, removable signage on the walls of the Tosa Room. These acknowledgements of sponsorship may remain during the entire curling season or may be changed by the Club from time to time throughout the season.

10. Management

- a. In renting the Premises, the City does not relinquish the right to control the management of the Premises, and to enforce all necessary and proper rules for the management and operation of same, and the City through its Public Works Director, police officers, firefighters, building and health inspectors and other designated representatives, shall have the right upon reasonable notice to enter the Lower Level Club Room for the purpose of ensuring compliance with this Lease or laws related to its use and occupancy. Reasonable notice shall consist of attempting to make telephonic or email contact via tosa@wauwatosacurlingclub.com with the Club's designated representative. The entire Building, including the Premises expressly covered by this Lease, shall at all times be under the charge and control of the City, provided this shall not authorize or empower the City to direct the activities of the Club or to assume liability of the Club. Notice shall not be required in the event of an emergency.

- b. Nothing contained in this Lease shall limit or interfere with, or be construed to limit or interfere with, any of City's rights or powers, including City's authority in enforcement of its municipal ordinances, including its zoning code. The City hereby acknowledges and agrees that the Club's use of the Building and Premises as set forth in this Lease shall be a permitted zoning use, or shall be an approved nonconforming use, throughout the term of this Lease.

11. Liability and Indemnity

- a. The Club shall save the City harmless from any loss, cost or damage that may arise in connection with this Lease or the Club's use of the Premises by the Club, or their agents, members, guests, or employees, or any other person using the Premises with the Club's consent or authorization. The Club agrees to indemnify and defend the City, its authorized agents and representatives, from any claims or liability for damages to any person, or personal injury and/or death of any person, or Loss or damaged property occasioned by or in connection with the use of the Premises rented, character, acts and conduct of all persons admitted to the Premises, or by or with the consent of the Club's members or employees or any person acting for the Club, and the Club agrees to have on hand at all times a responsible adult member, acceptable to the City's Superintendent, to maintain order and protect persons and property at the Premises.
- b. The City assumes no responsibility for any personal property or Improvements placed in the Premises, and the City is expressly released and discharged from any liability for any loss, injury or damage to persons or property that may be sustained by reason of the occupancy under this Lease. Specifically, the Club understands that the Premises has not been floodproofed, and assumes responsibility for any damage to its property or operations due to flooding or other natural disasters which may occur during its occupancy.
- c. All indemnification obligations of Club under this Lease shall survive the expiration or earlier termination of this Lease.
- d. No provision of this Lease is intended, or shall be construed, to be a waiver for any purpose by City of the provision of Section 893.80 of the Wisconsin Statutes or other applicable limits on municipal liability.

12. Default

The Club shall be deemed in default hereunder upon occurrence of any of the following events:

- a. Club defaults in the payment of rent or any other sums under this Lease to City when due, and does not cure that default within thirty (30) days after written

notice.

- b. Club defaults in the performance of any other term of this Lease and does not cure that default within sixty (60) days, or such longer time as may reasonably be necessary to effectuate the Club's performance given the nature of the breach to be cured, after written notice thereof by City.
- c. Club abandons or vacates the Building.
- d. Club files for relief under federal bankruptcy laws or makes any assignment for the benefit of creditors.
- e. Club becomes insolvent as determined by a court having jurisdiction of such a determination.

13. Insurance

a. General Liability Insurance

- i. The Club's insurance coverage must include, but are not limited to, the following:

- 1. *"Occurrence" Coverage Form*: must be as broad as 1988 "Commercial General Liability" (form CG 00 01) and include the following:

- a. Premises and Operations
- b. Products and Completed Operations, applicable for at least three years following completion of the construction phase of the Lease
- c. Personal Injury, with Employment Exclusion deleted
- d. Unlicensed Mobile Equipment
- e. Explosion, Collapse and Underground Hazard Coverages
- f. Blanket Contractual (Independent Contractor's Protective)
- g. Broad Form Property Damage
- h. Cross Suits Coverage (claims litigated by co-defendants or co-plaintiffs against one another and not the opposite side)

2. Minimum Limits of Liability: 1988 Comprehensive General Liability/Occurrence Form. Combined Single Limit Bodily Injury and Property Damage Liability

- a. Per Occurrence Limit: \$2,000,000
- b. Products/Completed Operations Aggregate Limit: \$2,000,000
- c. Personal Injury Limit: \$1,000,000
- d. Fire Damage Limit: \$500,000
- e. Medical Expense Limit: \$5,000
- f. \$1,000,000 Commercial Umbrella

b. Umbrella Liability policies must include schedule which shows form-following coverage in effect, in excess of all commercial general policies and limits, up to \$1,000,000, Combined Single Limit Bodily Injury and Property Damage Liability.

c. Other Insurance Provisions

- i. The policies are to contain, or be endorsed to maintain, the following provisions:

1. Commercial General Liability Coverages

- a. The City, its officers, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

d. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers are to be licensed with the State of Wisconsin.

e. Verification of Coverage

The Contractor shall furnish the City with certificates of insurance, and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms or approved by the City. For Workers'

Compensation-related risks, only forms approved by the State of Wisconsin Insurance Commissioner are to be used. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

14. Termination

This Lease shall terminate upon the earlier of the following events:

- a. Default by the Club not cured within the applicable grace period.
- b. Expiration of the term of the Lease and any extensions thereto.
- c. Failure of the ice-making equipment to function properly, provided the Club does not give written notice to the City of its election to choose to repair or replace said equipment at its own prorated expense within 120 days after written notification by the City of such failure.
- d. Damage to the Premises or Building including, but not limited to, damage caused by fire, flood, water back-up, wind, earth movement which renders the Premises or Building uninhabitable, provided the City elects not to rebuild the Building within 1 year of such casualty.

15. Waiver

Waiver by either party of any default in performance by the other of any of the terms, covenants, or conditions contained herein shall not be deemed a continuing waiver of that default or any subsequent default.

16. Conformance with the Law / Non-discrimination.

- a. The Club agrees that every member, guest, employee or agent connected with the purposes for which these Premises are rented shall comply with all laws of the United States and the State of Wisconsin, all the ordinances of the City and the rules and regulations of the Wauwatosa Board of Park & Forestry Commissioners for the governance and management of the Building, together with all rules and requirements of the police and fire departments of the City, as those rules, regulations and laws now read or may later be changed or amended in the future, and will not do, nor suffer to be done, anything on the Premises during the term of this Lease, in violation of any such rules, laws or ordinances, and if the attention of the Club is called to such violation, the Club will immediately desist from and correct such violation.
- b. The Club agrees not to discriminate in its membership or use of the Premises on account of race, religion, national origin, disability, gender or age, or any other

basis prohibited by state or federal law.

17. No Nuisances

The Club shall not knowingly perform any acts or carry on any practices upon the Premises which may endanger or injure the Premises, Building or surrounding areas or any person or be a nuisance or menace to adjoining property owners and shall keep the Premises free and clear of debris, rubbish, junk and garbage.

18. Environmental

- a. Club represents and warrants that its use of Premises will not generate any hazardous substances, that it will not unlawfully store or dispose on the Premises or unlawfully transport to or over the Premises any hazardous substances and that its Facility does not constitute or unlawfully contain and will not generate any hazardous substance. "Hazardous substance" shall mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments applicable to the Premises. Club shall defend, indemnify and hold the City harmless from and against any and all liability, loss, cost, damage, and expense, including reasonable attorneys' fees arising out of the release, threatened release, storage or disposal of any such hazardous substance on, under or adjacent to the Property, as a result of activities of the Club.
- b. Likewise, the City represents and warrants that its use of Building will not generate any hazardous substances, that it will not unlawfully store or dispose at the Building or unlawfully transport to or over the Premises any hazardous substances and that its Facility does not constitute or unlawfully contain and will not generate any hazardous substance. "Hazardous substance" shall mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments applicable to the Building. City shall defend, indemnify and hold the Club harmless from and against any and all liability, loss, cost, damage, and expense, including reasonable attorneys' fees' arising out of the release, threatened release, storage or disposal of any such hazardous substance on, under or adjacent to the Property, as a result of activities of the City.

19. No Assignment

The Club may not assign this Lease to any other entity without the consent of City. No assignment shall relieve Club of any obligations hereunder, except if expressly approved in writing by the City.

20. Notice

- a. Any notice required to be sent shall be in writing and shall be either personally delivered or mailed to the respective parties by posting it in the United States mail at the following addresses:

As to the City: City Clerk, Wauwatosa City Hall
7725 W. North Avenue,
Wauwatosa, WI 53213

With a copy to its Director of Public Works at the same time.

As to the Club: Wauwatosa Curling Club
7300 Chestnut Street
Wauwatosa, WI 53213

With a copy to its President at the same time.

- b. Either party may change the address for notice by sending notice of change of address to the other. Notwithstanding the foregoing, any notice mailed under Paragraph 11 must be sent Certified mail, return receipt requested, and shall be deemed effective 3 days after mailing.
- c. The Club shall designate to the City, via email, an individual who may be contacted by the City in the event of an emergency or for purposes of Paragraph 10 of this Lease, which individual has authority to act on behalf of the Club.

21. Applicable Law and Severability

This Lease and any interpretation thereof shall be interpreted under the laws and in the courts of the State of Wisconsin. If one or more of the terms hereof are found to be void or invalid, those terms shall be deemed inoperative and null and void, and shall be deemed modified to conform to such rule of law, all without invalidating any of the remaining provisions of this Lease or the enforceability thereof, which shall continue in full force and effect.

22. Entire Agreement

This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other terms of any kind. There are no representations or understandings of any kind affecting this Lease not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties. Club and City represent that each has full right, power and authority to sign and be bound by this Lease.

This Lease and all provisions shall be binding and inure to the benefit of the heirs, executors, administrators, successors, and assigns of both parties.

Executed this _____ day of _____, 2024.

Wauwatosa Curling Club, Inc.

By: _____
Its President, Rachel Koebel

Attest: _____
Its Secretary, Thomas Havas

City of Wauwatosa

By: _____
Mayor Dennis McBride

Attest: _____
Steve Braatz, City Clerk

Approved as to form

Alan Kesner, City Attorney

Exhibit A

Access to the Premises will be made available via an electronic key system furnished by the City. The Club will be allowed to request individual electronic key fobs provided by the City, each with a separate identification number for the Club's respective members. The Club shall follow the City's electronic access policy and pay actual costs incurred by the City for each fob provided.

Lower Level Club Room

The Club will have exclusive use of this area 365 days per year, except in the event of an emergency in which case the City may direct members of the public to seek shelter in the lower level club room. The room may be used during normal business days and hours at Hart Park which are established by the City and may vary from time to time. The room may also be used in excess of normal business hours without City approval, however, the Club shall be responsible to secure the facility during such times and the City will not provide any services to the Club such as janitorial needs.

Tosa Room (Curling Rink)

From September 26 through April 6 (the "Season"), the Club will have exclusive use of this area. These dates may be modified with City staff approval from time to time. The room may be used during normal days and business hours at Hart Park, which are established by the City and may vary from time to time. The room may also be used outside of normal business hours without City approval, however, the Club shall be responsible to secure the facility during such times and the City will not provide any services to the Club such as janitorial needs.

Firefly Room

From September 26 through March 30, the Club will have exclusive access and usage of this room Monday-Friday, 4pm-10pm; Saturday and Sunday, 7am-10pm except on those days that the park is closed and election days (if necessary). Should the Club need to extend their use of this room until April 6th they will be allowed to do so but must give the City notice of that need at the beginning of their Season. Other dates/times may also be modified with City staff approval from time to time. The room may also be used from 10pm to 2am daily without City approval, however, the Club shall be responsible to secure the facility during such times and the City will not provide any services to the Club such as janitorial needs. The room may be used for Club access and usage outside of these times upon approval from the City, which shall not be unreasonably withheld, provided a written request is submitted 30 days or more in advance of the date in question. As the room is a shared space with the Senior Center, the Club and City will work in good faith to accommodate the needs of all users wherever it is reasonable. The City will make all reasonable attempts to ensure that the Room is clean and set in the Club's standard configuration for the Club's use beginning September 26 at 4 pm. and each day thereafter during the period the Club uses this Room. If there is sufficient space

and it does not disrupt the Senior Center's use, Club members may occupy this Room before 4 pm daily.

Riverview Room

1. The Club will be allowed to use this room one Thursday night each year for its Opening Banquet (approx. mid-October) and one Thursday night each year for its Annual Meeting (approx. mid-March) free of charge. Exact dates are to be noted in Schedule. The Tosa Room may be used as an alternate site for these annual events at the request of the Club.
2. The Club will be allowed up to six additional uses of this room per Season at half of the normal rental rate then-charged by the City. Any rentals beyond this will be charged at the normal rental rate.

Exhibit B

Approved Improvements

The following Improvements are hereby agreed to and accepted by the City:

Lower Level Club Room:

- Locker room expansion
- Floors, walls, and ceilings cosmetic updates
- Kitchen updates and equipment
- Restroom updates
- Painting

Tosa Room:

Details as shown on the final approved construction plans prepared by Kahler Slater (bid opening date of 2/14/24) and Garland/DBS (bid opening date of 1/30/24).
Cameras reinstall

Vacuum reinstall

Note: Scoreboards, flags, ads, etc. are non-permanent

Firefly Room:

Details as shown on the final approved construction plans prepared by Kahler Slater (bid opening date of 2/14/24) and Garland/DBS (bid opening date of 1/30/24).

Certain décor provided by the Club.

Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into on this [Date], by and between the City of Wauwatosa, a municipal corporation located at 7725 West North Avenue, Wauwatosa, WI 53213 hereinafter referred to as the "City," and the Wauwatosa Curling Club, a non-profit organization located at 7300 West Chestnut Street, Wauwatosa, WI 53213, hereinafter referred to as the "Curling Club."

WHEREAS, the City owns certain real property known as the Muellner Building (hereafter "Building") in Hart Park at 7300 W. Chestnut Street, Wauwatosa, WI, which includes among other amenities an ice rink; and

WHEREAS, the City and Curling Club wish to continue their long-standing relationship and collaborate for their mutual benefit;

WHEREAS the City will undertake the remodel of the of the Muellner Building ("**Project**") for the benefit of the City and the users of the building including the Wauwatosa Curling Club. The Project is anticipated to commence in the early Spring of 2024 and conclude in October 2024. During that time, the Muellner Building will be closed;

WHEREAS the estimated budget of the project is \$4,600,000 with the City contributing \$2,600,000, the Wauwatosa Tourism Commission \$500,000 and the Curling Club \$1,500,000

WHEREAS a portion of the Curling Club's \$1,500,000 will be in the form of loan with the City;

WHEREAS the Curling Club has provided the City with prior year financial statements and a five-year financial forecast demonstrating the financial wherewithal to repay a loan;

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

1. LOAN AMOUNT AND TERMS

1.1 The City agrees to provide a loan to the Curling Club in the principal amount not to exceed SEVEN HUNDRED AND FIFTY THOUSAND 00/100 DOLLARS (\$750,000.00).

1.2 The loan shall be repaid by the Curling Club to the City over a period not to exceed 20 years based on a mutually agreed-upon amortization schedule.

1.3 The City may issue the loan using its own funds or borrow from a third party.

1.4 The interest rate for the loan shall be fixed and not exceed the 20-year rate offered by the State of Wisconsin Board of Commissioners of Public Lands State Trust Fund at the time of issuance.

1.5. The Curling Club shall provide annual financial statements within 30 days of their availability and no later than 6 months after their fiscal year end so long as a principle balance remains outstanding.

2. COLLATERAL AGREEMENTS

2.1 To secure the repayment of the loan, the Curling Club agrees to provide collateral in the form of a Deposits Account Controls Agreement (DACA), allowing the City access to specified deposit account(s) in the amount of 50% of the principal loan value in the event of a default. As the principal loan value is reduced, the Curling Club may request annually that the DACA be resized to reflect the current loan balance.

2.2 The DACA on the loan collateral as well as a separate DACA on the funds intended as the Curling Club's cash contribution to the project must be in place prior to the City signing the Project construction contract.

2.3 In addition, the Curling Club shall grant the City equipment liens on specific assets as itemized in Appendix A.

3. REPAYMENT SCHEDULE

3.1 The Curling Club agrees to make semi-annual interest and principal payments to the City in accordance an amortization schedule and promissory note that will be agreed to prior to the loan closing.

3.2 The first payment shall be due as specified in the loan closing document and subsequent payments shall be due on the same day of each six months thereafter until the principal balance of the loan is paid off.

3.3 The Curling Club may make partial or full prepayments without penalty between January 1 and August 31 each year, upon 60 days prior written notice.

4. USE OF FUNDS

4.1 The loan proceeds provided by the City shall be used exclusively for the remodel project pursuant to the Kahler Slater design and awarded construction contract.

4.2. To minimize the interest expense incurred by the Curling Club and to maximize the time they have available to fundraise, the loan will be issued when the project has estimated to have incurred \$3,000,000 in project expenses. As part of the loan closing, the Curling Club will also transfer to the City's bank account the total cash amount dedicated to the Project.

4.3. Upon loan closing, the funds will be deposited in the City's bank account and accounted for in the Capital Projects Fund under Project 8036 – Remodel Mueller Building.

4.4 The City will maintain records of funds expended for the project. The City will provide within 30 days of a request by the Curling Club during the project construction period an itemization of how their cash contribution or loan have been utilized and the remaining balance. A final report will be provided 60 days after the final invoice is paid. Any unused Curling Club funds will be used to pay down the principal balance on the loan.

5. DEFAULT

5.1 In the event of default by the Curling Club, the City reserves the right to accelerate the repayment schedule and pursue any legal remedies available.

5.2 Events constituting default include, but are not limited to, failure to make timely payments, violation of the terms and conditions of this MOU, or the Curling Club's dissolution.

5.3 Promissory will include standard notice and cure provisions in the event of a borrower default.

IN WITNESS WHEREOF, the City of Wauwatosa and the Wauwatosa Curling Club, by their duly authorized representatives, have executed this Memorandum of Understanding as of the date first above written.

Wauwatosa Curling Club, Inc.

By: _____
Its President, Rachel Koebel

Attest: _____
Its Secretary, Thomas Havas

City of Wauwatosa

By: _____
Mayor Dennis McBride

Attest: _____
Steve Braatz, City Clerk

Approved as to form

Alan Kesner, City Attorney



To Whom it May Concern,

The Wauwatosa Curling Club is excited to see the years-long process of working with our partners at the City of Wauwatosa manifest in your support over our revised lease agreement! This agreement represents the culmination of years of discussions across multiple City of Wauwatosa entities, and sets us on a course for a new era of our partnership.

Of course, construction of the historic Muellner Building was the genesis for our then nascent partnership, back in 1941. Through a grant from the Work Progress Administration as part of The New Deal, the City of Wauwatosa contributed \$80,000; the Wauwatosa Curling Club \$8,000; and the American Legion \$4,000. The innovation of indoor curling was brought to the heart of Wauwatosa.

Finding ourselves in 2024, the dynamics that surround our partnership at The Muellner Building have changed, but this agreement is living proof that the spirit of innovation is alive and well at the Muellner Building.

The curling club's \$1,500,000 contribution toward the renovations, and our acceptance of the full ongoing financial responsibility of the critical infrastructure solely useful to the curling club, represent yet another unprecedented evolution in our partnership. The rental payment reserve plan that John Ruggini and Dave Simpson have designed, and that we have agreed to, will truly make the Wauwatosa Curling Club partners with The City of Wauwatosa in protecting the heritage and legacy of The Muellner Building for generations to come. The club looks forward to attracting guests to the Village via our tournaments; to continuing to provide unique recreation to the adaptive community; to introducing the sport to the community through our Try Curling and Community bonspiel programs; and to growing our Junior Curling program.

The Wauwatosa Curling Club extends our sincere appreciation for the City leaders with whom we've worked over the past 6-8 years, and we look forward to continuing to enrich the culture of Wauwatosa with the Spirit of Curling, for another 100 years!

Sincerely,

Rachel Koebel
Wauwatosa Curling Club
2023-24 President