



Wauwatosa, WI

Financial Affairs Committee

Meeting Agenda - Final

7725 W. North Avenue
Wauwatosa, WI 53213

Tuesday, April 30, 2024

7:30 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. Approval of selection of bibliotecta to supply Automated Materials Handler (Book Sorter) for the Wauwatosa Public Library following Request For Proposal (RFP) process [24-0574](#)
2. Consideration of request by the City Clerk for waiver of the competitive bidding process and authorization to enter into a sales order agreement with Election Systems & Software for a high-throughput ballot scanner and tabulator in the amount of \$62,665.00 [24-0591](#)
3. Report on 2023 Unaudited Financial Results [24-0642](#)

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.



Staff Report

File #: 24-0574

Agenda Date: 4/30/2024

Agenda #: 1.

Approval of selection of bibliotheca to supply Automated Materials Handler (Book Sorter) for the Wauwatosa Public Library following Request For Proposal (RFP) process

Submitted by:

Robert Trunley, Assistant Library Director and Alanna Maddox, Library Circulation Supervisor

Department:

Library

A. Issue

In 2023 the City Finance Department approved Capital Improvement Project funds for purchasing a new Automated Materials Handler (AMH) for the library in 2024. The City and Library Board agreed the cost of the AMH would be split 50/50 between City funds and Library Agency Trust funds. Also, the Library Board agreed to provide an additional \$10,000 from 2024 budgeted funds i.e. 7001 FIXED ASSET. The AMH will be modular, which will allow it to be expanded in a potential library renovation. Expansion might include additional bins and additional induction points.

B. Background/Options

The library's current AMH is ten years old. It is under a maintenance contract for 2024 but the contract expires this year and will not be renewed by the vendor which is bibliotheca. The AMH is at the end of its useful life. With help from the City Purchasing Department, the Library requested proposals from three vendors. Library staff chose bibliotheca as the vendor whose proposal most fulfilled the Library's needs.

Envisionware was significantly more expensive and did not give us the 7-bin sort we requested. They proposed a 6-bin sort and an 8-bin sort.

FE Tech was slightly less expensive than bibliotheca if we go with spring-loaded bins which is what we want to do. We have been in contact with an FE Tech library, however, and they were dissatisfied with FE Tech and the installation. It took weeks to get the equipment working properly and they are not satisfied with technical support. FE Tech is headquartered in Australia and technical support requests were being routed to Australia. FE Tech showed only one comparable installation in Wisconsin. Their other two comparable installations were in South Dakota and Helsinki, Finland. FE Tech has only 25 library installations in the USA.

bibliotheca offers a reasonable price (only slightly more than FE Tech) and we know after years of working with them how consistent and excellent their equipment and technical support are. bibliotheca has over 150 library installations in the USA and they have technical support staff local to Wauwatosa. All our other library circulation equipment is provided by bibliotheca and it is much more convenient to deal only with one vendor. Chuck Pomerence (Facilities Manager) was very much in agreement on this point. Additionally, bibliotheca

promises a refund for the unused portion of our 2024 maintenance contract. If the installation is in September for instance, we would get about \$4,000 refunded.

Vendor	Purchase Price	2nd year	3rd year	4th year	5th year	5 Year TOTAL	Maintenance Total
bibliotheca	\$ 104,933	\$ 7,559	\$ 7,937	\$ 8,334	\$ 8,750	\$ 137,513	\$ 32,580
Envisionware	\$ 107,449	\$ 11,011	\$ 11,561	\$ 12,139	\$ 12,746	\$ 154,906	\$ 47,457
FE Tech spring bins	\$ 96,902	\$ 8,013	\$ 8,013	\$ 8,013	\$ 8,013	\$ 128,954	\$ 32,052
FE Tech e-bins	\$ 120,642	\$ 10,059	\$ 10,059	\$ 10,059	\$ 10,059	\$ 160,878	\$ 40,236

Project Costs

7-bin AMH with staff and public inductions:

City: \$ 47,466.50

Library Agency Trust: \$ 47,466.50

Library 7001 FIXED ASSET: \$ 10,000.00

Total: \$ 104,933.00

C. Strategic Plan (Area of Focus)

Priority Area Three: Infrastructure

D. Fiscal Impact

Funds are budgeted in the capital budget for this item.

E. Recommendation

We recommend selecting bibliotheca to supply Automated Materials Handler (Book Sorter) for the Wauwatosa Public Library in the amount of \$104,933.



Wauwatosa, WI

7725 W. North Avenue
Wauwatosa, WI 53213

Staff Report

File #: 24-0591

Agenda Date: 4/30/2024

Agenda #: 2.

Consideration of request by the City Clerk for waiver of the competitive bidding process and authorization to enter into a sales order agreement with Election Systems & Software for a high-throughput ballot scanner and tabulator in the amount of \$62,665.00

Submitted by:

Steven Braatz, City Clerk

Zach Kessler, Management Analyst/Deputy City Clerk

Department:

City Clerk

A. Issue

The City Clerk's Office is seeking a waiver of the competitive bidding process and authorization to enter into a sales order agreement with Election Systems & Software (ES&S) for the procurement of a DS450 high-throughput ballot scanner and tabulator machine.

B. Background/Options

The purchase of a DS450 high-speed ballot tabulator machine was approved in the 2024-2028 Capital Improvements Program (Project No. 9988). The City Clerk's Office is now ready to execute the sales order agreement with Election Systems & Software, the sole manufacturer and distributor of this equipment. Additionally, the City of Wauwatosa has an agreement with Milwaukee County which requires the use of ES&S equipment to conduct elections. For these reasons, we are requesting a waiver of the competitive bidding process for this device. Lastly, the sales order agreement amount is over the \$25,000 threshold for a single purchase, thereby necessitating Common Council approval.

C. Fiscal Impact

The sales order agreement of \$62,665.00 includes the machine itself, associated equipment, delivery and installation, and a training day with ES&S. The machine was included and approved in the 2024-2028 Capital Improvements Program.

There will be an annual expense of \$3,985.00 for firmware licensing and hardware maintenance. These funds are included in the Elections General Services budget.

D. Recommendation

If acceptable, recommend the Common Council waive the competitive bidding process for the procurement of this proprietary piece of equipment, and authorize appropriate City staff to enter into a sales order agreement with Election Systems & Software for the DS450 high-throughput ballot scanner and tabulator device in the amount of \$62,665.00.



11208 JOHN GALT BLVD
OMAHA, NE 68137-2364
(402) 593-0101

Sales Order Agreement

B.O. #: 2933

1st Election Date: April 2, 2024

Estimated Delivery Date: March 2024

Customer Contact, Title: Steve Braatz - City Clerk

Phone Number: 414-479-8920

Customer Name: City of Wauwatosa, Wisconsin

Fax Number: N/A

Type of Sale: ☒ NEW

Type of Equip: ☒ NEW ☐ REFURBISHED

Bill To:

City of Wauwatosa, Wisconsin

Steve Braatz - City Clerk

7725 W. North Avenue

Wauwatosa, WI 53213

Ship To:

City of Wauwatosa, Wisconsin

Steve Braatz - City Clerk

7725 W. North Avenue

Wauwatosa, WI 53213

Item	Description	Qty	Price	Total
1 DS450	Model DS450 High-Throughput Scanner and Tabulator: Model DS450 Scanner with Steel Table, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, and Two (2) Standard 8GB Memory Devices	1	\$56,595.00	\$56,595.00
2 DS450	Ballot Jogger	1	\$1,045.00	\$1,045.00
3 DS450	Equipment Installation	1	\$2,705.00	\$2,705.00
4 Services	DS450 Scanner Training Day	1	\$1,975.00	\$1,975.00
5 Shipping	Shipping & Handling	1	\$825.00	\$825.00

Freight Billable: yes ☒ no ☐

Order Subtotal \$ 63,145.00

Customer Discount (\$480.00)

Order Total \$ 62,665.00

Kyle Weber
Regional Sales Manager

Customer Signature

Date

V.P. of Finance

Date

Title

Payment Terms	100% of Order Total due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice.
	Invoices are due net 30 from invoice date.
	Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.
Warranty Period (Years):	One (1) Year From Equipment Delivery
Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period)	
The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.	
SEE GENERAL TERMS	

GENERAL TERMS

1. Definitions:

All capitalized terms used, but not otherwise defined, in these Hardware Purchase and Software License Terms ("General Terms") or in an Exhibit shall have the following meanings:

- a. "Documentation" means any and all written or electronic documentation furnished or generally made available to Customer by ES&S relating to the ES&S Hardware and ES&S Software, including any operating instructions, user manuals or training materials.
- b. "ES&S Firmware" means ES&S' proprietary software which is installed on the ES&S Hardware.
- c. "ES&S Hardware Maintenance Services" and "ES&S Software License, Maintenance and Support Services" means those services described on Exhibit A.
- d. "ES&S Software" means the ES&S Software and ES&S Firmware as set forth on the front side of this agreement.
- e. "ES&S Hardware" means ES&S's proprietary vote tabulation hardware set forth on the front side of this Agreement.
- f. "Software" means ES&S Software and Third-Party software.
- g. "Third-Party Items" means hardware, equipment and software manufactured and developed by parties other than ES&S.

2. **Hardware Purchase and Software License Terms.** Subject to the terms and conditions of this Sales Order Agreement ("Agreement"), ES&S agrees to sell and/or license, and Customer agrees to purchase and/or license, the ES&S Hardware and ES&S Software described on the front side of this Agreement. The payment terms for the ES&S Hardware and ES&S Software are set forth on the front side of this Agreement. The consideration for ES&S' grant of the license during the Initial License Term for the ES&S Firmware is included in the cost of the ES&S Hardware.

a. **Hardware Purchase.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Hardware. Title to the ES&S Hardware shall pass to Customer when Customer has paid ES&S the total amount set forth on the front side of this Agreement for the ES&S Hardware.

b. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full time, part time or temporary employees to use the ES&S Software and the Documentation in the Jurisdiction while Customer is using the ES&S Hardware and timely pays the applicable annual ES&S Software License, Maintenance and Support Fees set forth on Schedule A1. The licenses allow such bona fide employees to use and copy the ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S Hardware and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the Jurisdiction.

3. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:

- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;
- b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party without ES&S' prior written consent; or
- c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent;
- d. Cause or permit any review, testing, examination, or audit of the ES&S Software without ES&S' prior written consent; or
- e. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the ES&S Software (except finished ballots by ballot printers selected by Customer) in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

4. **Term of Licenses.** The licenses granted in Section 2(b) shall commence upon the delivery of the ES&S Software described in Section 2(b) and shall continue for a **one (1) year period** (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on the front side of this Agreement. The license terms for any License Renewal Term shall be set forth on Exhibit A. ES&S may terminate any of the licenses granted hereunder if Customer fails to pay the consideration due for, or breaches Sections 2(b), 3, or 9 with respect to, such licenses. Upon the termination any of the licenses granted in Section 2(b) for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

5. **Updates.** During the Initial License Term or any License Renewal Term for which Customer has paid the associated renewal fees, ES&S may provide new releases, upgrades, or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule solely defined by ES&S. Customer is solely responsible for obtaining and purchasing any upgrades or Third-Party Items required to operate the Updates, as well as the cost of any replacements, retrofits or modifications to the ES&S Hardware which may be necessary in order to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Updates

to the ES&S Firmware will be incorporated by ES&S into a regularly scheduled preventative maintenance event at no additional charge to Customer. If Customer requests installation of an Update at a time other than a regularly scheduled preventative maintenance event, then Customer shall execute and deliver to ES&S a purchase order therefore and ES&S shall charge Customer accordingly for such installation. ES&S shall also charge Customer at its then-current rates to: (i) train Customer on Updates, if such training is requested by Customer and (ii) if applicable, provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Notwithstanding the foregoing, Customer shall pay ES&S to install all ES&S Tabulation Software Updates. If applicable, Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install the most recent Update provided to it by ES&S. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, ES&S reserves the right to charge Customer for the following:

- (i) the total cost of any Third-Party Items that are required in order to operate the Updates;
- (ii) the total cost of any replacements, retrofits or modifications to the ES&S Hardware contracted for herein that may be developed and offered by ES&S in order for such ES&S Hardware to remain compliant with applicable laws and regulations; and
- (iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or ES&S Hardware and/or ES&S Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer.

6. **Delivery; Risk of Loss.** The Estimated Delivery Dates and First Election Use (if any) set forth on the front side of this Agreement are estimates and may only be established or revised, as applicable, by the parties, in a written amendment to this Agreement, because of delays in executing this Agreement, changes requested by Customer, product availability and other events. ES&S will notify Customer of such revisions as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Hardware and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Hardware and ES&S Software and shall name ES&S as an additional insured thereunder and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Agreement have been paid by Customer.

7. Warranty.

a. **ES&S Hardware/ES&S Software.** ES&S warrants that for a **one (1) year period** (the "Warranty Period"), it will repair or replace any component of the ES&S Hardware or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Period will commence upon delivery. The Warranty shall not include the repair or replacement of any ES&S Hardware components that are consumed in the normal course of operating the ES&S Hardware, including, but not limited to, headphones and headphone protective covers, protective coatings, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. The Warranty shall not include the repair or replacement of any ES&S Hardware due to cosmetic damages, including, but not limited to, screen cracks, scratches, dents and broken plastic or any defects resulting from normal wear and tear. ES&S has no obligation under this Agreement to assume the obligations under any existing or expired warranty for a Third-Party Item. Any repaired or replaced item of ES&S Hardware or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Hardware or ES&S Software will become the property of ES&S. This warranty is effective provided that (I) Customer notifies ES&S within three (3) business days of the discovery of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S Hardware or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (III) the ES&S Hardware or ES&S Software to be repaired or replaced has been maintained or repaired by an individual other than an authorized representative of ES&S (IV) the ES&S Hardware or ES&S Software to be repaired or replaced has not been used, displayed, disseminated, transferred, loaned, disassembled, dismantled, modified, and/or tampered with by a third party without ES&S prior written consent (V) the ES&S Hardware or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, liquid contact, use of adhesive materials on ballots, use which is not in accordance with the Documentation or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (VI) Customer has installed and is using the most recent Update provided to it by ES&S. This warranty is void for any units of hardware which: (i) have not been stored or operated in a temperature range according to their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product. Upon expiration of the Warranty Period, Customer shall be entitled to receive Hardware Maintenance and Software Maintenance and Support Services, the terms of which are set forth on Exhibit A.

b. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, IN THE EVENT CUSTOMER DECLINES ES&S' INSTALLATION AND ACCEPTANCE TESTING SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY HARDWARE, SOFTWARE, THIRD-PARTY ITEMS AND/OR NETWORK (COLLECTIVELY "SYSTEM") CONFIGURATIONS WHICH HAVE BEEN PREVIOUSLY INSTALLED BY ES&S OR WHICH ARE OTHERWISE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WARRANTIES OTHERWISE PROVIDED HEREUNDER WITH RESPECT TO THE SYSTEM PURCHASED, LEASED, RENTED

AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.

8. **Limitation Of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special, or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the ES&S Hardware or ES&S Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent update provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the ES&S Software Maintenance and Support.

9. **Proprietary Rights.** Customer acknowledges and agrees as follows:

ES&S owns the ES&S Software, all Documentation provided by ES&S, the design and configuration of the ES&S Hardware and the format, layout, measurements, design, and all other technical information associated with the ballots to be used with the ES&S Hardware. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Hardware, the ES&S Software, the Documentation, and ballots that are provided, and all permitted copies of the foregoing.

10. **Termination.** This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching party.

11. **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

12. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by commercial overnight courier (with written verification of receipt) or (d) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or email address set forth on such signature page unless other names or addresses are provided by either or both parties in accordance herewith.

13. **Disputes.**

a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due to ES&S for any product or service, or (3) the due date of any payment, Customer shall nevertheless pay to ES&S when due all undisputed amounts. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than 30 days, ES&S may suspend performance under this Agreement until such amount is paid. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

14. **Assignment.** Except in the case of a reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets of ES&S or any business operations thereof to a successor who has asserted its intent to continue the applicable business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed.

15. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the ES&S Hardware and ES&S Software sold and licensed under this Agreement will comply with all applicable requirements of federal and state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in Customer's state. The ES&S Hardware and ES&S Tabulation Software, including all components will be provided to Customer with a hardened network in accordance with the guidelines of the United States Election Assistance Commission. In the event Customer fails to maintain the ES&S Software in the hardened network or allows any internal or external access to the hardened network, Customer agrees to indemnify and hold harmless ES&S from and against any and all claims, damages, losses, liens, obligations, liabilities, judgments, assessed damages, costs, expenses (including reasonable attorney's fees) and the like arising out of or related to the Customer's breach of its obligations hereunder.

16. **Voting System Reviews.** In the event that the Jurisdiction or the State require any future reviews or examinations ("Reviews") of current or previous versions of state-certified ES&S voting systems or components thereof that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the ES&S Software and/or ES&S Hardware licensed and sold hereunder, Customer shall be responsible for:

(i) Customer's pro-rata share of such Review costs;

(ii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the ES&S Hardware and/or ES&S Software that may result from such Reviews; and

(iii) the total cost of any Third-Party Items that are required in order for the ES&S Hardware and/or ES&S Software to satisfy any new requirements resulting from such Reviews in order to remain certified;

Customer's pro-rata share of the costs included under subsections 16(ii) and 16(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the ES&S Hardware and/or ES&S Software purchased and licensed by Customer under this Agreement.

17. **Customer Enhancements.** In the event that Customer requests any future enhancements of the ES&S Hardware and/or ES&S Software ("Enhancements"), such requests shall be submitted in writing to ES&S. ES&S will evaluate each of the Enhancements to determine if any of such Enhancements are technologically feasible, commercially reasonable and consistent with ES&S's security protocol and procedures. In the event that ES&S determines that any of such Enhancements meet the foregoing requirements, then ES&S shall prepare a scope of work which shall include an estimated timeline and the estimated costs for design, development, testing, certification and implementation of such Enhancements (the "SOW"). ES&S shall provide the SOW to Customer for review and written approval. After ES&S's receipt of written approval of the SOW by Customer, ES&S shall prepare a written change order for Customer's execution. ES&S shall solely own and retain any and all intellectual proprietary rights in any Enhancements developed and provided to Customer.

18. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form, or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing equipment, software, and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the equipment, software, or services, but shall remain fully responsible for such performance. The provisions of Sections 1-5, 7(b), 8-9, 12, 13(b), 14-16, and 18 of these General Terms shall survive any termination or expiration of this Agreement, to the extent applicable.

EXHIBIT A
ES&S HARDWARE MAINTENANCE AND
SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES
(POST-WARRANTY PERIOD)

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A for ES&S Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Post-Warranty Term"). Upon expiration of the Initial Post-Warranty Term, this Exhibit A shall automatically renew for an unlimited number of successive **Two-Year Periods** (each a "Renewal Period") until this Exhibit A is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Post-Warranty Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Exhibit A, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the ES&S Hardware Maintenance Services contemplated hereunder, (d) the date on which the ES&S Hardware or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Exhibit A. The termination of this Exhibit A shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this is Exhibit A is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide ES&S Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the ES&S Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Post-Warranty Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Post-Warranty Term are due as set forth on Schedule A1. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 10% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Post-Warranty Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services.

ARTICLE II
HARDWARE

1. **Maintenance Services.** The ES&S Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S Hardware set forth on Schedule A1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services". Routine Maintenance Services shall be provided once each **Twenty-Four (24) Months** during the Initial Post-Warranty Term or any Renewal Period thereof.

Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Hardware components that are consumed in the normal course of operating the ES&S Hardware, including, but not limited to, headphones and headphone protective covers, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. Customer may request that Routine Maintenance Services be performed more than once during the Initial Post-Warranty Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule A1 and shall be due within thirty (30) days after invoice date. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the ES&S Hardware Maintenance Services.

b. **Repair Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a Routine Maintenance Service event at the Customer's Designated Location.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) use, modification, dismantling, disassembly, or transfer to third party without ES&S' prior written consent, (3) accident, theft, vandalism, neglect, abuse, liquid contact, use of adhesive materials on ballots or use that is not in accordance with instructions or specifications furnished by ES&S or (4) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided by ES&S within 48 hours after Customer notifies ES&S of the need therefore), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Schedule A1.

iv. **Loaner Unit.** At Customer's request and if such product is available, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed

pursuant to Subsection 1(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

c. **Exclusions.** ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, headphones and headphone protective covers, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"), or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for ES&S Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide ES&S Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for ES&S Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days within the Term for which such fee was paid and the denominator of which is the total number of days within the Term.

d. **Sole Provider; Access.** Customer shall not permit any individual other than an ES&S Representative to provide maintenance or repairs with respect to the Products for so long as the Initial Post-Warranty Term or any Renewal Period is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide ES&S Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all ES&S Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. **Environmental Conditions.** Products should be stored in a clean, dry and secure environment. During the storage and operation of the Products, the temperature and moisture ranges should be maintained in accordance with the Products' Documentation.

f. **Reinstatement of ES&S Hardware Maintenance Services; Inspection.** If the Initial Post-Warranty Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving ES&S Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires Customer to allow it to inspect such Products before it provides any ES&S Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates and shall be due from Customer within thirty (30) days of its receipt of ES&S' invoice, therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of Customer, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any ES&S Hardware Maintenance Services with respect to such Product(s).

ARTICLE III

SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES

1. **License and Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software, to allow Customer to continue to license and use the software in accordance with the license terms set forth in Sections 2-4 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License,

Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule A1.

2. **Updates.** During the Initial Post-Warranty Term, and any renewal or extension thereof, ES&S may continue to provide Updates in accordance with the terms of Section 5 of the General Terms. Unless otherwise agreed to by the parties, and subject to Customer's prior execution of a purchase order therefor, ES&S shall install ES&S Firmware Updates in accordance with Section 5 of the General Terms. ES&S shall install such ES&S Firmware Updates in conjunction with a scheduled Routine Maintenance Services event provided Customer is subscribing to and has paid for ES&S' hardware maintenance services which include Routine Maintenance Services. Customer shall pay ES&S to install all ES&S Firmware Updates which are requested to be installed outside of a scheduled Routine Maintenance Services event or in the event the Customer has not subscribed to ES&S' hardware maintenance services which include Routine Maintenance Services. Notwithstanding the foregoing, Customer shall pay ES&S to install all election management software Updates.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) use, modification, dismantling, or transfer to third party without ES&S' prior written consent, (c) accident, theft, vandalism, neglect, abuse, liquid contact or use that is not in accordance with the Documentation, (d) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (e) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, or (f) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software and/or Third-Party Items or any services required in order to replace the same as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title, and interest in and to all corrections, programs, information, and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, Maintenance and Support Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information, and work product that ES&S actually delivers to Customer pursuant to this Exhibit A. All licensed items shall be deemed to be ES&S Software for purposes of this Exhibit A. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Exhibit A.

5. **Reinstatement of Software License, Maintenance and Support.** If the Initial Post-Warranty Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees, which would have been due to ES&S had the Initial Post-Warranty Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services.

Schedule A1
Pricing Summary

<u>Sale Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$4,380.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$3,590.00
Total Maintenance Fees for the Initial Post-Warranty Term:		\$7,970.00
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included and are the responsibility of Customer.		
Note 2: <u>Invoicing and Payment Terms are as Follows:</u>		
ES&S shall Invoice Customer annually for each year of the Initial Post-Warranty Term.		
Payment is due before the start of each period within the Initial Post-Warranty Term.		

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Post-Warranty Term: Expiration of the Warranty Period through the **second** anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
1	Model DS450 Scanner	Year 1	\$2,190.00	\$2,190.00
1	Model DS450 Scanner	Year 2	\$2,190.00	\$2,190.00
Total Hardware Maintenance Fees for the Initial Post-Warranty Term				\$4,380.00

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 24-month period shall be 75% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.

Note 3: Customer's Designated Location: City of Wauwatosa, Wisconsin

Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be \$25.00 per unit for all units located at second or more locations.

ES&S Hardware Maintenance Services Provided by ES&S Under this Schedule A1

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
 - Onsite scheduled maintenance inspection per Article II, Section 1(a). The Inspection includes:
 - Service performed by an ES&S trained and certified technician.
 - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
 - Replacement of worn or defective parts with new or remanufactured federally and state certified parts.
 - Conducting a final test to verify that the unit is working according to manufacturer's specifications.
 - Use of a checklist tailored for each piece of ES&S Tabulation Hardware.
5. Repair Services.

- Customer will receive coverage for interim repair calls.
 - Interim repair calls may be provided during a scheduled Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity to Customer's location if such repairs are not election critical.
 - A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

6. Priority Services.

- Customer has access to the ES&S Help Desk for assistance.
- The customer receives priority on service calls.
- The customer receives priority on response time.
- The customer receives priority on certified ES&S parts inventory.

Note: Except for those ES&S Hardware Maintenance Services specifically set forth herein, ES&S is under no obligation and shall not provide other ES&S Hardware Maintenance Services to the Customer unless previously agreed upon in writing by the parties.

**ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES
FIRMWARE**

Initial Post-Warranty Term: Expiration of the Warranty Period through the **second** anniversary thereof

Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee in Total
1	Model DS450 Scanner	Year 1	\$1,795.00	\$1,795.00
1	Model DS450 Scanner	Year 2	\$1,795.00	\$1,795.00
Total Firmware License, Maintenance and Support Fees for the Initial Post-Warranty Term				\$3,590.00

Software License, Maintenance and Support Services Provided by ES&S under the Agreement

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

Note: Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

Software License, Maintenance and Support and ES&S Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed a full software training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
 - Customer shall have the ability to install hardware firmware and make changes to date and time settings.
 - Customer shall have the ability to change accessible consumable items on hardware. Any other changes made by the customer must be pre-approved in writing by ES&S.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall be responsible for the installation and integration of any third-party hardware or software application, or system purchased by the Customer, unless otherwise agreed upon, in writing, by the parties.
4. Customer shall be responsible for data extraction from Customer's voter registration system.

5. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Hardware and ES&S Software.
6. Customer shall be responsible for the acceptance of the ES&S Hardware and Software, unless otherwise agreed upon, in writing, by the parties.
7. Customer shall be responsible for the design, layout, set up, administration, maintenance, or connectivity of the Customer's network.
8. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Hardware and Software.
9. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.
10. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.



Wauwatosa, WI

7725 W. North Avenue
Wauwatosa, WI 53213

Staff Report

File #: 24-0642

Agenda Date: 4/30/2024

Agenda #: 3.

Report on 2023 Unaudited Financial Results

Submitted by:

John Ruggini

Department:

Finance

A. Issue

The Finance Department has finished closing the 2023 fiscal year and the preliminary and unaudited results are available for discussion.

B. Background/Options

At the close of each fiscal year, the Finance Department presents the preliminary financial results. At this time, those results have not been audited. The final audited financial statements are expected in June.

General Fund

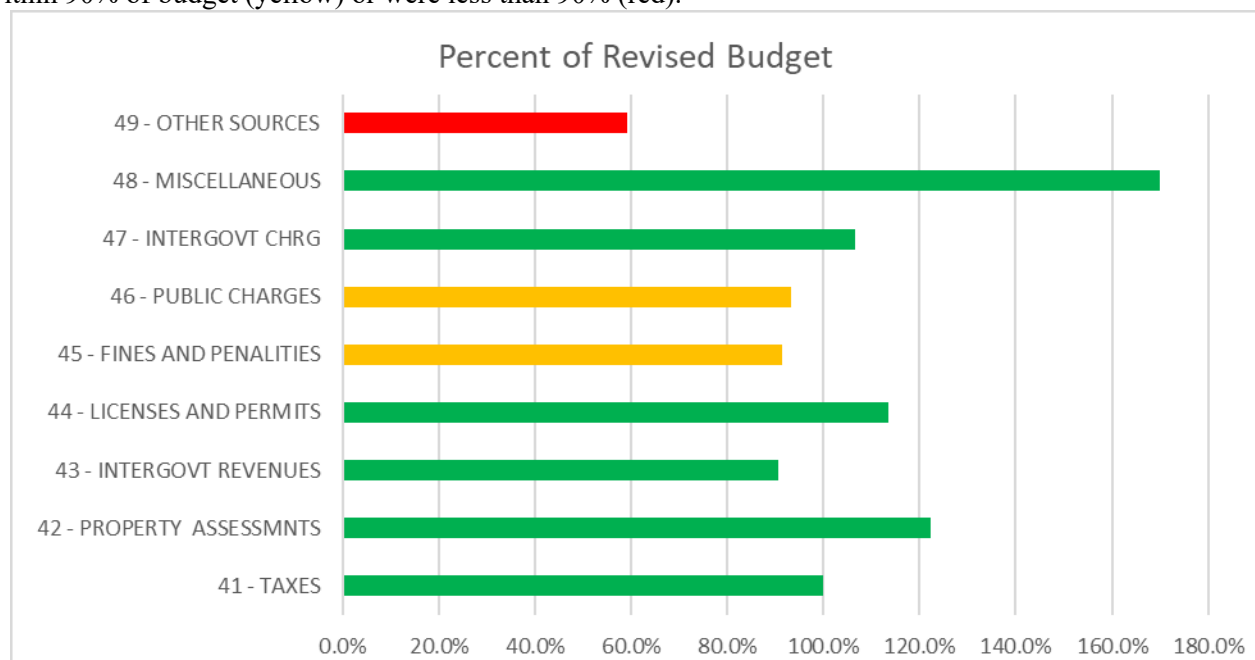
The General Fund, ended the year with a \$797,180 surplus which equates to 1.1% of total expenditures. The tables below provide detail by expenditures and revenue categories.

General Fund Revenues

In total, actual general fund revenues were 100.7% of budget, a surplus of \$545,000. This is broken down by revenue category below.

	Actual	LY Actual	Original Budget	Revised Budget	Surplus/(Deficit)	CY % of Budget	CY % of Original Budget	Period over Growth
Revenue	\$ 73,709,099	64,920,438	73,233,276	73,163,189	545,910	100.7%	100.6%	13.5%
41 - TAXES	53,015,254	51,132,616	52,248,951	53,062,096	(46,841)	99.9%	101.5%	3.7%
42 - PROPERTY ASSESSMNTS	16,043	11,695	10,000	13,115	2,928	122.3%	160.4%	37.2%
43 - INTERGOVT REVENUES	6,800,414	6,952,919	6,895,629	7,506,401	(705,987)	90.6%	98.6%	-2.2%
44 - LICENSES AND PERMITS	1,846,912	2,518,175	1,617,335	1,628,850	218,062	113.4%	114.2%	-26.7%
45 - FINES AND PENALTIES	758,662	692,852	1,037,500	831,000	(72,338)	91.3%	73.1%	9.5%
46 - PUBLIC CHARGES	2,956,591	3,038,418	3,158,190	3,169,720	(213,129)	93.3%	93.6%	-2.7%
47 - INTERGOVT CHRGR	1,697,034	1,842,785	1,571,147	1,594,110	102,924	106.5%	108.0%	-7.9%
48 - MISCELLANEOUS	5,291,937	(3,012,805)	2,185,374	3,113,399	2,178,537	170.0%	242.2%	275.6%
49 - OTHER SOURCES	1,326,252	1,743,732	4,509,100	2,244,498	(918,246)	59.1%	29.4%	-23.9%

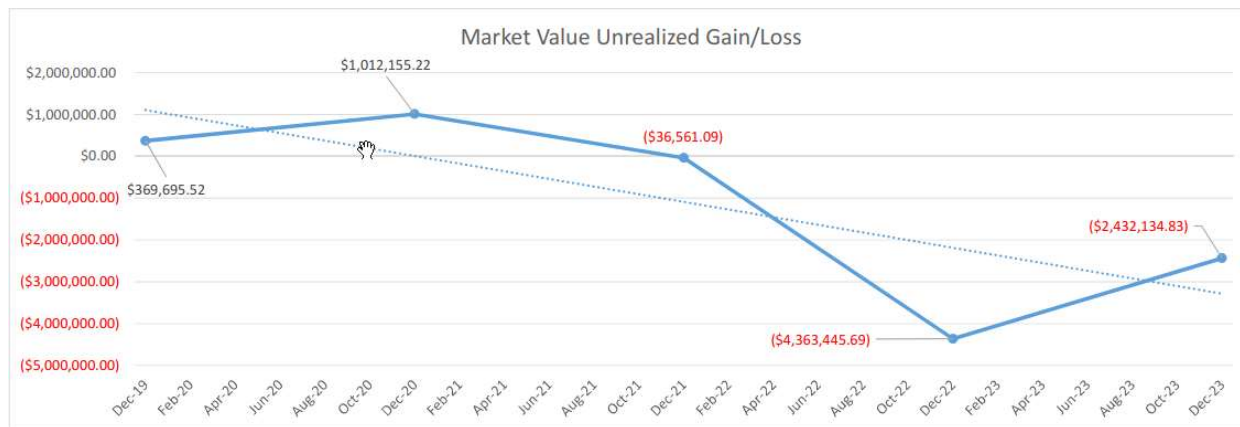
The graph below uses a “stop-light” formatting to indicate which revenue categories exceeded the revised budget (green), were within 90% of budget (yellow) or were less than 90% (red).



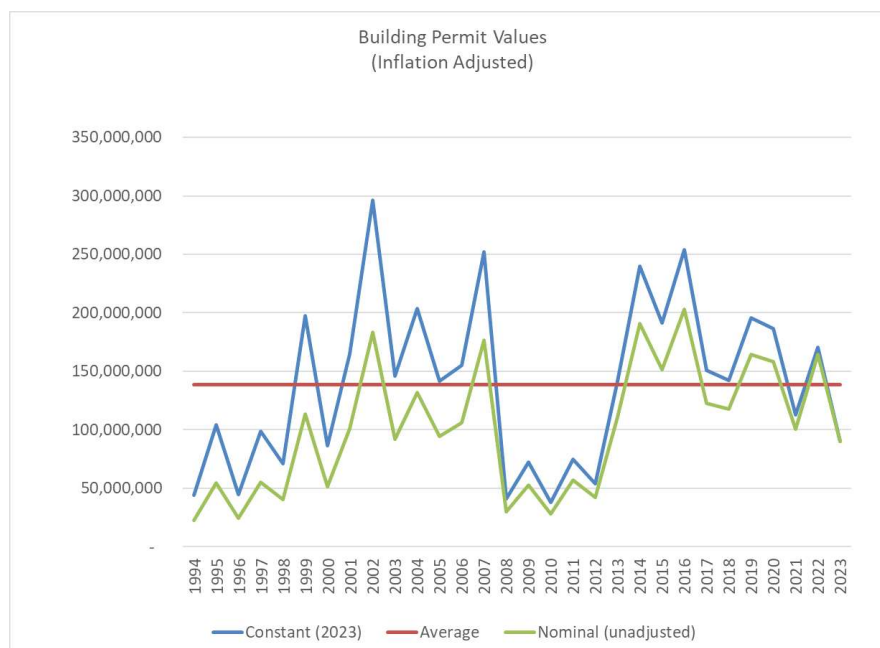
The largest positive variance from the Revised Budget was “48-Miscellaneous” at 170%. While interest earnings were within 3% of the revised budget, the required mark-to-market adjustment increased the surplus by another \$1.9 million. As interest rates decrease, bond prices increase so the City’s portfolio saw a recovery of the \$4.4 million-dollar loss of value in 2022.

So long as the City holds its investments to maturity, which it has sufficient cash to do so, the remaining \$2.4 million of market value will be recovered. Due to the volatility of the mark-to-market adjustment made annually as of 12/31 and its non-cash nature, the City does not budget for it.

While this is positive news, it should be noted that the increased market value is less than the overall surplus. This will be discussed in more detail below. The chart below shows the historical changes in value due to the mark-to-market.



“44-Licenses and Permits” exceed budget by 13.4% or \$218,062. This was nearly entirely due to building permits exceeding the revised budget. However, digging more into the details does raise some concerns. The 2023 revenue was 27% below 2022. As shown below, construction fell 47% over 2022 and was \$49 million below the 30 year average - the lowest amount seen since the Great Recession. The only reason building permit revenue posted such a large surplus was because of timing - the Building Department issued the Forensic Science and Protective Medicine Facility (e.g. State Crime Lab) an \$80,000 building permit in late December that was not paid until 2024. So the revenue was counted in 2023 but the \$110,000,000 construction value will be counted in 2024. We’ll want to monitor building permit revenue in 2024 closely.



“47-Intergovernmental Charges” posted a 6.5% surplus over the revised budget. This was expected as the budget assumed a reduction in the County payment for providing fire services to the medical campus as this contract would be phased out over the next 10 years. However, the negotiations took longer than expected so the first reduction will be seen in 2024, as approved by the Common Council.

While “43-Intergovernmental Revenues” were below budget, it is not shown in yellow because this was entirely due to unspent grant revenues that will be received in 2024 as the projects continued into the current year.

However, “46-Public Charges” was below budget and is marked yellow. This was largely due to a deficit of \$239,985 in Ambulance Revenue compared to the Revised Budget of \$1,705,000. In 2023 we assumed a budgetary increase due to changes in state legislation that would allow us to collect a higher reimbursement per transport from Medicaid and Medicare. However, there was an error made in the drafting of the legislation that prevented that higher rate of reimbursement. We continue to wait for a legislative fix.

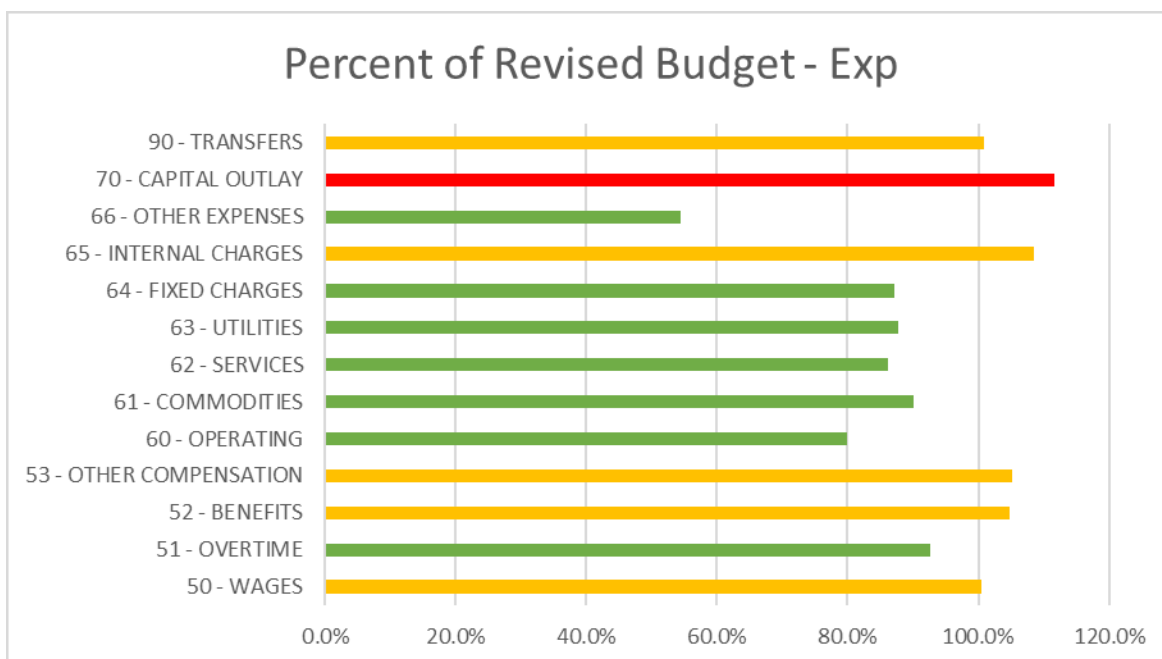
The next largest source of unearned revenue was in “45-Fines and Penalties” which posted 91.3% of budget, a shortfall of \$72,338 compared to the revised budget. Parking ticket revenue exceeded the revised budget by 4% and improved year over year by 26% as the police worked diligently to address turnover. However, this revenue remained below the original budget by \$179,628. Municipal citations were \$91,784 under the revised budget and 10.3% below the prior year due to police staffing shortages.

Similar to intergovernmental revenues, “49-Other Sources” is shown in green despite being 60% of budget due to the way in which we budget for the assumed use of fund balance for carryovers. So long as carryovers are approximately the same year-over-year, this has no impact on the bottom line.

General Fund Expenditures

In total, General Fund expenditures posted a surplus of \$760,971, which represents 99% of budget and 7.5% growth over the previous year.

	Actual	LY Actual	Original Budget	Revised Budget	Surplus/(Deficit)	CY % of Budget	CY % of Original Budget	Period over Period Growth
Expense	\$ 72,911,919	67,841,099	72,489,328	73,672,889	760,971	99.0%	100.6%	7.5%
50 - WAGES	28,751,274	27,127,223	29,363,674	\$28,629,630	(121,664)	100.4%	97.9%	6.0%
51 - OVERTIME	2,259,479	2,275,163	1,469,175	\$2,436,889	177,410	92.7%	153.8%	-0.7%
52 - BENEFITS	14,136,425	12,938,493	13,480,414	\$13,490,823	(645,602)	104.8%	104.9%	9.3%
53 - OTHER COMPENSATION	104,514	93,298	99,342	\$99,342	(5,172)	105.2%	105.2%	12.0%
60 - OPERATING	1,926,256	1,686,379	1,439,576	\$2,410,239	483,983	79.9%	133.8%	14.2%
61 - COMMODITIES	344,313	378,687	387,829	\$381,802	37,489	90.2%	88.8%	-9.1%
62 - SERVICES	4,019,055	3,051,694	3,211,087	\$4,667,267	648,212	86.1%	125.2%	31.7%
63 - UTILITIES	657,618	748,441	739,751	\$749,561	91,944	87.7%	88.9%	-12.1%
64 - FIXED CHARGES	86,238	113,455	98,918	\$98,918	12,680	87.2%	87.2%	-24.0%
65 - INTERNAL CHARGES	4,506,612	4,307,125	3,424,508	\$4,149,455	(357,157)	108.6%	131.6%	4.6%
66 - OTHER EXPENSES	699,448	734,649	733,823	\$1,286,028	586,580	54.4%	95.3%	-4.8%
70 - CAPITAL OUTLAY	92,370	224,639	50,000	\$82,713	(9,659)	111.7%	184.7%	-58.9%
90 - TRANSFERS	15,328,317	14,161,842	17,991,221	\$15,190,244	(138,073)	100.9%	85.2%	8.2%



The largest area that exceeded budget on a dollar basis was “52-Benefits” which ran a 4.8% deficit costing \$645,602. Of this total, \$204,055 is related to health insurance. This will be discussed below as part of the Fund 16 - Health/Life discussion. Pension costs in the Police and Fire Departments were \$266,000 over budget. Staff are still examining why this occurred.

The next largest category that ran over budget was “65-Internal Charges” by \$357,157, a 9% overage; however, this is shown as “green” due to offsetting related surpluses in other categories. In the case of the Police, we only deployed and billed the medical campus for 13.0 FTE vs. 16.14 budgeted due to patrol division vacancies. In Engineering, we billed nearly 20% less than budget to capital due to vacancies. For these two departments, internal charges are shown as negative expenses to offset expenses incurred and to be billed. So, both deficits were offset by wage and supply surpluses.

“90-Transfers” exceeded budget by \$138,073, 0.9%. This was the result of the General Fund not receiving a credit from the General Liability fund as anticipated as a way to increase fund balance in that fund. The transfer to the Debt Service Fund was \$53,628 over budget as the 2022 debt issuance which took place after the 2023 Budget was adopted incurred sold with higher interest rates than budgeted.

The final category that ran over budget was “50-Wages”. Despite being only .4% over budget, this represented a \$121,664 deficit. The Fire Department exceeded budget by \$240,000 (this is partially offset by surplus in other departments). However, this was due to the Finance Department over-estimating their wage savings from vacancies as they ran a six percent vacancy rate and were at 98.3% of their original budget.

A couple of notes when looking at year-over year variances:

- Utilities were down year over year by 12.1% demonstrating continued savings from the City’s sustainability initiatives
- Operating costs and services, while below budget, were both up 14.2% and 31.7% from the prior year. Inflation certainly played a part in these year over year increases.

While not over the revised budget, “51 Overtime” was 54% over the original budget with Police exceeding their original budget by \$537,171 and Fire by \$297,289. Both are driven mostly by vacancies and are largely offset by wage savings but we continue to monitor this with the departments closely.

In terms of budgetary surplus, the large surplus in “66-Other Expenses” is the offset for the grant revenue surplus discussed above.

General Fund Balance

The total General Fund Balance increased \$797,180 to \$23,041,710.

In total, the Unassigned Reserve is estimated at \$9,558,877 which reflects 47 days of operating expenditures. The City’s policy is to maintain 60 days of operating expenses in reserve so the City is at 78% of its benchmark; a deficit of \$2,761,098.

While the surplus is certainly positive, all things being equal, the surplus should have been \$1.9 million - the amount of the investment market value recovery. Given this, and that the overall fund balance is short of the City’s desired policy level, I recommend the committee strongly consider using any surplus American Rescue Plan Act funds to replenish fund balance as well as possibly budgeting for a contribution to surplus in 2025.

Other Funds

The ending balance and net change for each fund is included as an attachment as well as a brief explanation of significant changes. A few significant changes are described below.

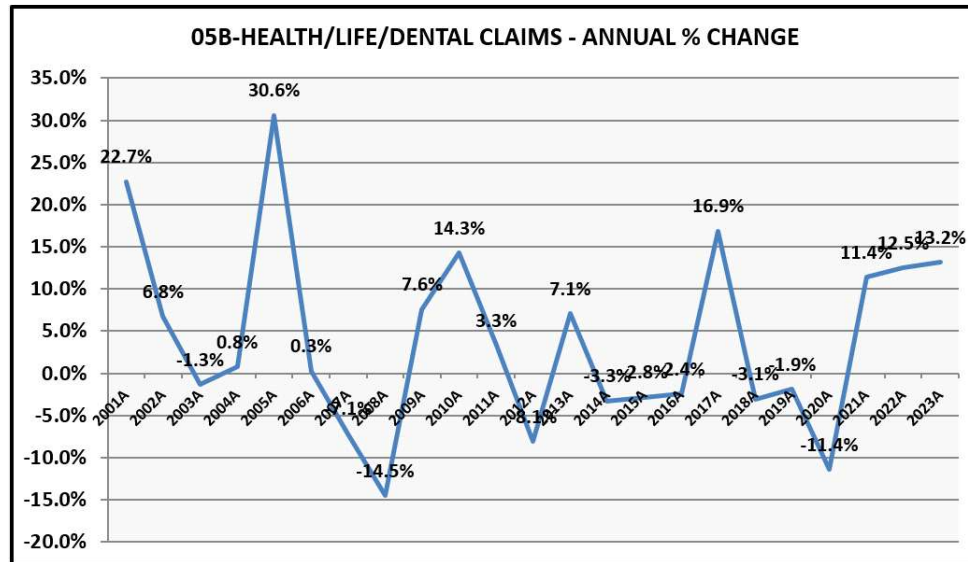
Health Insurance Fund

The Health Insurance program ran at 103.7% of the premium equivalent as claims exceeded budget by \$1.2 million (15% overage). This was offset by prescription rebates and employee and employer contribution surplus so the fund only ran a \$112,618 deficit. The increase in claims was caused entirely by a \$1.3 million increase over the prior year in high cost claims (claims greater than \$50,000) as shown in the tables below. This trend has continued into 2024.



Claim trends are a concern. As shown in the graph below, the plan has run double-digit claims cost increases over the past three years - the first time we’ve experienced three consecutive years of increases since data is available in 2001. This could prove to be challenging for the 2025 budget as we’ve regularly been able to use slower-than-forecasted claims

increases to help close the budget gap. That likely will not be an available strategy in 2025 and we already made a significant plan change in 2024 so that savings from plan design are also unlikely.



General Liability

The City had the best year since 2008 in terms of the number claims - only 16 reported. This contributed to the \$1,036,075 year-end surplus in the fund increasing the balance by 22%.

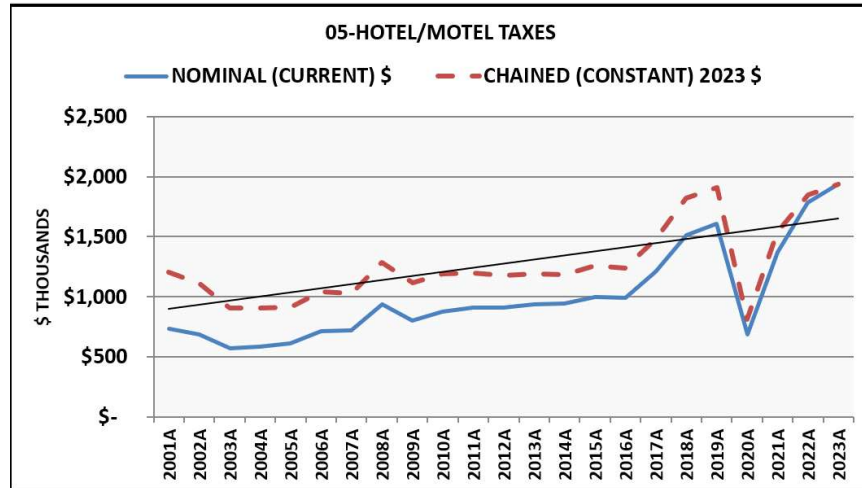


Workers Compensation

The number of claims decreased in 2023 from the prior year by 16% to 36 - the second consecutive year drop putting us well below our five-year average of 49 and a nearly 50% reduction in claims costs for that year. However, costs for claims incurred in prior years grew more than anticipated resulting in a claims expense in total exceeding budget by 22% and the fund to deficit by \$68,715. The ending funding balance of \$97,877 is significantly below our target so we will likely have to budget to replenish the reserve.

Tourism

The Tourism Fund posted a \$461,034 increase due largely to better than anticipated hotel/motel revenues which exceeded pre-COVID levels as occupancy increased 2.3% and the average daily rate 6.2% over 2022.

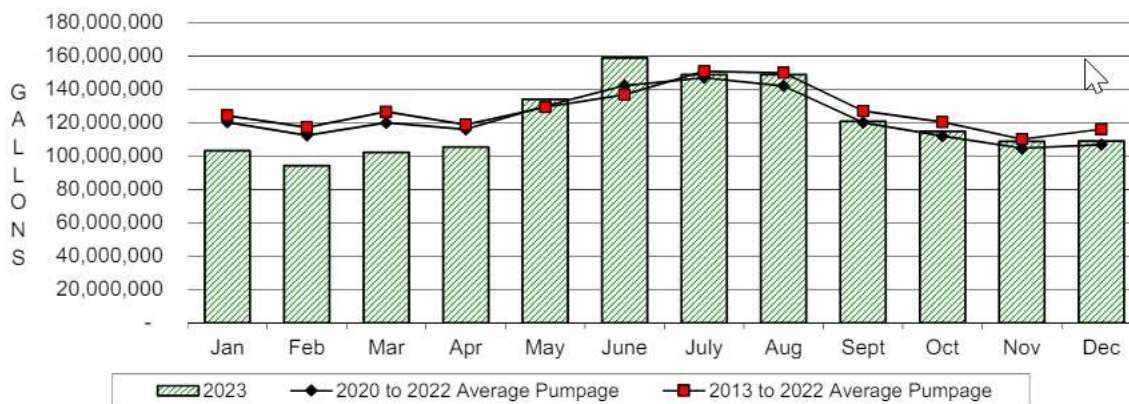


Water Utility

The Water Utility's fund balance includes the value of physical assets. The adjusted fund balance increased 5% to \$5,994,796 which represents 58% of operating expenditures. This is on track to have sufficient cash on hand to pay for upcoming tank paintings and still maintain a 25% balance.

The table below shows a historical comparison of the amount of water pumped, and ultimately sold. We exceeded the 2022 amount pumped by 4% but were below the 3-year average by 2% and below the 10-year average by 5%. The historical decrease has been a result of decreased manufacturing customers and increased residential water efficiency. This has been partially offset by the increase in multi-family customers.

PUMPAGE - 2023 VS THREE & TEN YEAR AVERAGE



MONTHS		2023	2022	3 YEAR AVERAGE	10 YEAR AVERAGE
January	Jan	103,180,000	110,625,000	120,240,000	124,152,100
February	Feb	94,139,000	108,128,000	112,336,667	117,173,300
March	Mar	102,251,000	119,053,000	119,861,467	126,458,940
April	Apr	105,360,000	111,040,000	115,977,000	118,751,400
May	May	134,038,000	123,274,000	129,772,603	129,212,581
June	June	158,710,000	131,936,000	142,171,515	136,745,655
July	July	148,773,800	137,010,000	146,886,000	150,785,700
August	Aug	148,822,400	136,084,000	142,023,333	149,839,300
September	Sept	120,818,400	115,165,000	120,013,333	127,029,700
October	Oct	114,846,000	103,779,000	111,946,333	120,379,700
November	Nov	108,665,000	97,889,000	104,563,667	110,057,900
December	Dec	109,060,000	103,055,000	106,870,667	116,068,700
		<u>1,448,663,600</u>	<u>1,397,038,000</u>	<u>1,472,662,585</u>	<u>1,526,654,976</u>

July-Oct 2023 estimated due to SCADA failure

Sanitary Utility

Staffing shortages in the Engineering Division resulted in several postponed projects including the manhole rehab project and the private lateral grouting project. This caused a larger than usual surplus but these funds will be spent in the subsequent year. Adjusted fund balance grew to \$17,341,546 representing 184.3% of operating expenditures. This intentionally exceeds our target of 25% due to funds for prior year projects and building a fund balance to help address the pending East Tosa Sewer project.

Stormwater Utility

Similar to Sanitary, the Stormwater Utility adjusted cash fund balance grew to \$5,768,334 Representing 108.3% of operating expenditures as the City builds a balance to address the East Tosa sewer project.

C. Strategic Plan (Area of Focus)

For informational purposes only

D. Fiscal Impact

For informational purposes only

E. Recommendation

For informational purposes only

Funds	Ending Balance	Net Change	% Change	Comment
10 - GENERAL FUND	23,041,711	797,180	3.6%	Investment value increases due to bond prices
11 - DEBT SERVICE	2,052,832	(190,248)	-8.5%	Use of bond premium as required. Reduction in MADACC loan
12 - CAPITAL IMPROVEMENTS	18,512,112	5,156,469	38.6%	Unused bond proceeds for multi-year projects
13 - COMMUNITY DEV BLOCK GRANT	(111,480)	(104,545)	1507.5%	Timing of grant reimbursements
14 - REVOLVING REVENUE	216,191	66,157	44.1%	Sale of surplus fire vehicles
15 - AGENCY	685,366	88,157	14.8%	Prior year Hart Park Senior Center surplus. Library Foundation contributions
16 - HEALTH AND LIFE INSURANCE	(24,279,114)	(112,618)	0.5%	Rx rebates and employee/employer surplus contributions offset claims overage
17 - DENTAL INSURANCE	235,694	(13,742)	-5.5%	Claims higher than budgeted
18 - GENERAL LIABILITY	5,830,735	1,036,075	21.6%	Fund surplused as budgeted
19 - WORKERS COMPENSATION	97,877	(68,715)	-41.2%	Prior year claims worsened
20 - FLEET	4,445,231	(55,689)	-1.2%	
21 - FLEET CAPITAL	675,772	60,716	9.9%	Several vehicles on back-order
22 - MUNICIPAL COMPLEX	578,184	(224,558)	-28.0%	Budgeted use of fund balance for building improvements
24 - INFORMATION TECHNOLOGY	1,835,108	21,258	1.2%	
25 - INFO TECH CAPITAL	1,481,103	264,754	21.8%	Contribution for future replacments exceeded expenses
26 - PUBLIC WORKS BUILDING	2,952,531	(65,281)	-2.2%	
27 - PUBLIC WORKS CAPITAL	329,616	93,254	39.5%	Contribution for future replacments exceeded expenses
30 - REDEVELOPMENT RESERVE	1,006,007	(37,236)	-3.6%	
31 - COMMUNITY DEV AUTH	5,266,863	(483,234)	-8.4%	Use of bond proceeds for Boston Store holding costs
32 - TOURISM	1,864,137	461,034	32.9%	Greater than budgeted hotel/motel revenue as hotels enjoyed higher occupancy than anticipated
33 - SPECIAL ASSESSMENTS	(0)	(0)	0.0%	
34 - PARKS	1,796,299	492,448	37.8%	Wage and benefit savings
35 - LIBRARY	-	-	0.0%	
36 - TAX INCREMENTAL DISTRICTS	3,728,278	1,400,009	60.1%	\$850K surplus in TIF 6
37 - HOSPITAL POLICING	69,413	(3,492)	-4.8%	
38 - SPECIAL GRANTS	1,900	1,900		
50 - WATER	45,034,087	1,590,745	3.7%	approx \$300K cash (4.25%) increase
51 - SANITARY	63,251,702	3,860,334	6.5%	approx. \$2.3 million cash increase due in part to carryover
52 - STORM SEWER	50,263,404	3,138,988	6.7%	approx \$960K (28%) cash increase
CA - CAPITAL ASSETS - GOVERNMENTAL	132,593,245	629,301	0.5%	
Grand Total	\$343,454,805	\$17,799,423		