



Common Council Chambers – City Hall Room 100
7325 W. Forest Home Ave, Greenfield, Wisconsin

BOARD OF PUBLIC WORKS MEETING Agenda

Tuesday, November 23, 2021 - 6:30 PM

1. Call to order
2. Roll Call
3. Approval of the September 28, 2021 meeting minutes
4. Citizen Commentary
5. Discussion and decision to approve an agreement for a Targeted Runoff Management Grant from the Wisconsin Department of Natural Resources to fund channel improvements within Honey Creek.
6. Discussion and decision to approve a license agreement with WE Energies for the Powerline Trail.
7. Discussion and decision to approve an agreement with Resource Environmental Solutions for maintenance along the Wildcat Creek in Kulwicki Park.
8. Superintendent of Public Works report
9. Engineering Report
10. Other topics for future agendas
11. Adjournment

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request this service, contact the Department of Human Resources at 329-5208, (FAX) 543-6158, TDD 1-800-947-6644 (Wisconsin Telecommunications Relay System), or by writing to the Director of Human Resources/ADA Coordinator at Greenfield City Hall, 7325 West Forest Home Avenue, Room 101, Greenfield, WI 53220. Greenfield City Hall is wheelchair accessible from the west and south entrances.

MINUTES OF THE BOARD OF PUBLIC WORKS MEETING HELD AT THE GREENFIELD CITY HALL
ON TUESDAY, SEPTEMBER 28, 2021

1. Call to order
Called to order at 6:01pm.
2. Roll Call
Present: Alderpersons Bruce Bailey, Pamela Akers, Denise Collins
Excused: John Rivera
Also present: John Leskoski, Superintendent, Department of Public Works; Jeff Katz, Director, Neighborhood Services; Bryan Haas, City Engineer
3. Approval of the August 24, 2021 Board of Public Works meeting minutes.
Motion by Alderperson Denise Collins, seconded by Alderperson Pamela Akers to approve the August 24th, 2021 meeting minutes. Motion carried unanimously.
4. Citizen Commentary
None
5. Discussion and decision to approve the 2022 Special Assessment Rate Schedule.
Mr. Katz states each year the City revises the Special Assessment reconstruction projects. Rates are based on the Consumer Price Index (CPI) and the average rate of inflation. The average for the past three years is less than 3%. The new rate will be 2.998%. Motion by Alderperson Denise Collins, seconded by Alderperson Bruce Bailey to approve. Motion carried unanimously.
6. Discussion and decision to approve an amendment to Resolution No. 3317, updating the Stormwater Utility Rate for 2022.
Mr. Katz stated the Stormwater Utility Rate is used to maintain the quality and the volume of stormwater. These costs increase yearly based on the Consumer Price Index and the cost of inflation. For example, a single family resident pays quarterly for 1 ERU- \$17.96 and the increase would be \$0.54. Ms. Akers inquired how the stormwater program differs from other municipalities. Mr. Katz stated the City of Greenfield has a Stormwater Utility Rate in order to meet the Stormwater regulation requirements at a lower cost. Motion by Alderperson Denise Collins, seconded by Alderperson Bruce Bailey to approve. Motion carried unanimously.
7. Superintendent of Public Works report
Mr. Laskoski stated phase 1 of landscaping at City Hall is completed. Public works will continue sweeping streets and leaf collection will begin Monday, October 11th. Mr. Laskoski said televising will be completed at the end of September for 2021.
8. Engineering Report
Mr. Haas gave an overview of Greenfield's projects. The reconstruction of the neighborhood south of Morgan Ave is progressing on schedule with paving scheduled for the middle of October. The top layer of asphalt will be paved next spring 2022. The

concrete panel replacement project on Cold Spring Rd has been completed. The sanitary sewer at Ramsey Ave has also been replaced. Engineering is working with DPW to identify sanitary sewer locations that need to be rehabilitated

Mr. Haas noted that the future Greenfield construction projects include:

- Resurfacing of the neighborhood 122nd St/Sunset Ln, Brookside Dr/Abbott Ave, 103rd St south of Oklahoma Ave and half of the neighborhood north of Morgan Ave around Anthony Dr/Schauer Ave.*
- Concrete replacement on Cold Spring Rd between 68th St and 51st St.*
- Traffic signals will be upgraded at Layton Ave/47th St and Edgerton Ave/60th St.*
- Sidewalk on 43rd St south of Cold Spring Rd.*
- Powerline Trail from the Oak Leaf Trail to 60th St*
- Sanitary sewer extension on 92nd St*

Mr. Haas gave an update on the Milwaukee County projects. Road reconstruction on Layton Ave is progressing. Work this year will be finished in November. The remaining work on Layton Ave will be completed next spring, 2022. Mr. Haas stated the Wisconsin DOT is resurfacing South 108th St. with plans to complete the project this fall. The traffic signals at Layton Ave and South 108th Street have been updated. The noise wall replacement between Cold Spring Rd and Howard Ave will be completed at the end of October/early November. There will be night-time closures of Cold Spring Rd.

Mr. Haas noted future Milwaukee County construction projects include resurfacing Beloit Rd from 124th St to Wollmer Rd. Also, future Wisconsin DOT construction projects include replacing the 60th Street bridge.

9. Other topics for future agendas

Mr. Bailey said he would like to have a discussion regarding speed bumps at the next meeting.

Ms. Akers requested to change the meeting start time to 6:30pm. Mr. Bailey and Mr. Katz agreed to change the start time to 6:30pm for future meetings.

10. Adjournment

Motion by Alderperson Pamela Akers, seconded by Alderperson Denise Collins to adjourn at 6:42 pm. Motion carried unanimously.

Respectfully Submitted, Stefanie Richter. Administrative Assistant



Board of Public Works Meeting

Item Number:

Introduced By: Department of Neighborhood Services (Katz)

Date Introduced: November 23, 2021

RELATING TO:

Discussion and decision to **approve an agreement for a Targeted Runoff Management Grant from the Wisconsin Department of Natural Resources to fund channel improvements within the Honey Creek.**

SUMMARY:

The City of Greenfield has received a grant in the amount of \$225,000 to fund channel improvements within the Honey Creek.

The overall project will reduce flooding, improve water quality, improve wildlife habitat, and enhance recreation along the Honey Creek.

The focus of the project will be between 43rd Street and Layton Avenue.

Neighborhood Services is concurrently applying for or has received other grants that could be used in combination to fund all or part of the project costs.

FINANCIAL:

RECOMMENDATION:

Approve an agreement for a Targeted Runoff Management Grant from the Wisconsin Department of Natural Resources to fund channel improvements within the Honey Creek.

ATTACHMENTS: KEY ISSUES ___ BACKGROUND ___ RESOLUTION ___ FISCAL NOTE ___
MOTION ___ OTHER ___



November 10, 2021

► **REQUIRES IMMEDIATE ACTION** ◀
Targeted Runoff Management Program
Grant# TUC40236Y22
Grant Amount: \$225,000.00

Jeff Katz, City Engineer
City of Greenfield
7325 W. Forest Home Ave.
Greenfield, WI 53220

Dear Mr. Katz:

Congratulations! On behalf of the Governor, we are pleased to forward to you a grant agreement for financial assistance for the following project: *Honey Creek Headwaters Streambank Stabilization*.

This grant, and any reimbursements made under it, is governed by very specific statute and administrative code provisions. Accordingly, please read the grant documents thoroughly, paying particular attention to the Scope and Conditions sections for eligibility, grantee requirements, and reimbursement provisions. There are also a number of activities where you must obtain prior departmental review and authorization before proceeding.

On January 27, 2022, DNR and UW-Madison Division of Extension will hold a grant administration webinar from 9:00 to 11:00 a.m. to provide information about seeking reimbursement from DNR, amending your grant, submitting the final report, etc. All grantees receiving CY 2022 grant awards must attend the webinar or view the webinar recording prior to submitting the first reimbursement request for their grant. Webinar registration information is included in the email from DNR with your grant agreement.

You are obligated to submit a final report, using the Department's BMP Implementation Tracking System (BITS), prior to submitting your final reimbursement request for the projects completed under this grant; before and after pictures are a required component.

To accept this grant, please review the agreement and email a scanned copy signed by the authorized government official, along with the completed *Grantee Contact Page*, to: DNRCFANONPOINTGRANTS@wisconsin.gov.

Please review this grant thoroughly and if you have any questions, contact your Regional Nonpoint Source Coordinator, Jesse Bennett, at (414) 458-0448 or by e-mail at Jessiah.Bennett@wisconsin.gov.

Thank you for your continued cooperation with Wisconsin's Runoff Management Grant Programs.

Sincerely,


for Jim Ritchie, Director
Bureau of Community Financial Assistance

Enclosure(s)

C (e-copy): Jesse Bennett, Regional Nonpoint Source Coordinator, DNR Southeast Region
Corinne Johnson, Nonpoint Source Program Grant Manager, CF/2

PROJECT CONTACT PAGE

INSTRUCTIONS: In the spaces below, insert contact information for the person **most directly involved** with this particular project. The Department will contact the person named for all matters related to this project.

Grant No.	TUC40236Y22
Governmental Unit	City of Greenfield
Project Contact Name	
Project Contact Title	
Project Contact Mailing Address	
Project Contact Phone Number (direct):	() Extension:
Project Contact Email Address:	

Address to which reimbursement checks should be sent if different than contact information above:

Name	
Title	
Mailing Address	
Phone Number (direct):	() Extension:
Email Address:	

If information provided on this page -- or any information in Part 1 of the grant agreement -- changes during the grant period, please provide the updated information to DNR Nonpoint Source Program Grant Manager and the DNR Regional Nonpoint Source Coordinator.

Please complete this contact page and email it with the signed grant to:
DNRCFANONPOINTGRANTS@wisconsin.gov.

WISCONSIN TARGETED RUNOFF MANAGEMENT (TRM)
GRANT AGREEMENT

Form 8700-328 (rev. 06/2021)

Notice: By signing and dating this grant agreement, grantees indicate concurrence with terms of this agreement, authorized under ss. 281.65 and 283, Wis. Stats., and chs. NR 151, 153, 154, and 243, Wis. Adm. Code. Signed agreement must be returned to the address above within 30 days so that funds will be reserved for this project. Failure to return a signed agreement will result in denial of grant funds. Personally identifiable information collected will be used for program administration and may be made available to requesters as required under Wisconsin's Open Records Law [ss. 19.31 - 19.39, Wis. Stats.].

PART 1. GRANT ADMINISTRATION INFORMATION

Grant Number TUC40236Y22	Grant Award Date November 10, 2021		
Grantee (Unit of Government) City of Greenfield			Total Grant Amount \$225,000 State Funding: \$225,000 Federal Funding: \$0
Project Name Honey Creek Headwaters Streambank Stabilization		Grant Period From January 1, 2022 Through December 31, 2023	
Authorized Government Official Jeff Katz, City Engineer		Grantee Contact Jeff Katz, City Engineer	
Street Address 7325 W Forest Home Ave		Contact's E-mail Address Jeffrey.Katz@greenfieldwi.us	
City, ZIP Code, County Greenfield, 53220, Milwaukee County		Contact's Telephone Number (414) 939-8322	
Name of Department Regional Nonpoint Source Coordinator, Phone Number and Email Address Jesse Bennett, (414) 458-0448, Jessieah.Bennett@wisconsin.gov			DNR Region Southeast Region

PART 2. ELIGIBLE COST-SHARING BUDGET

Note: Budget line items below cannot be exceeded without advance written approval from the DNR.

	TRM Grant State Cost-Share Amount	Federal funds provided in this agreement?		
		Yes	X	No
1. BMP Cost-Share:				
a. Structural	\$163,863.00	Structural Cost-Share Percent		70%
b. Non-Structural/Cropping		Non-Structural/Cropping Cost-Share Percent		%
c. Engineering/Design	\$61,137.00	Engineering/Design Cost-Share Percent		70%
d. Property Acquisition		Property Acquisition Cost-Share Percent		%
2. Other:		Date of Application:		04/15/2021
3. Total Maximum TRM Grant Amount	\$225,000.00	State Funds Used as Match to Federal Funds?		Yes

PART 3. PURPOSE AND SCOPE

This grant provides funding and authorizes cost-share reimbursement by the DEPARTMENT for the above-named project as described in the grant application submitted for the grant period in Part 1 above. The following eligible Best Management Practices (BMPs) and activities to address ch. NR 151 performance standards and prohibitions and/or Total Maximum Daily Load goals are consistent with project budget identified in Part 2 above. Eligible BMPs include:

[R39F] Streambank/Shoreline Fencing
[R39O] Other Streambank/Shoreline Protection (incl. assoc fencing)
[R39R] Streambank/Shoreline Rip-rapping (incl. associated fencing)
[R39S] Streambank/Shoreline Shaping & Seeding (incl. assoc fencing)
[R50] Engineering Services

PART 4. CONDITIONS**A. General Conditions:**

A.1. The Wisconsin Department of Natural Resources (DEPARTMENT) and the GRANTEE identified in Part 1 above mutually agree to perform this agreement in accordance with the TRM grant program and s. 281.65, Wis. Stats., and chs. NR 151, NR 153, and NR 154, Wis. Adm. Code., and with the project proposal, application, terms, promises, conditions, plans, specifications, estimates, procedures, maps and also any assurances attached and made a part of this agreement.

A.2. This agreement, together with any referenced parts and attachments, shall constitute the entire agreement and previous communications or covenants pertaining to this agreement are superseded. Any revisions to this agreement must be made by written amendment, signed by both parties, prior to the termination date of this agreement, whether for changes in scope, grant period, or cost.

A.3. Failure by the GRANTEE to comply with the terms of this agreement shall not cause the suspension of all obligations of the State if, in the judgment of the Secretary of the DEPARTMENT, such failure was due to no fault of the GRANTEE. In such case, any amount required to settle at minimum costs any irrevocable obligations properly incurred shall be eligible for reimbursement under this agreement, at the DEPARTMENT's discretion.

A.4. Eligibility for cost-sharing reimbursement is governed by the provisions of s. NR 154.04 and ch. NR 153, Wis. Adm. Code. Cost-share rates and applicability may be further limited by departmental contract approval(s), which may restrict the cost-share amount due to the eligibility requirements of the statute and codes.

A.5. The amount listed in Part 2 above is the maximum amount the DEPARTMENT may reimburse under this agreement.

A.6. Neither the GRANTEE nor any landowner or land operator may adopt any land use or practice that reduces the effectiveness or defeats the purposes of any BMP installed under this agreement.

A.7. The GRANTEE:

1. Agrees to comply with all applicable Federal, Wisconsin, and local laws in fulfilling the terms of this agreement.
2. Promises to execute the project described in accordance with this agreement.
3. May decline offer of financial assistance provided through this agreement, in writing, at any time prior to the start of the project and before expending any funds. After the project has been started or funds expended, this agreement may be rescinded, modified, or amended only by mutual agreement and in writing.
4. Agrees that its employees or agents are not employees or agents of the DEPARTMENT for any purpose including Worker's Compensation.
5. Agrees, to save, keep harmless, defend and indemnify the DEPARTMENT and all its officers, employees and agents, against any and all liability claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this agreement or omissions of GRANTEE's employees, agents or representatives.
6. Agrees to reimburse the DEPARTMENT of any and all funds the DEPARTMENT deems appropriate in the event the GRANTEE fails to comply with the conditions of this agreement or project proposal as described, or fails to provide public benefits as indicated in the project application, proposal description or this agreement. In addition, should the GRANTEE fail to comply with the conditions of this agreement, fail to progress due to non-appropriation of funds, or fail to progress with or complete the project to the satisfaction of the DEPARTMENT, all obligations of the DEPARTMENT under this agreement may be terminated, including further project cost payment.
7. Agrees, in connection with the performance of work under this agreement, not to discriminate against any employee or applicant for employment because of age, race, religion, color, disability, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Status, sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer,

recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The GRANTEE further agrees to take affirmative action to ensure equal employment opportunities, as required by law. The GRANTEE agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

8. Agrees to maintain a financial management system, separate from all other GRANTEE activities, for this agreement. The GRANTEE agrees that accounting for project funds shall conform to generally accepted accounting principles and practices.
9. Agrees to comply with all applicable local and state contract and bidding requirements. GRANTEE should consult its legal counsel with questions concerning contracts and bidding. For assistance, GRANTEE may consult Procurement Guide for Local Governments Receiving DNR Grants.
10. Agrees that accounting and fiscal records shall be maintained in accordance with the applicable administrative codes governing this agreement. At a minimum, GRANTEE shall retain and make available all fiscal records pertaining to this agreement for three years after the date of final settlement, or three years after the end of the Grant period, whichever is later, or for a longer period if required by the DEPARTMENT for audit purposes.
11. Agrees to enter into a cost-share agreement (CSAs) with landowner(s) or land operator(s) using forms provided by the DEPARTMENT if BMP will be constructed on land not owned by the GRANTEE. The CSA must include appropriate operation and maintenance requirements. The CSA installation period can be no longer than the grant period of this agreement. Each CSA exceeding \$50,000 for professional service and construction contracts, construction designs, and appraisals must be approved by the DEPARTMENT regional Nonpoint Source Coordinator before GRANTEE and landowner or land operator sign. The cost share rate included in the CSA shall not exceed the rates specified in chs. NR 153 and 154, Wis. Adm. Code, or in Part 2 of this agreement. Each CSA or amendment of CSA shall be recorded with the County Register of Deeds and promptly submitted to the DEPARTMENT's regional Nonpoint Source Coordinator identified in Part 1 above.
12. Agrees to perform periodic inspections of the project site after the grant period to ensure that all participating landowners and land operators are complying with the CSA maintenance requirements and applicable administrative code governing this agreement.
13. Agrees to conduct enforcement activities consistent with the local authority identified as part of the application materials for which the grant is awarded.
14. Shall not issue funds under this agreement to individuals whose names appear on the statewide support lien docket under s. 49.854(2)(b), Wis. Stats. unless the individuals submit to the provider a payment agreement that has been approved by the county child support agency under s. 59.53(5), Wis. Stats., and that is consistent with rules promulgated under s. 49.858(2)(a), Wis. Stats.
15. Agrees to comply, at its own expense, with annual Single Audit requirement. Annual Single Audit requirements are specified in 2 CFR Part 200, titled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also referred to as "Uniform Guidance"). The GRANTEE agrees to have an audit performed in accordance with the Uniform Guidance if the GRANTEE expends \$750,000 or more in combination of state and federal funds during the calendar year. Wisconsin State Single Audit Guidelines may be found at: <http://www.doa.state.wi.us/Divisions/budget-and-finance/financial-reporting/state-controllers-office/state-single-audit-guidelines> issued by the Wisconsin Department of Administration (DOA), State Controller's Office.
16. May request partial reimbursements from the DEPARTMENT for completed project components. Reimbursements are not possible for work done before or after the grant period identified in Part 1 above or for components not specified in the Part 3 of this agreement. Reimbursements are contingent upon availability of funds. Reimbursement request(s) must be submitted to the DEPARTMENT regional Nonpoint Coordinator identified in Part 1 above and must be accompanied by proof of purchase documentation and project progress reports.

17. Agrees, within 60 days of grant expiration date, to complete and submit a final report, using the DEPARTMENT's "BMP Implementation Tracking System" (BITS), and complete and submit a final request for grant reimbursement to the DEPARTMENT's Regional Nonpoint Source Coordinator for review and approval.
18. Agrees to request reimbursement of grant-eligible activities only, as listed in Part 3, for expenses incurred during the grant period specified in Part 1.
19. Shall ensure that DEPARTMENT representatives have access to land on which grant-funded activities are being planned or undertaken, before, during and after BMP installation.
20. Should consider following methods for controlling, transporting and disposing of aquatic invasive plants and animals and water in which they may be contained, as described in the DEPARTMENT's Manual Code 9183.1 *Boat, Gear, and Equipment Decontamination and Disinfection* and available on the DEPARTMENT's website at: <http://dnr.wi.gov/topic/invasives/disinfection.html>.
21. Shall seek repayment from CSA recipient of expenses reimbursed by the GRANTEE for project costs subsequently determined to be ineligible for grant reimbursement. Ineligible costs could include, but not limited to, livestock operations requiring WPDES permit coverage that have, within 12 months of reimbursement for BMPS under this agreement, at least 1,000 animal units and are required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b), Wis. Admin. Code. After ineligible reimbursements are recovered from CSA recipient, the GRANTEE shall repay the DEPARTMENT any previous grant reimbursements for grant-ineligible expenses.

A.8. The DEPARTMENT:

1. Promises, in consideration of the covenants and agreements made by the GRANTEE, to obligate for the GRANTEE the amount identified in Part 2 above and to tender to the GRANTEE that portion of the obligation that is required to pay the DEPARTMENT's share of the costs based on the cost-share percentage listed on Part 2 above for work performed and expenses incurred during the grant period noted in Part 1 above for eligible project costs.
2. Agrees that the GRANTEE shall have sole control of the method, hours worked, and time and manner of any performance under this agreement other than as specifically provided in this document. The DEPARTMENT reserves the right only to inspect the job site or premises for the sole purpose of ensuring that the project is progressing or has been completed in compliance with this agreement. The DEPARTMENT takes no responsibility of supervision or direction of the performance of the agreement to be performed by the GRANTEE or the GRANTEE's employees or agents. The GRANTEE is an Independent Contractor for all purposes, not an employee or agent of the DEPARTMENT. The DEPARTMENT further agrees that it will exercise no control over the selection and dismissal of the GRANTEE's employees or agents.
3. Agrees to notify the GRANTEE at the beginning of each calendar year about award of Federal funds in a prior calendar year as an aid for GRANTEES that undergoing Annual Single Audit.
4. Shall not reimburse GRANTEE for engineering design costs until installations of associated BMPs have been completed and certified by the GRANTEE as installed in accordance with the grant program standards and specifications of ch. 154, Wis. Admin. Code.

B – Special Conditions

B1. Natural Heritage Concerns. If historical/cultural artifacts are unearthed or environmental hazards are discovered during any earth disturbance activity under this agreement, the GRANTEE must immediately stop construction activities and notify the DEPARTMENT's regional Nonpoint Source Coordinator to determine the appropriate response.

B.2. Compliance Notification. GRANTEE shall provide a written record to the cost-share recipient of any croplands and livestock facilities brought into compliance with ch. NR 151 performance standards and prohibitions as a result of a project conducted under this agreement. A copy of that written record shall be provided to the DEPARTMENT's regional Nonpoint Source Coordinator. The written record shall clearly identify:

- the locations of the livestock facilities or croplands brought into compliance;

- the specific performance standards and prohibitions with which each of the identified livestock facilities and croplands comply;
- a statement that, under Wisconsin law, compliance at these sites must be maintained in perpetuity regardless of future cost-sharing.

B.3. WPDES Permit Potential. GRANTEE shall withhold reimbursement from cost-share recipients who, within twelve (12) months of commencing construction of a practice funded under this agreement, intend to expand livestock operations to the extent that they will be required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b), Wis. Adm. Code, if such practice(s) would be covered under the permit. If reimbursement is made within this timeframe, GRANTEE shall require the cost-share recipient to return all applicable reimbursements.

PART 5. INELIGIBLE COSTS

1. Costs incurred, or work performed, either prior to or after the grant period identified in Part 1 above, unless specifically authorized in the grant Scope.
2. Costs for installation of a BMP that does not meet the conditions of the applicable administrative codes governing this grant or that are inconsistent with the grant application.
3. Costs for BMPs identified as ineligible in the applicable administrative codes governing this grant or that are specifically excluded in a grant approval letter.
4. Costs that exceed or do not satisfy the cost containment procedures of the applicable administrative code governing this grant.
5. Costs to perform operation and maintenance of BMPs.
6. Costs specified in NR. 153.15(2), Wis. Adm. Code.

FOR THE GRANTEE
By: _____

Authorized Representative

Title

Date Signed

FOR THE STATE OF WISCONSIN
By: _____


for Jim Ritchie, Director
Bureau of Community Financial Assistance


Date Signed

(Print Name, If Different from Authorized Government Representative in Part 1.)



Board of Public Works Meeting

Item Number:

Introduced By: Department of Neighborhood Services (Katz)

Date Introduced: November 23, 2021

RELATING TO:

Discussion and decision to **approve a license agreement with WE Energies for the Powerline Trail.**

SUMMARY:

WE Energies has agreed to permit the City of Greenfield to build the Powerline multi-use recreation trail on lands it owns.

A license agreement between the City and WE Energies defines the terms and conditions.

FINANCIAL:

RECOMMENDATION:

Approve a license agreement with WE Energies for the Powerline Trail.

ATTACHMENTS: KEY ISSUES ____ BACKGROUND ____ RESOLUTION ____ FISCAL NOTE ____
MOTION ____ OTHER ____

LICENSE AGREEMENT

THIS LICENSE, Made and entered into this ____ day of _____, 2021, by and between **Wisconsin Electric Power Company, a Wisconsin corporation, doing business as We Energies**, hereinafter referred to as "Licensor", and the **City of Greenfield, a municipal corporation**, hereinafter referred to as "Licensee"; (Individually sometimes referred to as "Party", collectively as "Parties").

WITNESSETH:

Licensor, for and in consideration of the covenants, conditions, and agreements hereinafter contained, hereby grants license and permission unto Licensee, to develop, at Licensee's sole cost and expense, and use a part of Licensor's right of way lands (hereinafter "Lands") as a recreation trail (hereinafter "Premises") and to place thereon a trail for hiking, biking, and cross-country skiing and other similar non-motorized recreational uses (hereinafter "Trail") for use by the general public and for no other purpose or purposes whatsoever (except those purposes as may be determined by Licensor for its own use), which Premises is located **north of W. Cold Spring Rd. from US 894 east to S. 60th St, being a part of the NE ¼ of Section 20, NW and NE ¼ of Section 21, NW and NE ¼ of Section 22 and NW ¼ of Section 23, Township 6 North, Range 21 East, in Milwaukee County, Wisconsin**. The License and permission herein granted is subject to the following conditions:

1. **Term:** The term of this License Agreement (hereinafter "License") shall be for a period of **twenty (20) years** (hereinafter "Initial Term") and continue thereafter on a year to year basis subject to termination as hereinafter provided. This License shall commence on the above date which is the date the last of the Parties hereto executed this License (hereinafter "Commencement Date")
2. **Termination:** Upon expiration of the Initial Term, this License may be terminated at any time by either Party hereto by providing at least **180 days** prior written notice to the other Party of such termination. Notwithstanding any of the terms and conditions contained herein, should Licensor require exclusive use of any part of its Lands, including the Premises, for its purposes, then Licensor may, at any time, including during the Initial Term, terminate the License in whole or in part on such part or parts of the Lands or Premises it requires, and Licensee shall, not later than 90 days after receiving notice of such termination, at its sole cost and expense, relocate, remove or re-route the Trail from such part or parts of the Lands.
3. **Non Use:** Licensee shall have one (1) full year, beginning at the Commencement Date of this License, to begin construction of the Trail and one (1) full year after the start of construction to complete construction, as permitted herein. If Licensee fails to begin construction of the Trail within one (1) year of the Commencement Date or complete construction of the Trail within one (1) year, this License shall terminate immediately without notice from Licensor.
4. **Base Rent:** During the Initial Term and extensions thereto, no Base Rent shall be due.
5. **Assignment:** Licensee shall not assign this License nor permit any transfer by operation of law or otherwise of the interest in the herein-described Premises acquired through this License unless otherwise approved by Licensor in writing.
6. **Acceptance of Premises:** Licensor offers and Licensee agrees to take the Premises in an "as is" condition and Licensor makes no warranty or representation of any kind as to the condition, quality or suitability of the soil, subsoil or surfacing of the Premises and Lands or anything thereon or therein, unless the same is specifically set forth in this License, for the purposes to which Licensee will utilize the Premises. Licensee has examined the Premises described hereinabove and knows the condition thereof and no representations as to the condition and repair thereof and no agreements to make any alterations, repairs or improvements in or about the licensed Lands and

Trail have been made by Licensor. Licensee's taking possession of the Premises shall be conclusive evidence as against Licensee that the Premises were in good order and satisfactory condition for use as a Trail and other permitted ancillary uses. Licensor shall not be liable for any damages arising from acts or neglect of Licensee or its invitees or users of the Premises, whether authorized to use the Lands and Premises or not.

7. **Permitted and Prohibited Uses:** The Premises shall be used for the purpose of constructing, installing, operating, maintaining, using, repairing, and removing a recreation trail and permitted appurtenances thereto for hiking, biking, and cross-country skiing and other similar non-motorized recreational uses and for no other reason whatsoever. No vehicles, trucks, cars or equipment are to be parked or materials stored on said Lands or Premises at any time without specific written approval of Licensor. Furthermore, the Licensee agrees that no motorized vehicles, including but not limited to cars, trucks, snowmobiles, motor bikes, mini-bikes, motorcycles, mopeds, go-carts and all-terrain vehicles will be used, operated or permitted on the Lands or Premises. However, Licensee shall be permitted to use motorized vehicles for the patrol, maintenance and other permitted uses of the Lands and Premises. The Licensee also agrees that no horses will be used or permitted on the Lands and Premises. Licensee agrees that no kites, model airplanes or similar or dissimilar objects that may come in contact with or in close proximity to the facilities of Licensor or the American Transmission Company LLC (hereinafter "ATC") and its successors and assigns, will be used, operated or permitted on the Lands and Premises.
8. **Signage:** Licensee shall not place or maintain or allow to be placed or maintained by any person or persons, any signs or advertising billboards upon the Lands or Premises at any time, except as required or permitted by this Section. Licensee shall install and maintain signs that are necessary to identify Licensee's Trail and occupancy of the Lands and Premises at every road crossing and at least every 2,600 feet along the Trail or more frequently as desired by Licensor. Such identification signs shall include the We Energies approved corporate logo and shall state "In cooperation with We Energies" or such other signs as Licensor may reasonably require. Licensee further agrees to post, maintain at all times, and if necessary, replace signs that expressly state the uses that are permitted and prohibited under Section hereof. In addition, Licensee hereby agrees to post safety and traffic signs along the Trail and at road crossings, railroad crossings, driveways, farm crossings and any other vehicular crossings along the Trail. All signs must be approved by Licensor prior to erection or installation on the Lands or Premises.
9. **Zoning and Permits:** Licensee hereby agrees that Licensor has made no representations that the Premises are properly zoned for the proposed use by Licensee, and it is expressly understood that Licensee hereby assumes any and all obligations and responsibilities with respect to compliance with all applicable zoning laws and ordinances of any regulatory bodies which may have jurisdiction. Any change in zoning must be approved by Licensor. This License is conditioned on Licensee's obtaining all necessary permits and authority for the proposed use. All permits required hereunder shall be acquired by Licensee at its sole cost and expense. If permits are required, a copy of the final permits must be provided to the Licensor prior to the commencement of any work on the Lands or Premises by Licensee and upon reasonable time for Licensor to review the permits.
10. **Governmental Jurisdiction:** Licensee shall, in the use and occupancy of the Premises, comply with all laws, ordinances, rules and regulations of the **City of Greenfield, Milwaukee County**, State of Wisconsin and all other governmental bodies having jurisdiction, over the operation of Licensee's or Licensor's business or occupation of the Lands and Premises.
11. **Construction and Other Liens:** Licensee shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Licensor in the Premises or Lands or to charge the Base Rent payable hereunder, if any, for any claim in favor of any person dealing with Licensee, including those who may furnish materials or perform labor for any construction or repairs. Licensee covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed, materials, services or supplies furnished in connection with any work performed on the Premises and Lands by or at Licensee's direction on which any lien is or can be validly and legally asserted

against its interest in the Premises or the improvements thereon and that it will save and hold Licensor harmless from any and all loss, liability, cost or expense, including costs of suit and reasonable attorney's fees, based on or arising out of asserted claims or liens against the Leasehold estate or against the right, title and interest of the Licensor in the Premises and Lands or under the terms of this License. Licensee will not permit any construction lien or any other liens which may be imposed by law affecting Licensor's or its mortgagees' interest in the Premises and Lands to be placed upon the Premises or Lands arising out of any action or claimed action by Licensee, and in case of the filing of any such lien Licensee will promptly pay same. Licensee shall provide Licensor with Lien Waivers from all contractors and subcontractors for all work performed and material and services supplied by or on its behalf at the Premises or Lands. If any such lien shall remain in force and effect for ten (10) days after written notice thereof from Licensor to Licensee and Licensee has not posted with Licensor a bond in the amount of at least 125% thereof, Licensor shall have the right and privilege of paying and discharging the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much Additional Rent hereunder due from Licensee to Licensor and shall be paid to Licensor immediately on presentation of a bill therefor. Notwithstanding the foregoing, Licensee shall have the right to contest any such lien in good faith and with all due diligence so long as any such contest, or action taken in connection therewith, protects the interest of Licensor and Licensor's mortgagee in the Lands, and Licensor and any such mortgagee are, by the expiration of said ten (10) day period, furnished such protection, and indemnification against any loss, liability, cost or expense related to any such lien and the contest thereof as are satisfactory to Licensor and any such mortgagee. If Licensee has posted a bond with Licensor in the amount of 125% of the liens, such liens can and will be cleared within 180 days of filing. However, Licensor reserves the right at any time prior to the expiration of said 180 day period to make a demand on said bond to clear its title in the event such liens would prevent Licensor's lawful use or transfer of its property in any way or to prevent any loss of Licensor's fee simple ownership rights. Licensor reserves the right to make demand on any such bond immediately upon expiration of said 180 day period. Licensor agrees to notify Licensee of its intent to secure the release of any such liens from the posted bond. No temporary or permanent construction may occur in wetlands. If any work is proposed within wetlands, the Licensee must obtain the appropriate permits from the Wisconsin Department of Natural Resources ("WDNR") and the Army Corps of Engineers ("ACOE"). The Licensee must provide a copy of the application and final permits to Licensor prior to working within the wetland and provided Licensor has reasonable time to review said permits.

12. **Diggers Hotline:** Licensee shall contact Diggers Hotline at (800) 242-8511 to locate any underground facilities at least five (5) days prior to any work, excavation or construction on the Lands and Premises in order to determine the location of electric, telephone, water, communication and natural gas facilities within the Lands, Premises and surrounding lands in the vicinity of the contemplated work and the applicable clearance requirements for work performed in the proximity of such facilities.
13. **Plan Review and Approval:** Licensee shall submit to Licensor and to ATC for its review and written approval, detailed site plans and construction drawings (hereinafter "Plans") showing the proposed location of the Trail with respect to the Lands and Utility Facilities, which Plans shall also include proposed grade changes, Trail cross sections, signs and other improvements to the Premises which Licensee desires to construct or install. If Licensee intends to use any fill on Licensor's Lands, Licensee shall include the type and source of any fill material on the Plans and any fill material used shall be subject to inspection and analysis by Licensor for the presence of Hazardous Material as defined in Section _____ hereinafter. Licensee will not install or construct or permit to be installed or constructed, any improvements upon, or make any alterations or substantive changes to the approved plans for the Premises without first submitting plans and specifications to Licensor and receiving Licensor's approval thereof.
14. **Height Restrictions:** Licensee hereby agrees that no vehicles or equipment will be used, stored operated or permitted on the Lands or Premises having a height in excess of 12 feet above original ground grade level, unless otherwise approved in writing by Licensor and/or ATC as their respective interests lie.

15. **Runoff Control:** Licensee and its contractors shall follow those best management practices to prevent or control site runoff and erosion in accordance with the Wisconsin Department of Natural Resources (hereinafter "WDNR") publication "Wisconsin Construction Site Best Management Practice Handbook." It shall also be the responsibility of the contractor to determine if and when a permit to discharge storm water associated with a construction activity as per Wisconsin NR 216, or subsequent statute, law, ordinance, act, rule or regulation, is required. Following the completion of Licensee's work, all adjoining areas shall be restored.
16. **Drainage and Grade Changes:** Licensee shall be permitted, at its sole cost and expense, to grade, level, and apply crushed stone and/or asphalt paving and plant grass on the Trail and Premises as may be permitted by Licensor except that the Licensee shall not in any manner alter or change the original ground grade level of the Premises, or alter in any manner the drainage on the Lands or Premises without obtaining written permission from Licensor. Licensor, at its sole discretion, may require Licensee to install such drainage facilities as Licensor may deem necessary to adequately drain the Lands and Premises, which facilities are made necessary due to or arising out of any filling, grading, leveling, paving or use by the Licensee hereunder. All such drainage facilities (including culverts, storm sewers, ditches, etc.) shall be installed by and at the expense of the Licensee and to the complete satisfaction of Licensor. Any existing culverts that run beneath Licensor's lands must be maintained or enhanced; they can not be removed, filled or otherwise blocked.
17. **Maintenance and Landscaping:** Licensee shall, at its sole cost and expense, keep the Licensed Lands and Premises routinely mowed, free of weeds to the satisfaction of the local Weed Commissioner and Licensor. **Lawn mowing duties will be shared with Licensor. Licensee will mow all grass as illustrated "purple" shown in Exhibit "A" and Licensor shall mow all grass as illustrated in "red" as shown in Exhibit "B".** Licensor reserves the right to trim and/or cut down any trees and shrubs on the Lands and Premises. Licensee further agrees that it shall maintain the entire Premises as a Trail as described hereinabove, and perform such other landscaping maintenance including trimming and/or cutting down any trees and shrubs to maintain an appearance suitable for use as a Trail for biking, hiking and cross-country skiing and other similar non-motorized recreational uses. Licensee shall not plant any trees or shrubs on the Lands or Premises without the express written permission of the Licensor. Licensee agrees to keep the Lands and Premises clean and free from all debris, rubbish, litter and trash. Licensee shall be permitted or upon request of Licensor, to place trash containers at convenient locations on the Premises. Such containers shall be emptied on a regular basis, prior to overflowing or creating a nuisance, by Licensee.
18. **Work Standards:** During construction, use of and repairs or maintenance to the Lands or Premises pursuant to this License, while in proximity to electrical conductors or gas facilities presently existing or to be installed at some future date, Licensee hereby agrees to conform to all laws, rules, ordinances, acts and regulations such as O.S.H.A. Safety and Health Regulations for Construction dealing with safe work practices and the operation of equipment near electrical lines and equipment and the provisions and requirements of the Wisconsin Administrative Code, Rules of the Department of Commerce and any amendments thereto. Licensee shall, at all times, comply with the provisions of the Wisconsin State Electric Code, compiled by the Department of Commerce and the Public Service Commission of Wisconsin, and all amendments thereto. Any work done by Licensee on the Lands or Premises shall be performed in such a manner as not to interfere with the use of Licensor's Lands for electric lines, gas lines, communication lines and related or unrelated facilities, both overhead and underground, which presently exist or might be installed at a later date.
19. **Damage to Facilities:** Licensee hereby agrees to effectively prevent damage to electrical facilities, communication facilities or related facilities due to or arising out of the construction, installation, operation, maintenance, repairs, removals and use of the Lands and Premises by Licensee, its employees, agents, contractors, customers or invitees. In the event the Lands, Premises or adjoining lands or existing electrical and communication facilities or related or unrelated facilities thereon are damaged as a result of activities conducted

on or in any way connected with Licensee's construction, installation, operation, maintenance, repairs, removals or use of the Lands or Premises by Licensee, its employees, agents, contractors, customers or invitees, repairs shall be completed by or at the direction of Licensor and paid for by Licensee upon presentation of a bill therefor.

20. **Movement of Licensor Facilities:** In the event it is necessary for Licensor, ATC or existing tenants, permittees or licensees to reconstruct, protect, modify, adjust, replace or relocate its facilities due to the aforementioned use of Licensor's Lands and/or the construction, operation, maintenance or existence of Licensee's facilities, Licensee agrees to promptly reimburse Licensor, ATC or such affected tenants, permittees or licensees upon presentation of a bill for the costs and expenses incurred by Licensor as a result thereof but Licensee shall be given the option of moving or relocating its material and equipment to reduce or eliminate costs associated herewith.
21. **Proximity to Gas Lines/Facilities:** During construction, installation, operation, maintenance, repairs, removals and use of the Lands and Premises pursuant to this License, while in proximity to gas lines and gas facilities presently existing or to be installed at some future date, Licensee hereby agrees to exercise due caution, comply with all applicable safety laws and regulations and take or suffer no action which results in the gas lines or gas facilities being placed in violation of any applicable law or regulation. In the event the Lands, Premises, adjoining lands or existing gas facilities or related facilities thereon are damaged as a result of activities conducted on or in any way connected with Licensee's construction, installation, operation, maintenance, repairs, removals or use of the Lands or Premises by Licensee, its employees, agents, contractors, customers or invitees, repairs shall be completed by or at the direction of Licensor and paid for by Licensee upon presentation of a bill therefor.
22. **Solid Waste:** Licensee shall not cause or permit any solid wastes to accumulate or be stored in or about the Lands or Premises. All solid wastes shall be properly stored, handled and routinely disposed of off the Lands and Premises in a manner that complies with applicable federal, state and local laws, codes and/or regulations. Licensee shall not store, handle or dispose of solid wastes in a manner that will pollute or contaminate the atmosphere, ground or water or which may adversely affect the health, welfare or safety of persons whether located on the Lands, Premises or elsewhere.
23. **Hazardous Materials:** Licensee its agents, employees, contractors, and invitees shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Lands or Premises or Licensor's adjoining lands. The use and/or storage of Hazardous Material by or for any assignee is prohibited. Licensee shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, storm water or sanitary sewer system, or any body of water, if such material (as determined by the Licensor or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Lands, Premises or elsewhere; or (b) the condition, use, or enjoyment of any other real or personal property.

As used herein, the term "Hazardous Material" means:

- a. Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;
- b. Any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder;
- c. Any oil, petroleum products, and their byproducts; and

- d. Any substance which is or becomes regulated by any federal, state, or local governmental authority.

Licensee agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material kept on the Premises or Lands by the Licensee and the Licensee shall give immediate notice to the Licensor of any violation or potential violation of the provisions of this Section _____. Licensee shall defend, indemnify, and hold harmless Licensor and its agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorneys' and consultant fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to:

- aa. The presence, disposal, release, or threatened release of any such Hazardous Material which is on, from, or affects soil, water, vegetation, buildings, personal property, persons, animals, or otherwise;
- bb. Any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material;
- cc. Any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; or
- dd. Any violation of any laws applicable thereto. The provisions of this Section shall be in addition to any other obligations and liabilities Licensee may have to Licensor at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this License.

Provided Licensee is not in violation of any federal, state or local laws, rules, ordinances or orders existing at the signing hereof or at some future date pertaining to vehicular discharge, leak, release or emission of any antifreeze, oil, petroleum products and their byproducts from Licensee's vehicles or those of its employees, contractors, visitors and invitees affecting the Premises and Lands and provided any such discharge, release or emission is in the typically small amounts associated with parking lot and driveway usage, Licensee shall not be considered to be in violation of this Section. Any larger discharge, leak, release or emission of antifreeze, oil, petroleum products and their byproducts resulting in pooling or runoff of the products must be quickly and thoroughly cleaned up by Licensee and properly disposed of off Licensor's lands or Licensee will be considered in violation of this Section.

Licensee shall not be considered in violation of this Section due to the presence of fuel in the fuel tanks of its vehicles or the vehicles of its employees, agents, contractors and invitees.

Nothing contained herein shall be construed to preclude Licensee from using Hazardous Materials in the routine maintenance of the Lands or Premises without the prior consent of Licensor so long as such materials are readily available to the general public or are applied by a contractor licensed for such application and are used in compliance with federal, state or local laws and regulations for its intended purpose and is applied in the manner and quantities recommended by the product manufacturer and the Wisconsin Department of Agriculture, Trade and Consumer Protection.

24. **Job Inspector Notification:** Licensee agrees to contact Rollie Simatic 414-944-5955 or such other person or phone number as Licensor may from time to time designate, within the specified time limits to inform him about the following occurrences:

- a) At least seven (7) days prior to the commencement of the project herein permitted.

- b) Within seven (7) calendar days after the termination of the License herein permitted with a plan for restoration.
- c) Within seven (7) calendar days after the restoration has been completed.
- d) Within seven (7) calendar days after a lapse of six (6) months since Licensee accepted this License if the project herein permitted has not been undertaken by such date; within seven (7) calendar days after each six (6) month interval thereafter until the project herein permitted is undertaken.

It is not Licensor's intent to serve as or in lieu of a building inspector, but to serve and protect Licensor's interest in the Lands and Premises and other improvements and its communication, electrical, gas and other facilities. In the event Licensor's inspector(s) reasonably determines that communication, electric, gas or other facilities of Licensor are in danger of being damaged or certain construction activity poses a threat to human life, Licensee hereby agrees that Licensor's inspector(s) is empowered to immediately shut down and stop all threatening activity and the work shall not restart until Licensor's inspector is satisfied that the dangerous situation has been resolved to his or her satisfaction. The cost of Licensor's reasonable supervision shall be itemized and billed separately to Licensee and Licensee agrees to promptly reimburse Licensor for its reasonable cost.

- 25. **Indemnification/Insurance:** Licensee hereby agrees to indemnify, save and hold harmless Licensor, its affiliated corporations and their respective directors, officers and employees against any and all loss, cost, liability, damage and expense, including attorney's fees incurred by Licensor on account of any injury to or death of any person or persons whomsoever or on account of damage to property sustained by any person or persons whomsoever caused by, connected with or arising directly or indirectly, wholly or in part, from any use, permitted or not, or operation of the Lands and Premises resulting in any manner from the privileges herein given and whether authorized for such use or not, or the failure of Licensee to observe the covenants of this License; excepting, however, any claims or actions arising out of the sole negligence or willful acts of Licensor. Licensee agrees to deliver to the Licensor a certificate to the effect that it has in full force and effect a comprehensive general liability insurance policy, which may be supplemented by an umbrella policy, issued by a reputable insurance company and Bodily Injury Liability coverage in the amount of \$1,000,000 each person, \$2,000,000 each accident, and Property Damage Liability coverage in the amount of \$250,000 each accident, and further providing that Licensor will receive at least ten (10) days notice in writing of any cancellation thereof and naming Licensor as an additional insured. Licensee agrees to continue such insurance in force during the entire term of this License, and shall furnish like certificates for any renewal thereof.
- 26. **Safety and Protection:** The Licensee hereby agrees, at its sole cost and expense, to erect and maintain any barricades, guard rails, fencing, and/or safety devices for protection as they relate to the protection of the Licensor's and ATC's electric facilities, gas facilities and related construction and operational procedures. The Licensee agrees to maintain the same in good condition, repair and appearance at all times. Licensee will submit to Licensor any and all plans and specifications for the installation of barricades, guard rails, fencing and/or safety devices or protection which may be installed on the Lands and Premises and such installations shall not be made without the consent and prior written approval of Licensor. No fencing, barricades or other improvements shall be installed or erected for any purpose which will obstruct, interfere with or impede the free access of Licensor or ATC to the Lands, Premises or facilities.
- 27. **Galvanic/Stray Current/Grounding:** Licensee agrees to release Licensor from any responsibility for damage or personal injury resulting from electromagnetic fields electrolysis due to local galvanic or stray current conditions on or along said Lands. Further, Licensee agrees to assume all costs for electrolysis protection. All improvements, including bridges, shall be grounded unless otherwise approved in writing by Licensor.

28. **Removal of Improvements:** Licensee hereby agrees, upon the expiration or early termination of this License by forfeiture, lapse of time or otherwise, if so requested in writing by Licensor, to remove promptly, at its sole cost and expense, all or part of its improvements including Trail surfaces and drainage structures from the Lands or Premises. In the event Licensee cannot or is unable or unwilling to remove said improvements and related facilities as directed by Licensor, Licensee hereby authorizes Licensor to do so, and Licensee hereby agrees to reimburse Licensor for any and all expenses incurred in connection therewith, including restoration as hereinafter required, upon presentation of a bill therefor, and Licensee hereby agrees to indemnify and save harmless Licensor from all liability of any kind whatsoever that Licensor may have incurred by such removal.
29. **Restoration:** Licensee agrees to restore or cause to restore the Lands and Premises of Licensor to the condition existing prior to any disturbance to such Lands and Premises. Licensee further agrees that upon the earlier termination or expiration of this License by either Party, the Lands, including the Premises shall be restored to the condition existing prior to any disturbance or improvement from the aforementioned use of Lands and Premises. Included, but not limited to, in such restoration, after construction and subsequent to termination of this License, shall be the spreading of topsoil and sowing perennial type grass seed on any disturbed areas, replacement of crushed stone and/or paved surfacing, replanting of shrubs and other ground cover and repair of fences and gates or other damages incurred due to or arising out of the permission herein given.
30. **Snow Plowing:** Licensee shall be permitted to plow, but not pile, the snow on the Premises in the event it desires to do so.
31. **Taxes:** During the License Term, Licensee shall be responsible for all taxes on the Licensed Space, such taxes being defined as any and all federal, state and local governmental, quasi-governmental or public authority taxes, assessments and charges of any kind or nature, whether general, special, ordinary or extraordinary (but not including income or franchise taxes or any other taxes imposed upon or measured by Licensor's income or profits, except as provided below), or payments to governmental authorities in lieu thereof, whether or not in contemplation of the parties to this License, which Licensor shall pay or become obligated to pay because of or in connection with the ownership, renting, or operation of the Licensed Space (including but not limited to charges for the installation, maintenance, repair and replacement of sewer/water, curb, gutter and roadway) and of the personal property, fixtures, machinery, equipment, systems and apparatus located thereon or used in connection therewith. Taxes shall include, without limitation, all real and personal property taxes (attributable to the year in which paid), sales taxes, assessments (special or otherwise), fire inspections, transit taxes and ad valorem taxes but shall not include penalties or late fees thereon unless the penalty and/or late fees are directly attributable to Licensee. Taxes shall also include all fees, costs and expenses (including, legal fees and court costs) paid by Licensor in connection with protesting or contesting or seeking a refund or reduction of and/or negotiating with public authorities with respect to any of the aforesaid taxes, regardless of whether Licensor is ultimately successful. If at any time during the term hereof, a tax or excise on rents or other tax however described, other than an income tax, is levied or assessed by the United States or the State of Wisconsin, or any political subdivision thereof, on account of the rents hereunder or the interest of Licensor under this License, such tax shall constitute and be included in taxes. Any taxes paid by Licensor hereunder shall be reimbursable to Licensor by Licensee as Additional Rent
32. **Breach of License:** In the event Licensee shall breach or violate any of the terms, conditions or provisions of this License, or if any governmental agency having jurisdiction shall serve any demand, order or notice, including violations relating to zoning or municipal ordinances, upon Licensor or Licensee, the Licensee shall, at its sole cost and expense, correct said breach or violation and comply with said demand, order or notice within 30 days of its receipt of such written notice or as stated within said demand, order or notice. In the further event that Licensee does not correct said breach or violation or comply with said demand, order or notice within the required time period, it shall be lawful for Licensor, without liability to Licensee, without notice or demand, to declare said License terminated and to re-enter the Premises either with or without process of law and to expel,

remove and put out Licensee or any person or persons occupying the Premises, using such force as may be necessary so to do and to repossess and enjoy the Lands and Premises again as before this grant of License without prejudice to any remedies which might otherwise be used for the preceding breach of covenants; Licensee hereby expressly waiving all right to any notice or demand under any statute relating to forcible entry and detainer. The decision of Licensors shall be final and binding upon Licensee concerning any breach or default in the covenants and agreements contained in this License. Licensee shall be liable to Licensors for any and all costs incurred, including reasonable attorneys' fees owing to or arising out of any action taken pursuant to this provision in which Licensors prevail.

33. **Licensors Right to Enter:** The Licensors reserve unto itself and ATC and for their employees, agents and contractors the right, at any time, to enter upon the Lands and Premises by any means necessary i) for performing studies, gathering of air, water, soil and other material samples, ii) for inspection of the Premises in order to verify Licensee's compliance with the Lease terms, iii) for access to Licensors' Lands including the Premises, iv) to inspect, patrol, construct, install, operate, maintain, replace and repair electric lines, gas lines, communication equipment and related and unrelated facilities and equipment, both overhead and underground, upon, over, across, in and beneath the Premises and the Lands without liability to Licensee, the same as though this License had not been entered into. Licensors or ATC through Licensors may, without liability to Licensee, require Licensee to immediately vacate all or part of the Premises upon notice to do so in the event Licensors deem it necessary to make emergency repairs to its facilities. In the event it becomes necessary for Licensors or ATC to install or erect additional electric lines, natural gas lines, communication lines and/or related facilities at some future date, Licensee hereby agrees to vacate as much of the Premises as Licensors and/or ATC deem necessary and for such periods of times as may be necessary to install, modify, reconstruct or erect such facilities upon receipt of notice from Licensors to do so. Licensors and/or ATC shall perform and complete all work under this Section as quickly as is reasonable possible to minimize the inconvenience to Licensee.

Licensee further agrees that it shall immediately vacate the Premises and close down the Trail upon notification by Licensors that weather conditions exist or may develop which could cause dangerous conditions such as icing on trees and wires.

34. **Paramount Rights:** The rights of the Licensors and ATC to utilize the Lands and Premises in their utility business will at all times be and remain paramount to the rights herein granted to Licensee and nothing stated herein is to be construed as restricting Licensors from granting rights to other Parties or persons in, upon or under the Lands and/or Premises for but not limited to driveways, streets, sidewalks, sewers, water pipes and mains, drainage tiles and pipes, gas mains and pipelines, communication circuits and other allied uses. It is understood and agreed that this License is subject to all existing easements, grants and licenses.
35. **Fees and Charges:** As a condition of the agreement, Licensee shall not charge at any time fee for the use of the Trail except that Licensee may be permitted to charge a fee for group activities or special events upon written consent of Licensors, which consent shall not be unreasonably withheld.
36. **Alcoholic Beverages Prohibited:** Licensee covenants and agrees that alcoholic liquors or beverages are not permitted on the Lands and Premises.
37. **Police Protection:** Licensee shall be permitted to provide or arrange for the provision of all law enforcement and shall be permitted to reasonably require such law enforcement personnel to patrol the Premises as it deems reasonable under this License.
38. **Notices:** All notices to Licensors shall be sent by a reputable overnight delivery service, registered or certified mail, addressed to **Wisconsin Electric Power Company, Property Management, Room A252, 231 West Michigan Street, Milwaukee, Wisconsin 53201**, or at such other address or place as Licensors may from time

to time designate in writing. Personal delivery with a signature acknowledgement of receipt by Licensor is always an acceptable means of delivery.

All notices to Licensee shall be sent by a reputable overnight delivery service, registered or certified mail addressed to _____, or at such other place as Licensee may from time to time designate in writing. Personal delivery with a signature acknowledgement of receipt by Licensee is always an acceptable means of delivery.

39. **Waiver of Terms and Conditions:** Failure of Licensor or Licensee to enforce or insist upon compliance with any of the terms or conditions of this License shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
40. **Costs and Attorney Fees:** Licensee shall pay and discharge all reasonable costs, expenses and attorney fees that may be incurred or paid by Licensor in enforcing the covenants and agreements of this License where litigation is not commenced. In the event litigation is commenced by Licensor or Licensee to enforce any provision of this License, the prevailing Party (as determined by a judgment in favor of one Party or the other) shall be entitled to recover from the other, as additional costs, its reasonable attorney fees and costs incurred in connection with such action.
41. **No Joint Venture:** The agreements contained herein are not intended, nor shall the same be deemed or construed, to create a partnership between Licensor and Licensee, to make them joint ventures, nor to make Licensor in any way responsible for the debts or losses of Licensee.
42. **Obligations Survive:** All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the term of this License shall survive the expiration or earlier termination of the term hereof, including without limitation, all payment obligations with respect to taxes and all obligations concerning the condition of the Lands.
43. **Binding Effect:** The covenants and agreements herein contained shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, except as otherwise provided in Section hereof.
44. **Captions:** The captions in this License are inserted only as a matter of convenience and for reference and in no way define, limit, construe or describe the scope or intent of such sections or paragraphs of this License nor in any way affect this License.
45. **Severability of Provisions:** If any term, covenant or condition of the License or the application thereof to any person or Party or circumstance shall, to any extent, be invalid or unenforceable at any time, the remainder of the License, or the application of such term, covenant or condition to persons, Parties, or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this License shall be valid and be enforced to the fullest extent permitted by law.
46. **Interpretation:** The laws of the State of Wisconsin shall govern the validity, performance and enforcement of this License. Whenever the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.
47. **Acceptance:** Licensee hereby accepts this License upon the terms, conditions, restrictions hereinbefore set forth, and do covenant to keep and perform each and every one of said terms conditions and restrictions.

The covenants herein contained shall bind the Parties mutually and their respective successors and assigns.

IN WITNESS WHEREOF, the said **WISCONSIN ELECTRIC POWER COMPANY** has caused these presents to be signed by Tonya M. Peters, its Manager of Property Management on the _____ day of _____, 2021, and the said **City of Greenfield**, has caused these presents to be signed by its _____ and its _____ and its corporate seal to be hereunto affixed this _____ day of _____, 2021.

In Presence Of:

WISCONSIN ELECTRIC POWER COMPANY
(Licensor)

By _____
Tonya M. Peters, Manager of Property Management

CITY OF GREENFIELD
(Licensee)

By: _____
Name: _____
Title: _____

ATTEST:

By _____

R:\Data\as\Real Estate\Recreation Trails\Recreation Trails\REC TRAIL LICENSES\Milwaukee County\Greenfield Trail 108-60Streets\21-0051 Greenfield_Powerline Phase 1 Trail License.doc

This document was drafted by Kerry Paruleski on behalf of We Energies, P. O. Box 2046, Milwaukee, Wisconsin 53201.

Exhibit “A”

Trail limits starting at STA 98+88.75 to the end point at STA 260+98.07.

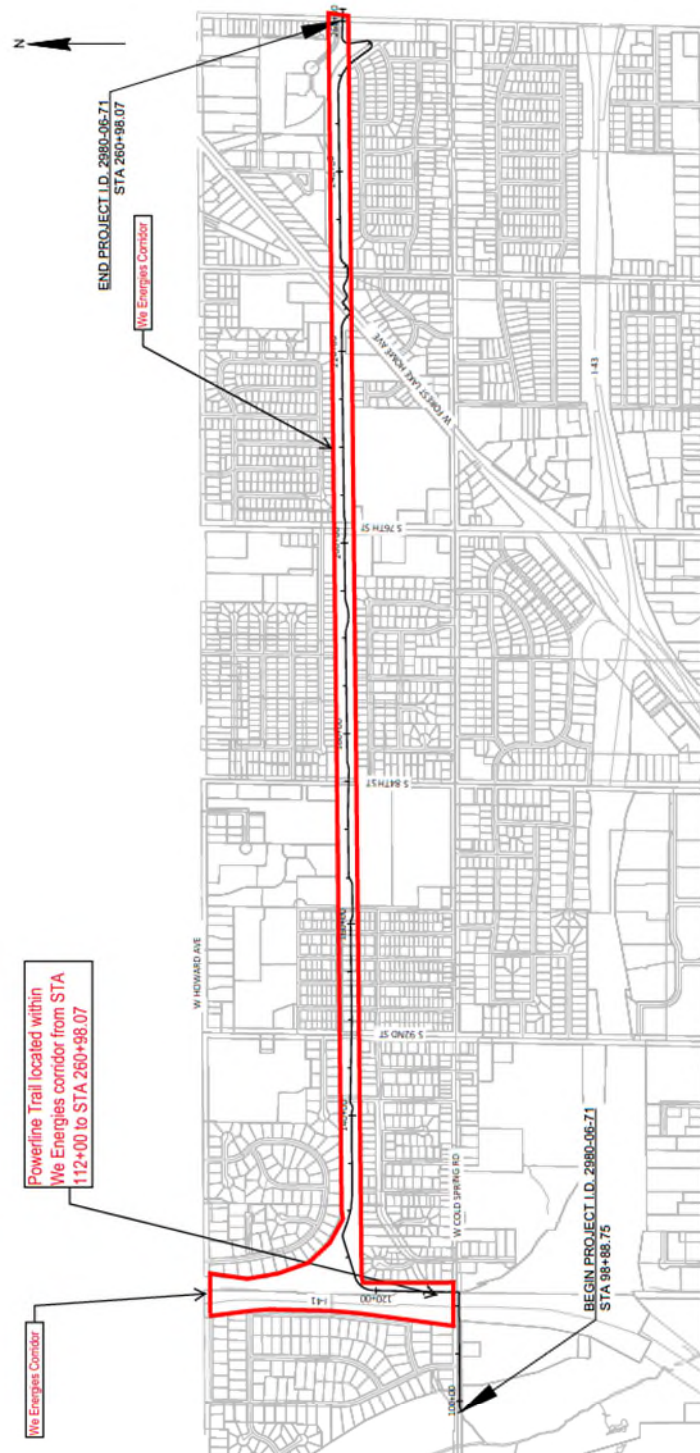


Exhibit “B”

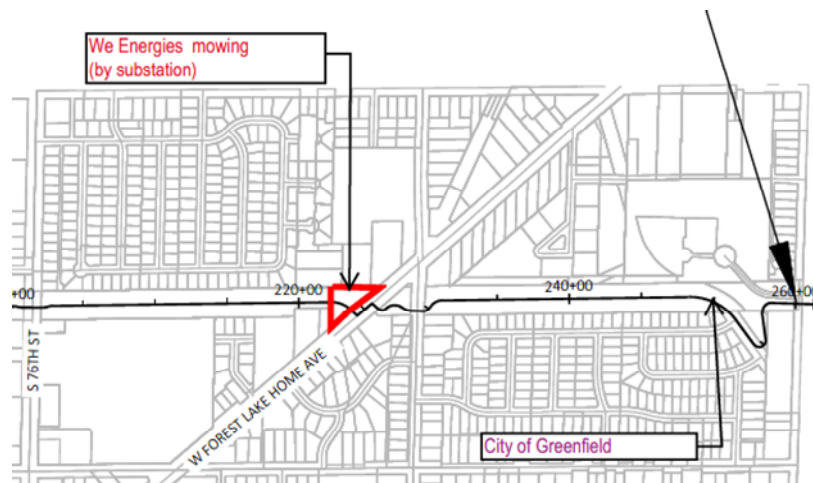
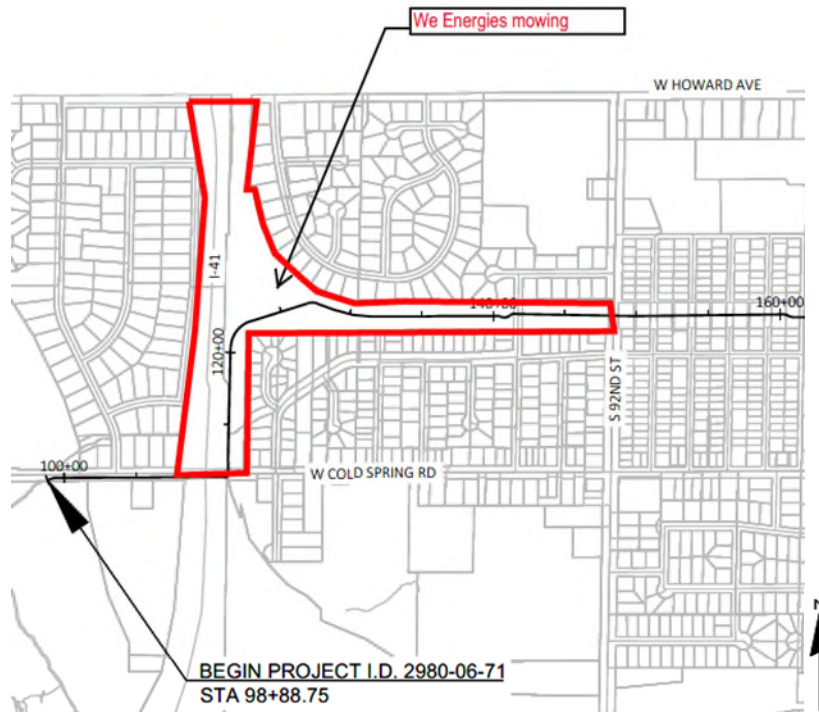
City of Greenfield will maintain all lawn mowing duties EXCEPT as depicted below (We Energies will cut the grass as shown).



Exhibit "B" continued

City of Greenfield will maintain all lawn mowing duties EXCEPT as depicted below (We Energies will cut the grass as shown).

I94 N/S Corridor to 92nd Street



We Energies Substation Property



Board of Public Works Meeting

Item Number:

Introduced By: Department of Neighborhood Services (Katz)

Date Introduced: November 23, 2021

RELATING TO:

Discussion and decision to **approve an agreement with Resource Environmental Solutions for maintenance along the Wildcat Creek in Kulwicki Park.**

SUMMARY:

On 2018 the City of Greenfield used grant funding to improve the Wildcat Creek where it flows through Kulwicki Park.

The project included the planting of native grasses and flowers along the stream bank.

Establishing a native planting requires maintenance to remove weeds for the first five years.

This agreement with Resource Environmental Solutions is for the final two years of maintenance.

FINANCIAL:

Two years of maintenance for a total cost of \$4,900.

RECOMMENDATION:

Approve an agreement with Resource Environmental Solutions for maintenance along the Wildcat Creek in Kulwicki Park.

ATTACHMENTS: KEY ISSUES ___ BACKGROUND ___ RESOLUTION ___ FISCAL NOTE ___
MOTION ___ OTHER ___



627 South 89th Street
Milwaukee, WI 43214

Corporate Headquarters
6575 West Loop South, Suite 300
Bellaire, TX 77401
Main: 713.520.5400

Project Information

Quote

Wildcat Creek Maintenance 2023 & 2024
RES # OP01580

November 17, 2021

Jeff Katz
City of Greenfield
7325 W. Forest Home Ave
Greenfield, WI 53220

Thank you for the opportunity to submit a quote for two more years of maintenance at the Wildcat Creek site. We will be happy to answer any questions that you may have about our proposal.

Sincerely,

Deanna Nickey, Restoration Manager
Resource Environmental Solutions (RES)
920.390.0642
dnickey@res.us

Travis Lanser, Estimator
Resource Environmental Solutions (RES)
262.895.9005
tlanser@res.us

Scope of Work and Estimate

Item	Qty	Unit	Unit Cost	Extended
2022 Maintenance	1	LS	\$2,400.00	\$2,400.00
2023 Maintenance	1	LS	\$2,500.00	\$2,500.00
Total				\$4,900.00

Notes:

1. This quote is valid for 60 days.
2. Upon acceptance of this quote by the Owner/Client, please sign the attached Services Agreement necessary for acceptance of the contract by each party.

3. RES is a non-union shop. Prevailing Wages rates have not been included in the above price.
4. **Quote is exclusive of sales tax.** Client/Owner shall pay all applicable sales or use taxes, or provide RES with a sales tax exemption certificate to support any exemption.

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is entered into effective as of _____ (the “Effective Date”), by and between City of Greenfield, having its offices at 7325 W Forest Home Avenue Greenfield, Wisconsin 53220 (hereinafter called “Project Owner”), and RES Great Lakes, LLC dba Applied Ecological Services, having its office at c/o Resource Environmental Solutions, LLC, 6575 West Loop South, Suite 300, Bellaire, Texas 77401 (hereinafter called “Service Provider” and, together with the Project Owner, the “Parties” and, each individually, a “Party”).

RECITALS:

WHEREAS, Project Owner desires to engage Service Provider to provide the Services (defined below), and Service Provider is willing to perform such Services subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and of other good and valuable consideration, the Parties agree as follows:

AGREEMENTS:

1. Appointment. Service Provider shall perform the services described on Schedule 1 attached hereto (collectively, the “Services”). The Parties may agree in writing to amend Schedule 1 from time to time.
2. Term and Termination.
 - (a) The term of this Agreement (the “Term”) shall commence on the Effective Date and shall continue until the date upon which the Services are completed, unless sooner terminated by mutual written consent of the Parties; provided that, in the event that a Party (the “Defaulting Party”) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 60 days after receipt of written notice of such breach, then the other Party may terminate this Agreement, effective upon written notice to the other Defaulting Party.
 - (b) Notwithstanding anything to the contrary herein, if Project Owner fails to pay any amount when due hereunder: (a) and such failure continues for ten (10) days after Project Owner's receipt of written notice of nonpayment; or (b) more than once during the Term, then Service Provider (1) may retain all prior payments received as liquidated damages, (2) cease providing Services unless and until such breach is cured to Service Provider's reasonable satisfaction, and (3) in addition to its other remedies at law or in equity, terminate this Agreement by written notice to Project Owner.
 - (c) The rights and obligations of the Parties set forth in this Section 2 and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

3. Limited Warranty and Limitation of Liability.

- (a) Service Provider warrants that it shall perform the Services:
 - (i) In accordance with the terms and subject to the conditions set out in this Agreement;
 - (ii) Using personnel of industry standard skill, experience and qualifications; and
 - (iii) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.
- (b) Service Provider's sole and exclusive liability and Project Owner's sole and exclusive remedy for breach of this warranty shall be as follows:
 - (i) Service Provider shall use reasonable commercial efforts to promptly cure any such breach; provided, that if Service Provider cannot cure such breach within a reasonable time (but no more than 60 days) after Project Owner's written notice of such breach, Project Owner may, at its option, terminate this Agreement in accordance with Section 2(a).
 - (ii) In the event this Agreement is terminated pursuant to Section 3(b)(i) above, Service Provider shall within 30 days after the effective date of termination, refund to Project Owner any fees paid by the Project Owner as of the date of termination for the Services, less a deduction equal to the fees for receipt or use of such Deliverables (as defined below) or Services up to and including the date of termination on a pro-rated basis.
 - (iii) The foregoing remedy shall not be available unless Project Owner provides written notice of such breach within 30 days after delivery of the Services.
- (c) SERVICE PROVIDER MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN THIS SECTION 3. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

4. Subcontracts. Service Provider shall be permitted, at its sole cost and expense, to enter into one or more contracts with third parties for the performance of all or any portion of the Services (each, a "Subcontractor"), and Service Provider shall direct and supervise such Subcontractors consistent with Service Provider's obligations hereunder.

5. Insurance. Throughout the Term, Project Owner and Service Provider each shall obtain and maintain commercial general liability insurance on an occurrence basis and other customary insurance policies, including but not limited to Worker's Compensation insurance as required by statute, with the other Party as insureds, with limits of not less than One Million and No/100 Dollars (\$1,000,000) each occurrence combined single limit on bodily injury, death or property damage.

Each Party's insurance shall be primary and non-contributory to any insurance otherwise carried by the other Party.

6. Waiver of Subrogation. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PROJECT OWNER AND SERVICE PROVIDER HEREBY WAIVE ANY AND ALL RIGHTS OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION AGAINST THE OTHER, ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, PARTNERS, MEMBERS, AFFILIATES, SERVANTS OR SHAREHOLDERS FOR ANY LOSS OR DAMAGE TO PROPERTY OWNED OR CONTROLLED BY THE WAIVING PARTY BY REASON OF FIRE, THE ELEMENTS, OR ANY OTHER CAUSE WHICH IS COVERED BY THE INSURANCE POLICIES REQUIRED TO BE CARRIED HEREUNDER, REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF THE OTHER PARTY HERETO, ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, PARTNERS, MEMBERS, AFFILIATES, SERVANTS OR SHAREHOLDERS. THIS SECTION 6 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

7. Project Owner's Obligations. The Project Owner shall:

(a) Respond promptly to any reasonable requests from Service Provider for instructions, information or approvals required by Service Provider to provide the Services.

(b) Cooperate with Service Provider in its performance of the Services and provide access to Project Owner's premises, employees, contractors, and equipment as required to enable Service Provider to provide the Services.

(c) Without limiting Section 7(b), to the extent applicable Project Owner hereby (i) grants to Service Provider and its affiliates, employees, agents, consultants, contractors and subcontractors (collectively, "Service Provider Parties") the right to enter and exit the property on which the Services will be performed (the "Property") at such reasonable times to allow such parties to perform the Services, (ii) represents and warrants that (A) Project Owner has the authority to grant such rights to Service Provider Parties, and (B) Project Owner is aware of no agreement binding on Project Owner or the Property that could reasonably be expected to interfere with Service Provider Parties' ability to enter the Property and perform the Services, and (iii) covenants and agrees that it will take no action, or fail to take any action, that would impair Service Provider Parties' ability to enter or exit the Property or perform the Services. In the event Service Provider reasonably believes that any of the foregoing are untrue, Service Provider shall provide prompt written notice thereof to Project Owner and shall have the right to interrupt Services until such issues have been resolved to Service Provider's reasonable satisfaction.

(d) Take all steps necessary, including obtaining any required licenses or consents, to prevent Project Owner-caused delays in Service Provider's provision of the Services.

8. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and

domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, “Intellectual Property Rights”) in and to all documents, work product and other materials that are delivered to Project Owner under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services (collectively, the “Deliverables”) shall be owned by Service Provider. Service Provider hereby grants Project Owner a license to use all intellectual property rights in the Deliverables free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Project Owner to make reasonable use of the Deliverables and the Services.

9. Limitation of Liability.

(a) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NO PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) EACH PARTY EXPRESSLY AGREES THAT THE MEMBERS, MANAGERS, AFFILIATES, PARTNERS AND SHAREHOLDERS OF ANY DEFAULTING OR BREACHING PARTY HEREUNDER ARE NOT LIABLE FOR ANY COSTS, EXPENSES, LOSSES OR DAMAGES ARISING FROM SUCH PARTY’S BREACH OR DEFAULT UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 9 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

(c) IN NO EVENT SHALL SERVICE PROVIDER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE YEAR PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. Compensation to Service Provider.

(a) Project Owner shall pay to Service Provider the amounts set forth on Schedule 2, which amounts shall become fully due and payable within thirty (30) days after the receipt by Project Owner of an invoice. Service Provider will invoice Project Owner on a monthly basis.

(b) All amounts required to be paid by Project Owner under this Agreement (a) shall be paid by wire transfer in accordance with instructions to be provided by the Service Provider, in good and sufficient funds, or by other method reasonably acceptable to the Service Provider, and (b) once paid shall be deemed fully earned by the Service Provider and non-refundable.

(c) Upon expiration of the Term or any earlier termination of this Agreement, Project Owner shall pay to Service Provider all amounts which have become payable under this Section 10 or, in the case of milestone payment not yet due, but that have not yet been paid, and such payment obligations shall survive termination of this Agreement. Except for invoiced payments that the Project Owner has successfully disputed, all late payments shall bear interest at the lesser of the rate of 5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.

(d) Project Owner shall reimburse Service Provider for all reasonable expenses incurred in accordance with the performance of the Services within thirty (30) days of receipt by the Project Owner of an invoice from Service Provider accompanied by receipts and reasonable supporting documentation.

(e) Project Owner shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Project Owner hereunder; provided, that, in no event shall Project Owner pay or be responsible for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personnel or real or personal property or other assets.

11. Miscellaneous.

(a) Force Majeure. Except for the payment of monetary amounts due pursuant to Section 10 hereof, no Party shall be liable or responsible for failure to satisfy its obligations hereunder if such failure is attributable to Force Majeure. As used herein, “Force Majeure” means any of the following: fires, floods, storms, earthquakes, other weather events, strikes, riots, acts of God (including epidemics), shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, adverse determinations from any such parties, delays in permitting or approvals from any governing bodies, changes to the scope of work that extend the time period necessary to complete the Services, delays to a Party that are caused by the other Party or any third party, the migration of endangered species onto the property where the Services are to be performed, discovery of environmental contamination or other adverse site conditions that suspend or delay the performance of the Services, the actions, faulty work or defective work of any third party for whom the delayed Party is not responsible, or any other causes of any kind whatsoever which are beyond the reasonable control of the responsible Party.

(b) Amendments. This Agreement may not be changed, amended or modified except by an instrument in writing signed by all Parties.

(c) Provision to Third Parties. Neither this Agreement nor the terms hereof nor any confidential information disclosed in connection herewith may be furnished to any

third party, including governmental entities, without the written consent of all Parties, such consent not to be unreasonably withheld, except as may otherwise be required by law or a court of competent jurisdiction; provided, that the foregoing shall not be deemed to prohibit the Parties from providing this Agreement or the terms hereof to their attorneys, consultants, professional advisors, and current and prospective investors and primary lenders. The terms and conditions of this paragraph shall survive termination of this Agreement.

(d) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Texas (the “State”).

(e) Counterparts; Execution. This Agreement may be signed by facsimile signature, which signature shall be deemed to constitute an original signature and be binding as such. This Agreement may be executed in identical counterparts, each of which when so executed and delivered will constitute an original, but all of which taken together will constitute one and the same instrument. The Parties each represent that the person signing this Agreement is duly authorized to sign this Agreement.

(f) Notices. All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth on their signature pages hereto (or to such other address that the receiving Party may designate from time to time in accordance with this Section 11(f)). Unless otherwise agreed herein, all Notices must be delivered by (i) personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid) or (ii) by electronic mail addressed to the electronic mail address set forth on the signature page hereto for the Party to be notified with a confirmation copy delivered by another method permitted under this paragraph. Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements hereof.

(g) Severability; Waiver; Entire Agreement. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. This Agreement (including any schedule, exhibits or amendments) embodies the entire agreement between the Parties and supersedes all prior agreements and understandings relating to the Project.

(h) Third Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement

(i) Assignment; Successors and Assigns. This Agreement shall be binding upon the Parties and their respective successors and assigns; however, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. The foregoing restriction shall not be deemed to prohibit (i) the assignment or transfer of this Agreement by either Party to (A) any third party that controls, is controlled by, or is under common control with, the assigning Party, or (B) any purchaser of all, or substantially all, of the assets of the assigning Party, as long as, in each case, the assignee agrees to assume all obligations of the assigning Party hereunder, or (ii) the pledge or collateral assignment of this Agreement, or any rights and/or remedies hereunder, by any Party to its primary lender(s) as collateral for such Party's obligations under any secured credit facility.

(j) Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Project Owner and Service Provider have executed this Agreement effective as of the Effective Date.

SERVICE PROVIDER:

RES Great Lakes, LLC dba Applied Ecological Services

By: _____
Name: _____
Title: _____

Address:

PO Box 256, 17921 W. Smith Road
Brodhead, WI 53520

Attn: _____
Email: _____

With copies of all notices to:

c/o Resource Environmental Solutions, LLC
6575 West Loop South, Suite 300
Bellaire, Texas 77401
Attn: Lilly Van Maele
Email: lvanmaele@res.us

IN WITNESS WHEREOF, Project Owner and Service Provider have executed this Agreement effective as of the Effective Date.

PROJECT OWNER:

City of Greenfield

By: _____

Name: _____

Title: _____

Address:

Attn: _____

Email: _____

SCHEDULE 1

SERVICES

See Schedule 2 for Services and Compensation

SCHEDULE 2
COMPENSATION

Item	Qty	Unit	Unit Cost	Extended
2022 Maintenance	1	LS	\$2,400.00	\$2,400.00
2023 Maintenance	1	LS	\$2,500.00	\$2,500.00
Total				\$4,900.00